House Calendar No. 271

106TH CONGRESS, *2d Session* | HOUSE OF REPRESENTATIVES | REPORT 106–801

CONTEMPT OF CONGRESS

JULY 27, 2000.—Ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

REPORT

REPORT ON THE REFUSALS TO COMPLY WITH SUBPOENAS ISSUED BY THE COMMITTEE ON RESOURCES

65–784

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DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

LETTER OF TRANSMITTAL

July 27, 2000

Honorable Dennis J. Hastert
Speaker of the House of Representatives
Washington, D.C.

Dear Mr. Speaker:

Since May 1999, the Committee on Resources has been conducting an oversight review of payments made by a private corporation to two federal employees with duties affecting public lands. That oversight project focuses on three areas: the payments and the source of the funds used to make the payments; the possibility that those payments affected policies and actions concerning public lands; and statutes, rules and practices of the Department of the Interior and Department of Energy which were circumvented or inadequate to disclose the payments.

During the course of our work, many witnesses refused voluntary interviews and requests for records. In June 1999, the Committee authorized me to issue subpoenas in this oversight project. I thereupon issued subpoenas requiring the production of records from various parties. In spite of the plain requirements of one subpoena, certain documents were heavily redacted. In February 2000, that same party and two others announced publicly that they intended to refuse production under subpoenas issued on February 17, 2000. Further subpoenas were also met with defiance.

On May 4, 2000, the Subcommittee on Energy and Mineral Resources began a series of hearings in this matter. Because many important witnesses had refused requests for interviews, I issued subpoenas requiring appearances at four hearings. During the course of those hearings, four witnesses refused to answer questions ruled by the Subcommittee to be pertinent and ordered to be answered.

This Report includes facts describing the refusals by Mr. Henry M. Banta; Mr. Keith Rutter; and Ms. Danielle Brian Stockton to both refuse compliance with subpoenas for records and refuse answers to pertinent questions while testifying under subpoena; the refusal of Mr. Robert A. Berman to answer pertinent questions while testifying under subpoena; and the refusal of the Project on Oversight to produce subpoenaed records.

The Committee on Resources reports these facts to the House with a recommended resolution authorizing you to report the facts of these refusals to the United States Attorney for the District of Columbia. If the House accepts the Committee's recommendation and adopts our report, upon certification by you, the United States Attorney would ask a grand jury to consider Contempt of Congress charges against these parties.

The standards of proof applicable to these offenses is a matter for another branch of government. This Committee and the House of Representatives fulfill the legislative branch's obligation by making a report of the facts.

During consideration of the report, the Committee considered and rejected a motion to abandon the historical view of the House and the established practice of the Committee on Resources regarding claims of common law privileges such as the attorney-client privilege.

The Committee on Resources believes that the important work of this oversight project and the broader oversight responsibilities of the Congress require action to sanction these parties for refusing compliance with duly authorized subpoenas. Oversight of possible abuses of public trust often require the use of subpoena power. If subpoenas may be openly defied, the power of Congress to conduct oversight is eroded.

The Committee on Resources voted to approve the attached report and resolution and recommends favorable action by the House of Representatives.

DON YOUNG
Chairman

CONTEMPT OF CONGRESS

Mr. Young of Alaska, Chairman of the Committee on Resources,
with Mrs. Cubin, Chairman of the Subcommittee on Energy and Mineral Resources
submits the following to the Committee on Resources

REPORT

Introduction

Chairman DON YOUNG together with Representative BARBARA CUBIN, Chairman of the Subcommittee on Energy and Mineral Resources, submits to the Committee the following Report including the following Resolution recommending to the House of Representatives that Mr. Henry M. Banta; Mr. Robert A. Berman; Mr. Keith Rutter; Ms. Danielle Brian Stockton; and the Project on Government Oversight, a corporation organized in the District of Columbia, be cited for Contempt of Congress:

> *Resolved*, That pursuant to sections 102 and 104 of the Revised Statutes of the United States (2 U.S.C. §§192 and 194), the Speaker of the House of Representatives shall certify to the United States Attorney for the District of Columbia the report of the Committee on Resources detailing (1.) the refusal of Mr. Henry M. Banta; Mr. Keith Rutter; and Ms. Danielle Brian Stockton to produce papers subpoenaed by the Committee on Resources and the refusal of each to answer questions while appearing under subpoena before the Subcommittee on Energy and Mineral Resources; (2.) the refusal of the Project on Government Oversight, a corporation organized in the District of Columbia, to produce papers subpoenaed by the Committee on Resources; and (3.) the refusal of Mr. Robert A. Berman to answer questions while appearing under subpoena before the Subcommittee on Energy and Mineral Resources, to the end that Mr. Henry M. Banta; Mr. Robert A. Berman; Mr. Keith Rutter; Ms. Danielle Brian Stockton; and the Project on Government Oversight be proceeded against in the manner and form provided by law.

The Committee on Resources directed the preparation of this Report by a Motion adopted on July 12, 2000 by a vote of 26 to 11 (Exhibit FF), after Mr. Banta, Mr. Rutter, Ms. Brian, and the Project on Government Oversight defied rulings by the Committee on Resources ordering production of the papers over objections, and after the Subcommittee on Energy and Mineral Resources sustained rulings by the chair which overruled objections raised and ordered that questions be answered by Mr. Banta, Mr. Berman, Mr. Rutter, and Ms. Brian. (Exhibit GG)

Committee Consideration

On July 19, 2000, the Full Resources Committee met in open session with a quorum present to consider a resolution and report of contempt against Henry M. Banta; Keith Rutter; Danielle Brian Stockton; and the Project on Government Oversight, a corporation organized in the District of Columbia, for failure to comply with subpoenas for records; and against Henry M. Banta, Keith Rutter, Danielle Brian Stockton and Robert Berman for refusing to answer pertinent questions while testifying under subpoena.

Congressman Jay Inslee (D-WA) offered an amendment to the report; the amendment was defeated by a roll call vote of 16 to 26, as follows:

(See next page.)

Committee on Resources
U.S. House of Representatives
106th Congress

Full Committee

Date 7-19-00

Roll No. 1

Bill No. _____ Short Title Resolution & Report regarding Contempt of Congress.

Amendment or matter voted on: Amendment offered by Mr. Inslee

Members	Yea	Nay	Pass	Members	Yea	Nay	Pass
Mr. Young (Chairman)		X		*Mr. Miller*	X		
Mr. Tauzin		X		*Mr. Rahall*	X		
Mr. Hansen		X		*Mr. Vento*			
Mr. Saxton		X		*Mr. Kildee*	X		
Mr. Gallegly		X		*Mr. DeFazio*			
Mr. Duncan		X		*Mr. Faleomavaega*	X		
Mr. Hefley		X		*Mr. Abercrombie*	X		
Mr. Doolittle		X		*Mr. Ortiz*			
Mr. Gilchrest		X		*Mr. Pickett*			
Mr. Calvert		X		*Mr. Pallone*			
Mr. Pombo		X		*Mr. Dooley*	X		
Mrs. Cubin		X		*Mr. Romero-Barcelo*	X		
Mrs. Chenoweth-Hage		X		*Mr. Underwood*	X		
Mr. Radanovich				*Mr. Kennedy*			
Mr. Jones		X		*Mr. Smith*			
Mr. Thornberry		X		*Mr. John*			
Mr. Cannon				*Mrs. Christensen*	X		
Mr. Brady		X		*Mr. Kind*	X		
Mr. Peterson		X		*Mr. Inslee*	X		
Mr. Hill		X		*Mrs. Napolitano*	X		
Mr. Schaffer		X		*Mr. Tom Udall*	X		
Mr. Gibbons		X		*Mr. Mark Udall*	X		
Mr. Souder		X		*Mr. Crowley*	X		
Mr. Walden		X		*Mr. Holt*	X		
Mr. Sherwood		X					
Mr. Hayes		X					
Mr. Simpson		X					
Mr. Tancredo		X		**TOTAL**	16	26	

No further amendments were offered, and the Committee on Resources approved the resolution and report by a roll call vote of 27-16, as follows:

(See next page.)

Committee on Resources
U.S. House of Representatives
106th Congress

Full Committee

Date 7-19-00

Roll No. 2

Bill No. _____ Short Title Resolution & Report regarding Contempt of Congress.

Amendment or matter voted on: Final Passage

Members	Yes	Nay	Pres.	Members	Yes	Nay	Pres.
Mr. Young (Chairman)	X			*Mr. Miller*		X	
Mr. Tauzin	X			*Mr. Rahall*		X	
Mr. Hansen	X			*Mr. Vento*			
Mr. Saxton	X			*Mr. Kildee*		X	
Mr. Gallegly	X			*Mr. DeFazio*		X	
Mr. Duncan	X			*Mr. Faleomavaega*		X	
Mr. Hefley	X			*Mr. Abercrombie*	X		
Mr. Doolittle	X			*Mr. Ortiz*			
Mr. Gilchrest	X			*Mr. Pickett*			
Mr. Calvert	X			*Mr. Pallone*			
Mr. Pombo	X			*Mr. Dooley*		X	
Mrs. Cubin	X			*Mr. Romero-Barcelo*		X	
Mrs. Chenoweth-Hage	X			*Mr. Underwood*		X	
Mr. Radanovich				*Mr. Kennedy*			
Mr. Jones	X			*Mr. Smith*			
Mr. Thornberry	X			*Mr. John*			
Mr. Cannon				*Mrs. Christensen*		X	
Mr. Brady	X			*Mr. Kind*		X	
Mr. Peterson	X			*Mr. Inslee*		X	
Mr. Hill	X			*Mrs. Napolitano*		X	
Mr. Schaffer	X			*Mr. Tom Udall*		X	
Mr. Gibbons	X			*Mr. Mark Udall*		X	
Mr. Souder	X			*Mr. Crowley*		X	
Mr. Walden	X			*Mr. Holt*		X	
Mr. Sherwood	X						
Mr. Hayes	X						
Mr. Simpson	X						
Mr. Tancredo	X			**TOTAL**	27	16	

I. Background

In April 1999, an oil industry publication reported that two federal employees had been paid by the Project on Government Oversight (POGO). (Exhibit A) POGO is a private corporation which is pursuing changes in oil valuation policies and regulations. The payments, totaling $383,600 to each official, were derived from the private corporation's participation in a False Claims Act lawsuit alleging fraudulent underpayment of royalties due on oil from federal and Indian leases.

In May 1999, the Committee on Resources opened an oversight review to: examine the payments; the possibility that the payments tainted or cast a shadow over recent major oil valuation policy actions; and to review agency rules and procedures which may have been circumvented or inadequate to stop the payments. On June 9, 1999, the Committee authorized the Chairman to issue subpoenas in this matter. (Exhibit B)

The Committee's oversight review began by making official written requests for documents and information from the Department of the Interior, the Department of Energy, and POGO. Later in 1999, subpoenas duces tecum were issued to POGO, Mr. Berman, and Mr. Speir.

Analysis of records and information gathered through subpoenas, official requests, and other means cast considerable doubt on the explanations provided by the parties. Records of POGO Board of Directors meetings and of POGO's dealings with Mr. Berman and Mr. Speir suggested that the three parties intended a binding agreement to equally share POGO's oil litigation proceeds. This agreement was concluded orally in early December 1996, memorialized on January 8, 1998, and restated in writing on October 8, 1998. None of these written or oral forms of the agreement suggest that the payments were intended as public service awards. An excerpt from minutes taken of the October 27, 1998, POGO Board of Directors meeting along with testimony received by the Subcommittee on Energy and Mineral Resources indicates that consultation with attorneys and accountants led to a decision to record the payments as awards but does not suggest that the Board intended or understood the payments as such.

Information was gathered and further research and analysis was conducted through the balance of 1999. By March of 2000, the Committee concluded that a more robust inquiry was required to attempt to determine the purpose and nature of the POGO/Berman/Speir agreement; to examine its possible effects on federal oil valuation and royalty policy deliberations and actions; and to review the agency ethics and financial disclosure rules and policies which may have been circumvented in concealing the agreement or which were inadequate to uncover such an agreement.

On March 21, 2000, Chairman Young charged the Subcommittee on Energy and Mineral Resources with advancing the oversight inquiry. In the letter making that charge, Chairman Young also stated a revised subject of the oversight inquiry. (Exhibit C) That statement of

subject remains unchanged. It was provided to the parties soon after it was transmitted to the Subcommittee and on numerous subsequent occasions.

II. Authority and Legislative Purpose

The authority of the Committee on Resources to conduct this oversight review has been provided to the parties cited for Contempt of Congress in correspondence and in statements at the opening of hearings.

The Committee on Resources is a duly established committee of the House of Representatives, pursuant to the Rules of the House of Representatives, 106th Congress. The jurisdiction granted to the Committee by House Rule X includes "petroleum conservation on public lands. . . ." and "[p]ublic lands generally", which plainly includes policies and programs for collecting royalties owed on crude oil from federal and Native American leases and related matters. House Rule X 2(a) and (b) confer general oversight responsibility on the Committee on Resources. Clause 2(a)(1)(A) of Rule X charges the Committee on Resources with conducting oversight examinations of "the application, administration, [and] execution . . . of federal laws ". Clause 2(a)(1)(B) of Rule X extends the oversight mandate to "conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation." Clause 2(b)(1)(B) of Rule X additionally empowers the Committee to examine the "operation of Federal agencies" which administer matters under the Committee's jurisdiction. (Exhibit D)

Under these mandates contained in the Rules of the House of Representatives, 106th Congress, the Committee on Resources has clear authority to conduct an oversight review of payments made to federal oil valuation and royalty policy advisors; the possible effect of those payments on federal oil valuation and royalty policy deliberations and actions; and laws and regulations and federal policies which bear on those payments.

Rule 6 of the Rules for the Committee on Resources, 106th Congress, establishes the Subcommittee on Energy and Mineral Resources and delegates to it jurisdiction and responsibility for "Petroleum conservation on the public lands . . . ." and related matters. (Exhibit E)

Since the First Congress, the legislative branch has conducted inquiries into suspected corruption and mismanagement by federal officials. Supreme Court decisions confirm the power of Congress to engage in oversight and investigation and to reach all sources of information enabling it to carry out its legislative function. Congress, through duly established committees such as the Committee on Resources, has considerable power to require from executive agencies, private persons and organizations production of information needed to discharge legislative branch functions.

The Supreme Court has also firmly established that the oversight and investigative power of Congress is integral to legislative branch functions and is implicit in the Constitution's general vesting of legislative power in Congress. Eastland v. United States Servicemen's Fund (421 U.S. 491, 504 n. 15 (quoting Barenblatt v. United States, 360 U.S. 109, 111 (1950)) reiterates that Congress' "scope of power of its power of inquiry . . . is as penetrating and far reaching as the potential power to enact and appropriate under the Constitution." Watkins v. United States reaffirmed that statement and made it clear that Congress' oversight and investigation power is "at its peak when the subject is alleged waste, fraud, abuse, or maladministration within a government department." (354 U.S. 178, 187 (1957))

The authority of the Committee on Resources to issue subpoenas is equally clear. House Rule XI 2(m) authorizes the Committee to issue subpoenas and to delegate that power to the Chairman under its own rules. (Exhibit F) Committee Rule 4(e) governs issuance of subpoenas. (Exhibit G) Under that authority, on June 9, 1999, the Committee delegated subpoena power to the Chairman for purposes of this oversight review. The Chairman has exercised that authority by issuing subpoenas duces tecum and subpoenas to appear before the Subcommittee on Energy and Mineral Resources. The Chairman has also exercised that authority to consider and rule on objections, to alter the terms of subpoenas to accommodate objections, and to order production of withheld records.

During the course of hearings, the Chairman of the Subcommittee on Energy and Mineral Resources has exercised the authority of a chairman to consider and rule on objections and to order that questions be answered by witnesses appearing under subpoena.

III. Refusals to Comply With Subpoenas

A. Henry M. Banta

See Exhibit H for information and subpoenas.

February 17, 2000 Subpoena Duces Tecum

Mr. Banta has refused to comply with this subpoena by:

(1.) Redacting records: Mr. Banta produced a photocopy of a document on 8 ½" X 11" POGO letterhead which was redacted so severely as to have no independent meaning.(Exhibit I) In the upper left hand corner, the date "February 5, 1998" is typed. Approximately 7.125" from the top of the page, along the left hand margin and indented, the words "III. Oil Case Discussion" is typed. All other portions of the first page of the document and the entire second page is stamped "Redacted Based Upon Lack of Pertinency" Mr. Banta provided no information or arguments to permit the Committee to review and rule upon his objection to producing the redacted portions. Chairman Young ruled by a letter dated June 26, 2000, that Mr. Banta was required to produce unredacted

versions of responsive records. (Exhibit S) The Committee sustained that determination and ordered production of such records on July 12, 2000, by a vote of 26 to 11. (Exhibit FF)

The Committee has obtained a document under subpoena to POGO which appears to be the same as the severely redacted document produced by Mr. Banta. (Exhibit J) The POGO version of the document is redacted differently and establishes that Mr. Banta concealed a portion of this document which is pertinent to the subject under examination by the Committee.

Mr. Banta produced a redacted version of minutes taken of the October 27, 1998, POGO Board of Directors meeting. (Exhibit AA) A version of these minutes obtained by subpoena from POGO establishes that Mr. Banta's redaction concealed a portion of this record which is pertinent to the subject under examination by the Committee. (Exhibit BB) Chairman Young ruled by a letter dated June 26, 2000, that Mr. Banta was required to produce unredacted versions of responsive records. (Exhibit S) The Committee sustained that determination and ordered production of such records on July 12, 2000, by a vote of 26 to 11. (Exhibit FF)

(2.) Refusing to Comply with Orders to Produce: Mr. Banta, as required by this subpoena, provided a log of responsive records withheld under a claim of privilege. The Chairman reviewed each claim and ruled on each. Mr. Banta was ordered to produce many of the withheld records but was invited to provide additional information to support claims of attorney-client or attorney work product privileges asserted by Mr. Banta. That offer was not accepted. On June 26, 2000, Chairman Young ordered Mr. Banta to produce twelve specified records which do not qualify for protection under the judicial branch privileges for attorney-client communications or attorney work product.(Exhibit S) These rulings and orders were sustained by the Committee on July 12, 2000, by a vote of 26 to 11, as noted above. (Exhibit FF)

On July 12, 2000, by a vote of 26 to 11(Exhibit FF), the Committee also sustained the Chairman's rulings that neither 29 U.S.C. §1733 or 30 U.S.C. §1733 are applicable to withholding records sought to be protected under those claims and must be produced. Mr. Banta is withholding four specified records under these claims.(Exhibit CC)

Mr. Banta is also refusing to produce eight records under claims that they are not pertinent to the statement of the subject under examination contained in Chairman Young's March 21, 2000, letter to Representative Cubin. Chairman Young considered each claim and overruled each. (Exhibits K and S) On July 12, 2000, by a vote of 26 to 11, the Committee sustained these rulings and ordered that the records be produced. (Exhibit FF)

April 10, 2000 Subpoena Duces Tecum

Mr. Banta has refused to comply with this subpoena by:

(1.) Failure to Comply: Mr. Banta did not produce a required log of responsive records withheld under a claim of privilege.

(2.) Refusal to Produce: Mr. Banta possesses but did not produce an unredacted agenda for the February 17, 1998, POGO Board Meeting and unredacted minutes of the October 27, 1998, POGO Board meeting.

Subpoena to Appear on May 18, 2000

This subpoena was issued by Chairman Young on May 9, 2000. It required Mr. Banta to appear and testify before the Subcommittee on Energy and Mineral Resources on May 18, 2000. (Exhibit H)

Prior to appearing at that hearing and a hearing on May 4, 2000, Mr. Banta was provided with a statement of the subject under examination, with a copy of the Committee rules and relevant portions of House rules, and was advised that he would be placed under oath and may be accompanied by counsel to advise on constitutional rights and privileges.

During testimony on May 4, 2000, and May 18, 2000, Mr. Banta answered without objection or volunteered information about the link between POGO's oil royalty litigation effort and the agreement to pay Mr. Berman and Mr. Speir; his knowledge of specific aspects of and actions taken during POGO's oil royalty litigation effort; and his professional assessment of POGO's chances of success in its case or as a co-relator in Johnson v. Shell. But when asked specifically about his knowledge of Johnson v. Shell while that case was under seal, he refused to answer. The Chair ruled the question to be pertinent and within jurisdiction of the Subcommittee and Committee. The question was asked again and an answer was again refused. On June 29, 2000, the Subcommittee, by a vote of 9 to 0, sustained the Chairman's ruling and order that the question be answered. (Exhibit GG)

The relevant excerpt from the hearing transcript is attached as Exhibit L.

B. Mr. Robert A. Berman

See Exhibit M for information and subpoenas.

Subpoena to Appear on July 11, 2000

On April 17, 2000, Chairman Young issued a subpoena requiring Mr. Berman to appear before the Subcommittee on Energy and Mineral Resources on May 18, 2000. That subpoena is

not at issue in this report. On June 29, 2000, Chairman Young issued a subpoena requiring Mr. Berman to appear again before the Subcommittee, on July 11, 2000. (Exhibit M)

At the May 18, 2000, hearing, Mr. Berman objected to conducting the hearing outside of Executive Session, citing a House rule applicable to conducting closed-door business meetings and mark-ups. In a letter received on the morning of the hearing, Mr. Berman's attorney, Steven C. Tabackman, made the same incorrectly grounded objection.(Exhibit N) These missteps notwithstanding, the Chairman made a corrected motion to discuss closing the hearing to the public, on behalf of Mr. Berman. The motion was defeated on a voice vote. When questioned, Mr. Berman refused to answer unless one of two demands was met: Members who Mr. Berman believed had defamed him waived their constitutional immunity for official acts and remarks so that Mr. Berman might sue them for defamation; or those allegedly offending Members apologize to Mr. Berman and state publicly that they had no basis for making statements found objectionable by Mr. Berman.

Mr. Berman was warned against refusing to answer questions on this basis and was dismissed by the Chairman.

At the July 11, 2000, hearing, proceedings were conducted in Executive Session and under House Rule XI.2(k) procedures applicable to Investigative Hearings on a motion approved by a vote of 9 to 0. (Exhibit GG)

Refusal to Answer

When questioned in Executive Session during the July 11, 2000, hearing under the extraordinary witness protections provided by Rule XI.2(k), Mr. Berman again refused to answer questions unless Members acquiesced to his demands and limited questioning to matters deemed to be pertinent by Mr. Berman. After answers were refused to several questions, the Chairman ruled each question to be pertinent to the stated subject under review and ordered Mr. Berman to answer each question not answered. Mr. Berman did not comply. Thereupon, by a vote of 6 to 3, the Subcommittee sustained the Chairman's rulings and orders and directed that Mr. Berman's refusal to answer while testifying under subpoenas be reported to the Committee on Resources. (Exhibit GG) Mr. Berman was thereupon provide with a final opportunity to answer. He declined. The Chairman then provided an extraordinary opportunity for Mr. Berman and Mr. Tabackman to explain their grievances to the Subcommittee. Even after being allowed to deliver these highly unusual statements, Mr. Berman refused to answer questions posed by Members.

Under questioning by a Minority Member, Mr. Berman made it clear that he would refuse to answer any questions unless his grievances and demands were addressed satisfactorily. (Exhibit Z)

Relevant portions of the July 11 hearing transcript are included as Exhibit O.

C. Mr. Keith Rutter
See Exhibit P for information and subpoenas.

April 10, 2000 Subpoena Duces Tecum

Mr. Rutter has refused to comply with this subpoena by:

(1.) Withholding Records: At the time the subpoena was issued and served, Mr. Rutter was required to provide the IRS Form 990 filed by POGO for tax years 1996, 1997, and 1998. The 1998 form had been produced in answer to the June 18, 1999, subpoena to POGO. It was included in this subpoena to ensure that the Committee had any changes or modifications made since the original filing. Later production by POGO confirmed that the copy provided to the Committee has been superceded by a corrected form filed on July 10, 2000. Under the continuing obligation imposed by this subpoena, Mr. Rutter is now required to produce the corrected form for tax year 1998, the forms for tax years 1996, 1997, and 1999. None of these has been produced. By letter dated June 26, 2000, (Exhibit S) Chairman Young rejected Mr. Rutter's objection, made in a letter dated April 21, 2000, from Stanley M. Brand, that this subpoena requirement is not pertinent to the stated subject under review and is outside the authority of the Committee. (Exhibit Q) On July 12, 2000, the Committee sustained the Chairman's ruling in this regard and his order that the records be produced, by a vote of 26 to 11, as discussed earlier. (Exhibit FF)

It must be noted that although Mr. Rutter asserts that the IRS Form 990 filed by POGO for tax years 1996 through 1999 need not be produced to the Committee, POGO itself has provided two versions of the 1998 Form 990 under a subpoena which did not separately specify tax records of oil litigation income, expenses, and disbursements.

This subpoena also required Mr. Rutter to produce the publicly-available records relating to POGO's IRS Form 1023, an application for tax exempt status. This record would help determine whether the POGO Board of Directors intended to reward Mr. Berman and Mr. Speir under an existing or newly established program of public service monetary awards. Mr. Rutter's objection (Exhibit Q) to producing this record was considered by the Chairman and rejected. (Exhibit S) That ruling and the Chairman's order to produce the record was sustained by the Committee on July 12, 2000, by a vote of 26 to 11, as noted earlier. (Exhibit FF)

This subpoena also required Mr. Rutter to produce the articles of incorporation for POGO and the corporate by-laws in effect for the years 1996 through 1999. These records are needed to help determine whether the agreement to pay Mr. Berman and Mr. Speir the initial payments served a valid corporate purpose or may have been intended as part of an improper scheme. Mr. Rutter objected to this production requirement as not pertinent to the subject under review. (Exhibit Q) That objection was considered by the Chairman

and rejected by a letter dated June 26, 2000. (Exhibit S) That ruling and order to produce these records was sustained by the Committee on July 12, 2000, by a vote of 26 to 11, as noted earlier. (Exhibit FF)

This subpoena also required Mr. Rutter to produce records relating to civil litigation deposition testimony given by Ms. Brian which concerned Mr. Rutter's job responsibilities. By letter dated April 21, 2000, Mr. Rutter objected that this item constituted a written interrogatory outside the authority of the Committee.(Exhibit Q) On June 26, 2000, Chairman Young overruled this objection, explaining that the subpoena only required production of existing records concerning or relating to the facts contained in Ms. Brian's deposition, and ordered the records produced. (Exhibit S) On July 12, 2000, the Committee sustained this ruling and order by a vote of 26 to 11, as discussed earlier. (Exhibit FF)

(2.) Failure to Produce: Mr. Rutter failed to provide a required log of responsive records withheld by him under a claim of privilege.

D. Ms. Danielle Brian Stockton
See Exhibit T for information and subpoenas.

June 18, 1999 Subpoena Duces Tecum

Ms. Brian has refused to comply with this subpoena by:

(1.) Redacting Records: Pursuant to this subpoena, the Committee received two excerpts from two POGO Board of Directors meetings conducted some 20 months apart. (Exhibit R) Complete minutes should have been produced for those meetings and for all meetings at which subjects concerning oil royalty litigation and payments to Mr. Berman and Speir were discussed. By letter dated June 26, 2000, Chairman Young ordered that unredacted copies of responsive records be produced to the Committee. (Exhibit S) That determination was sustained by the Committee on July 12, 2000, by a vote of 26 to 11, as discussed above. (Exhibit FF)

(2.) Withholding Records: Sworn civil litigation testimony by Ms. Brian indicates that the Board may have touched on these matters at as many as twenty sessions from 1994 until the present. Excerpts from Board meeting minutes provided to the Committee, outside of any subpoena, establish that Ms. Brian failed to produce complete minutes and agendas for Board meetings held on January 5, 1995; December 9, 1996; February 17, 1998; October 27, 1998; April 26, 1999; and September 9, 1999. (Exhibits X, EE, R and J)

February 17, 2000 Subpoena Duces Tecum

Ms. Brian has refused to comply with this subpoena by:

(1.) Failure to Comply: Ms. Brian failed to produce a required log of responsive records withheld under a claim of privilege. Chairman Young ordered production of a log of responsive withheld records by letter dated June 26, 2000.(Exhibit S) On July 12, 2000, the Committee sustained this order by a vote of 26 to 11, as noted above. (Exhibit FF)

Subpoena to Appear on May 18, 2000

On April 17, 2000, Chairman Young issued a subpoena requiring Ms. Brian to appear before the Subcommittee on Energy and Mineral Resources on May 18, 2000. (See Exhibit T)

Prior to appearing at that hearing, Ms. Brian was provided with a statement of the subject under examination, with a copy of the Committee rules and relevant portions of House rules, and was advised that she would be placed under oath and may be accompanied by counsel to advise on constitutional rights and privileges.

Failure to Comply

Ms. Brian has refused to comply with this subpoena by:

Refusing to Answer: At the outset of her testimony on May 18, 2000, Ms. Brian acknowledged without protest that the hearings and oversight review were examining POGO's oil royalty litigation effort and consequent payments to Mr. Berman and Mr. Speir. Ms. Brian also volunteered her view of the effect the POGO/Berman/Speir agreement had on Johnson v. Shell. But, when asked if she attempted to discuss Johnson v. Shell with Mr. Johnson while the case was under seal or if she had knowledge of the case while it was under seal, Ms. Brian refused to answer. Both questions were ruled by the Chair to be pertinent and within the jurisdiction of the Subcommittee and Committee. Both questions were repeated. Each time, Ms. Brian refused to answer. On June 29, 2000, the Subcommittee, by a vote of 9 to 0, sustained the Chairman's ruling and order that the question be answered. (Exhibit GG)

The relevant excerpts from the hearing transcript are attached as Exhibits U and V.

E. Project on Government Oversight

See Exhibit W for information and subpoena.

February 17, 2000 Subpoena Duces Tecum

The Project on Government Oversight has refused to comply with this subpoena by:

(1.) Refusing to Produce Records: By letter from Stanley M. Brand, Esq., on behalf of POGO, to Chairman Young dated February 28, 2000, POGO objected to providing records reflecting the names and office addresses of POGO Directors during the period of January 1, 1994, through the present. (Exhibit DD) POGO argued that the identity of the individuals legally responsible for overseeing POGO's oil royalty campaign, for authorizing the agreement to pay Mr. Berman and Mr. Speir, and for authorizing the initial payments of $383,600 each made on November 2, 1998, are not pertinent to the stated subject under review. By letters dated April 6, 2000, and June 26, 2000, Chairman Young overruled this claim and ordered production of these records. (Exhibits K and S) By a vote of 26 to 11 on July 12, 2000, the Committee sustained this ruling and order that these records be produced, as noted previously. (Exhibit FF)

Records provided to the Committee by the Department of Treasury establishes that POGO possesses records showing the names and addresses of Board members. Common sense presumes that notices of Board meetings and other correspondence with and among the governing body is not addressed from memory.

This subpoena required POGO to produce records concerning payments to Mr. Berman or Mr. Speir discussed since January 1, 1999. POGO offered no argument to justify failing to comply with this requirement. By letters dated April 6, 2000, and June 26, 2000, Chairman Young ordered production of such records. (Exhibits K and S) By a vote of 26 to 11 on July 12, 2000, the Committee sustained this order, as noted earlier. (Exhibit FF)

The Committee has obtained a record from Stanley M. Brand, Esq. which establishes that POGO possesses but did not produce a record described by this item of the subpoena. (Exhibit X) In response to an inquiry from Chairman Young, Mr. Brand informed the Committee that the record in question was not intended to satisfy any subpoena and was not offered by POGO. (Exhibit Y)

(2.)Refusing to Comply: POGO has not provided a log of responsive records withheld from production under this subpoena under a claim of privilege. Chairman Young ordered production of a log of responsive withheld records by letter dated June 26, 2000. (Exhibit S) On July 12, 2000, the Committee sustained this order by a vote of 26 to 11, as discussed earlier. (Exhibit FF)

IV. Rules Requirements

Committee Oversight Findings and Recommendations

Pursuant to clause 3(c) of Rule XIII of the Rules of the House of Representatives, and as outlined in this report, the Committee held several oversight, investigative and business meetings and made the findings that are reflected in this report.

Committee on Government Reform Oversight Findings

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

New Budget Authority, Entitlement Authority, and Tax Expenditures; Committee Cost Estimate; Congressional Budget Office Estimate; and Federal Mandates Statement

The Committee finds that clauses 3(c)(2) and (3) of Rule XIII, clause 3(d) of Rule XIII, sections 308(a) and 402 of the Congressional Budget Act of 1974, and section 423 of the Unfunded Mandates Reform Act are inapplicable to this report. Therefore, the Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this report or the costs incurred to carry out the report.

Advisory Committee Statement

The Committee finds that section 5(b) of the Federal Advisory Committee Act is inapplicable to this report.

Applicability to Legislative Branch

The Committee finds that the report does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

Changes in Existing Law

This report makes no changes in any existing federal statute.

Preemption of State, Local or Tribal law

This report does not preempt any state, local or tribal law.

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Exhibit A

Citation
0/99 PLATTON 1
30/99 Platt's Oilgram News 1
1999 WL 12178620

Search Result

Rank 2 of 20

Database
PLATTON

Platt's Oilgram News
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Friday, April 30, 1999

Vol. 77, No. 82

US JUSTICE REVIEWS PAYMENTS TO EMPLOYEES FROM OIL VALUATION SUIT
Maureen Lorenzetti

The US Justice Department is conducting an internal review of a US Department of Interior employee who reportedly accepted money from a public interest group for his role as a whistleblower in an oil valuation investigation, government and other sources close to the case said Apr 29.

Justice is seeking to determine whether it was appropriate for Robert Berman, an official with Interior's policy office, to accept about $350,000 from the Project on Government Oversight.

According to POGO, the money was given to Berman and a retired Department of rgy policy analyst, Bob Speir, for their work in the mid-1990s in helping expose underpayment of royalties.

POGO sued oil companies for alleged royalty underpayments under the False Claims Act in 1997. No formal criminal investigation is pending, sources familiar with the case stressed. Rather, US civil attorneys in the Justice Dept are seeking an opinion from criminal attorney counterparts on whether Berman's actions were appropriate as a public official.

Berman declined to comment on Justice's decision to conduct an internal review.

"You'll have to talk to the US Justice Department about that," said Berman when asked by Platt's in a brief telephone interview.

Speir, while not acknowledging the receipt of funds from POGO, said he did not consider himself a whistleblower in this matter.

He also noted that the funds in question were dispersed by POGO a year after he left government service.

"While I have heard the Justice Department is investigating this matter, I have not been contacted by them or advised by them that I am the subject of investigation."

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eir in fact defended POGO, stressing the group was solely responsible for suing the case.

"POGO has forced the government to collect a large amount of money toward the underpayment of royalties by the oil companies," Speir added.

The US Justice Department declined to comment on the case.

Berman reportedly accepted the money from POGO after the public interest group won $1-mil last year as part of a larger $45-mil settlement between Mobil, the government, POGO and other private individuals under the False Claims Act. POGO, along with several private individuals initially brought on the civil action against 16 oil companies for allegedly conspiring to underpay oil royalties to the federal government. Mobil opted to settle after the government decided to intervene against several of the oil companies involved. Mobil denied any wrongdoing in that case.

The civil lawsuit against the other companies is still pending, along with a separate crimimal investigation against Burlington Resources.

The two government employees helped POGO with information but opted not to be part of the civil lawsuit. But after POGO received settlement money from the Mobil case, the group decided to share the proceeds even though the two were not parties in the suit.

POGO informed the US Justice Department last year that it planned to give the money to the two men. Sources familiar with the case say they are puzzled as to why Justice now is going ahead with a review.

"POGO has been privileged to work with whistleblowers over the years, and it seemed only fair that the two unsung heros be compensated in keeping with the spirit of the False Claims Act," the group said in a statement.

It is unclear whether Berman consulted government attorneys before accepting the money. Speir's alleged payment took place a year after he left DOE.

---- INDEX REFERENCES ----

COMPANY (TICKER): Burlington Resources Inc. (BR)

NEWS SUBJECT: World Equity Index (WEI)

STORY ORIGIN: WASHINGTON

INDUSTRY: Oil-Secondary (OIS)

Word Count: 564
4/30/99 PLATTON 1
END OF DOCUMENT

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Exhibit B

STENOGRAPHIC MINUTES
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UNREVISED AND UNEDITED, NOT FOR QUOTATION
OR DUPLICATION IN ANY FORM
COMMITTEE ON RESOURCES

Committee on Resources

U.S. House of Representatives

MARKUP ON:
H.R. 592, TO REDESIGNATE GREAT KILLS PARK IN THE GATEWAY NATIONAL RECREATION AREA AS "WORLD WAR II VETERANS PARK AT GREAT KILLS"

H.R. 791, TO AMEND THE NATIONAL TRAILS SYSTEM ACT TO DESIGNATE THE ROUTE OF THE WAR OF 1812 BRITISH INVASION OF MARYLAND AND WASHINGTON, DISTRICT OF COLUMBIA, AND THE ROUTE OF THE AMERICAN DEFENSE, FOR STUDY FOR POTENTIAL ADDITION TO THE NATIONAL TRAILS SYSTEM

H.R. 1524, TO AUTHORIZE THE CONTINUED USE OF PUBLIC LANDS OF THE EXPEDITED PROCESSES SUCCESSFULLY FOR WINDSTORM-DAMAGED NATIONAL FORESTS AND GRASSLANDS IN TEXAS

MOTION CONFERRING AUTHORITY ON THE CHAIRMAN OF THE COMMITTEE TO AUTHORIZE AND ISSUE SUBPOENAS

H.R. 1533, TO COMPENSATE THE WYANDOTTE TRIBE OF OKLAHOMA FOR THE TAKING OF CERTAIN RIGHTS BY THE FEDERAL GOVERNMENT

H.R. 1167, TO AMEND THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT TO PROVIDE FOR FURTHER SELF-GOVERNANCE BY INDIAN TRIBE

H.R. 1651, TO AMEND THE FISHERMEN'S PROTECTIVE ACT OF 1967 TO EXTEND THE PERIOD DURING WHICH REIMBURSEMENT MAY BE PROVIDED TO OWNERS OF UNITED STATES FISHING VESSELS FOR COSTS INCURRED WHEN SUCH A VESSEL IS SEIZED AND DETAINED BY A FOREIGN COUNTRY

H.R. 1653, TO APPROVE A GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE UNITED STATES AND THE RUSSIAN FEDERATION

H.R. 1652, TO ESTABLISH THE YUKON RIVER SALMON ADVISORY PANEL

H.R. 1243, TO REAUTHORIZE THE NATIONAL MARINE SANCTUARIES ACT

H.R. 1431, TO REAUTHORIZE AND AMEND THE COASTAL BARRIER RESOURCES ACT

Wednesday, June 9, 1999
Washington, D.C.

Nelson Reporting Associates, Inc.
202-434-8171

600 MOTION CONFERRING AUTHORITY ON THE CHAIRMAN OF THE COMMITTEE
601 TO AUTHORIZE AND ISSUE SUBPOENAS
602 The Chairman. The next order of business, Mr. Hansen?
603 Mr. Hansen. Mr. Chairman, I have a motion.
604 The Chairman. The gentleman is recognized.
605 Mr. Hansen. Pursuant to rule 2(m) of rule XI of the
606 Rules of the House of Representatives and rule 4(e) of the
607 Rules of the Committee on Resources, I move that the chairman
608 of the committee be authorized to issue subpoenas in
609 connection with the oversight review being conducted
610 regarding (1) policies and practices of the Department of the
611 Interior and Department of Energy regarding payment of
612 employees and former employees from sources outside of these
613 Departments that may be related to the employee's past or
614 present work with the Department, and (2) payments from the
615 Project on Government Oversight, POGO, to Mr. Robert Berman,
616 an employee of the Department of the Interior, and Mr. Robert
617 Speir, a former employee of the Department of Energy; and
618 that all criminal investigation records, which by their
619 nature may contain sensitive law enforcement information,
620 received from the Department of Justice and from the Office
621 of the Inspector General of the Department of the Interior,
622 whether received in response to subpoenas issued by authority
623 of this motion or in response to previous committee document
624 requests in this matter, be treated as if received in

625 executive session, and access thereto be limited to Members
626 and to staff designated by the chairman and senior democratic
627 member, and that release of such material in any form must
628 first be authorized by vote of the full committee.
629 And I so move.
630 [The information follows:]

631 ********** INSERT **********

632 The Chairman. Will the gentleman withdraw the motion and
633 move it until a moment, there is some discussion. Is there
634 some discussion first?
635 Mr. Hansen. Mr. Chairman, I withdraw the motion.
636 The Chairman. I have an explanation and will recognize.
637 I will explain the motion for the committee. It is a motion
638 to authorize me to issue necessary subpoenas for the inquiry
639 of this committee into policies and practices that have been
640 allowing certain employees of the U.S. Department of the
641 Interior and the U.S. Department of Energy to receive
642 sizeable payments, approximately $700,000 from sources
643 outside their agencies, payments that may be related to
644 competing legislative and regulatory proposals governing
645 Federal and oil royalties. Under rule 10(l) of the Rules of
646 the House of Representatives, the Committee on Resources
647 exercises broad jurisdiction over ''mineral land laws,''
648 ''mineral resources of public lands,'' ''mining interests
649 generally,'' ''petroleum conservation on public lands,'' and
650 ''public lands'' generally. I began this inquiry in an
651 oversight capacity as a matter that is directly under our
652 jurisdiction because the payments by the Project on
653 Government Oversight may have influenced, or at least had the
654 appearance of influencing, the execution of laws and
655 legislative proposals developed by this committee.
656 The subcommittee has conducted extensive oversight of

657 the Minerals Management Service's, MMS, ability to collect
658 royalties over the last several years and proposed a new
659 ''royalty in-kind'', RIK, as opposed to the cash value as is
660 currently paid. The cumbersome and costly collection
661 procedures for collecting Government shares of revenues from
662 production on Federal lands could be drastically reduced if
663 MMS were to use the RIK method of evaluation.
664 I recognize the gentleman.
665 Mr. Romero-Barcelo. Thank you, Mr. Chairman.
666 The Chairman. And I ask unanimous consent my opening
667 statement be submitted for the record. The gentleman from
668 Puerto Rico?
669 [The statement of Mr. Young follows:]

670 ********** INSERT **********

671 Mr. Romero-Barcelo. Thank you, Mr. Chairman. Chairman,
672 at the last committee meeting, the subpoena resolution put us
673 in the middle of Federal court litigation in the Tongass
674 Timbers Contract. And today's resolution goes even further
675 and gets us in the middle of a matter that is under criminal
676 investigation by the Justice Department and the Inspector
677 General of the Department of the Interior.
678 At the outset, let me note that simply because the
679 actions of the Project on Government Oversight sharing the
680 proceeds of their settlement with Mobil with two Federal
681 whistle blowers is under investigation by Justice and the
682 Office of the Interior Inspector General, that does not mean
683 that any laws were broken. It is premature to reach a legal
684 conclusion in this matter and there is no evidence that I am
685 aware of that suggests anything under the Department of the
686 Interior's royalty regulations since neither of the two
687 Federal employees participated in the drafting process.
688 While I can appreciate that the Chair has concerns about
689 the appearance of impropriety in this case, I do question the
690 timing of the Chair's request for subpoena authority when
691 there is an ongoing criminal investigation. Both the
692 Inspector General and the Justice have concerns about the
693 committee's insertion of ourselves into the middle of this
694 matter at this time. As the June 4th Inspector General's
695 letter states concerning the documents which have been

696 withheld from the committee, and I quote from the Inspector
697 General's letter to the chairman: ''These documents include
698 notes of witnesses' reviews, witnesses' statements and
699 communications between OIG special agents and the Department
700 of Justice attorneys concerning investigative strategies and
701 legal analysis. We believe that the release of the documents
702 would jeopardize the integrity of our investigation and
703 ultimately the possible prosecution of the individuals
704 involved.''

705 As a governor, I lived the experience when the
706 legislature sometimes intervenes in investigations that were
707 being carried out, and I would say just about in every single
708 case those interventions by the legislature in hearings
709 prejudiced the cases that were being investigated by the
710 Justice Department and allowed some of the people to protect
711 themselves through these investigations sometimes by asking
712 for immunity, and they were then therefore protected later on
713 from litigation, from being prosecuted.

714 With all due respect, Mr. Chairman, I do not see where a
715 committee investigation contributes to this process and the
716 ethics statutes applicable to the Federal employees conduct
717 are not even within our jurisdiction, and we bring no
718 particular expertise in criminal law to this case.

719 I would like to ask unanimous consent, Mr. Chairman, to
720 produce as part of the record the letter to you from the

721 Acting Inspector General, Mr. Robert J. Williams?

722 The Chairman. I don't think it is necessary. I will

723 accept it because I already have the letter and it is part of

724 the record.

725 [The information follows:]

726 ********** COMMITTEE INSERT **********

727 Mrs. Cubin. Mr. Chairman?

728 Mr. Romero-Barcelo. And I urge our colleagues to vote no
729 on this.

730 The Chairman. Let me respond that the motion states that
731 any criminal investigation records, which by their nature may
732 contain sensitive law enforcement information received from
733 the Department of Justice from the Office of the Inspector
734 General of the Department of the Interior may be treated and
735 received in executive session only. This also applies to
736 information already received from those sources who respond
737 and previous documented requests in this matter. And may I
738 also add this would not be necessary if I thought this
739 administration would expedite the process. But as you know,
740 all of you know, and most of you should be ashamed, they have
741 stonewalled all of the investigation saying, ''We are
742 investigating. We will continue.'' And they do not give us
743 the results. And this does affect this committee. The idea
744 that there was $700,000 paid from outside sources to
745 employees of an agency where they didn't inform the agency
746 they were receiving the money is breaking the law, and we are
747 going to get to the root of this type of activities within
748 the Department of the Interior. This Department of the
749 Interior from the time I have sat here and watched this
750 administration has been run very slipshod. And they do not
751 respond to this committee, and they are going to respond to

752 this committee.

753 And I will yield to the lady, Barbara Cubin?

754 Mrs. Cubin. Mr. Chairman, I would like to also respond

755 to the comments made by the gentleman. It isn't the intent

756 of the committee to intervene in this procedure at all, but

757 we do have a need to know what is going on and what has gone

758 on because we have things in front of us as far as oil

759 valuation is concerned that are directly the purview of this

760 committee. We have legislation in front of us that tries to

761 determine a valuation method for oil. Right now, the

762 administration and the Minerals Management Service has some

763 regulation or proposed regulations that should not go into

764 effect about the valuation of oil because we don't know

765 whether this action and this payment of money has anything to

766 do with those new regulations. We just need to know whether

767 the two people involved had any influence on the MMS.

768 This was a settlement with Mobil oil over an argument on

769 the valuation of what the oil that Mobil sold was and so this

770 committee definitely has a need for this information. It

771 isn't a need to intervene in criminal proceedings, but it is

772 a need to be able to be sure that the value of oil on which

773 we charge royalties is the correct value and that the

774 Government gets every single penny that it is entitled to and

775 that the States get every single penny in Federal mineral

776 royalties that they are entitled to.

777 Mr. Vento. Mr. Chairman?

778 The Chairman. Mr. Vento?

779 Mr. Vento. Well, thank you. With reference to our
780 subcommittee chairwoman's comments, I understand that the two
781 individuals that are the subject of this oversight of the
782 Inspector General's investigation were not involved with
783 regards to rule-making. But I understand that having
784 information on this topic from the Office of the Inspector
785 General may in fact relate somehow back to such rules. I
786 don't know.

787 The issue here though I think is one where I think all
788 of us would like to see--I certainly am not and I don't think
789 anyone wants to defend any wrongdoing that occurred with
790 regards to the improper payments that may have been made,
791 that are alleged to have been made regarding these employees.
792 But the issue is that the Office of Inspector General, which
793 normally doesn't share any type of information here, has
794 identified documents that they believe can be released, and I
795 am quoting from their letter, ''to your committee without
796 adversely affecting the ongoing criminal investigation.''

797 Now I don't think anyone's intent here is to affect the
798 ongoing criminal investigation. This appears to me almost is
799 that your investigating the investigators. I almost think it
800 is harassment of the Office of Inspector General, which is
801 sort of this independent entity within the Department of the

802 Interior that is in fact trying to go to the bottom of this.
803 Now we are certainly empowered and they have given us
804 certain information, but what you are seeking, the documents
805 that haven't been released I assume are the ones that you
806 seek by virtue of the subpoena because they claim they have
807 released other documents which may be material to support an
808 investigation by this committee. And I admire the staff that
809 has all the time to do this type of work in terms of
810 investigations. I think it is quite proper. But whether or
811 not we want to interfere in fact defeats the criminal
812 investigation by virtue of that, that's a possibility.
813 Now I took the chairman's words with regards to how he
814 would release any of the additional documents, but these
815 documents include, and I quote from the letter again, Mr.
816 Chairman to you, ''notes of witnesses' interviews, witness
817 statements, communications between the Office of Inspector
818 General special agents, the Department of Justice attorneys
819 concerning the investigative strategies and their legal
820 analysis. I think these are all issues that we could
821 reproduce ourselves if we want to do the investigation. But
822 I think they're concerned that in terms that this is
823 interference, that this actually will undercut their ability
824 to in fact do the type of investigation. I mean the
825 resolution provides for a vote of the committee prior to the
826 release of any of the material obtained by this subpoena.

827 That is what the chairman I think was stating.

828 After talking in discussions with parliamentarians, our

829 staff says is it your view that the documents obtained in

830 other committee investigations, including the recent Tongass

831 contract matter, are to be kept confidential and released

832 only when authorized by committee members?

833 The Chairman. No.

834 Mr. Vento. It's not your view with regard to those. In

835 the Tongass subpoena matter, we were not aware of the

836 chairman's intent to subpoena the current work products of

837 Government attorneys in Federal court litigation.

838 It is my understanding, Mr. Chairman, that you have

839 received the 67 documents related to the cancellation of the

840 1994 contract. Why is it that you also need materials

841 produced by the Department of Justice lawyers defending the

842 Government case in the breach of contract litigation before

843 the Court of Federal Claims?

844 The Chairman. I thought we were discussing the issues of

845 these subpoenas and not the ones that already have been voted

846 on? If you want to get into this discussion, you and I will

847 discuss it a little later on down the line. I am not going

848 to discuss this part, we are talking about the subpoenas we

849 are issuing today.

850 Mr. Vento. Well, I do want to know. I think that we are

851 being asked to vote for these types of subpoenas--

852 The Chairman. And you can vote no; you can vote no. I
853 know you are going to vote no, so and I am going to vote yes.
854 Mr. Vento. Well, the point is I just think that it
855 undercuts the Department of Justice and it undercuts the
856 Office of the Inspector General--
857 The Chairman. Again, if I may say--
858 Mr. Vento. This is an effort that destroys the ability
859 to get to the criminality--
860 The Chairman. Your time is about up.
861 Mr. Vento. --in terms of what is going on. It doesn't
862 help. It hurts it and it is being done I believe
863 improperly--
864 The Chairman. It is not partisan. This agency has been
865 corrupt from the very beginning, and I am going to get to the
866 bottom of how they conducted themselves within the aide of
867 the Department of the Interior and how the Justice Department
868 is also--
869 Mr. Vento. You don't get to the bottom of it by
870 destroying the--
871 The Chairman. We have destroyed nothing. We have
872 destroyed nothing. The gentleman knows that. The gentleman?
873 Mrs. Chenoweth. Mr. Chairman?
874 Mr. Hansen. The previous question.
875 The Chairman. The question has been moved.
876 All in favor of issuing the subpoena, say aye.

877 All opposed, signify by saying no.

878 The ayes appear to have it and the ayes do have it.

879 Mr. Vento. Roll call.

880 The Chairman. Roll call. The clerk will call the roll.

881 It's on the previous question.

882 The Clerk. Mr. Young.

883 The Chairman. Aye.

884 The Clerk. Mr. Young votes aye. Mr. Tauzin.

885 [No response.]

886 The Clerk. Mr. Hansen.

887 Mr. Hansen. Aye.

888 The Clerk. Mr. Hansen votes aye. Mr. Saxton.

889 Mr. Saxton. Aye.

890 The Clerk. Mr. Saxton votes aye. Mr. Gallegly.

891 Mr. Gallegly. Aye.

892 The Clerk. Mr. Gallegly votes aye. Mr. Duncan.

893 [No response.]

894 The Clerk. Mr. Hefley.

895 Mr. Hefley. Aye.

896 The Clerk. Mr. Hefley votes aye. Mr. Doolittle.

897 Mr. Doolittle. Aye.

898 The Clerk. Mr. Doolittle votes aye. Mr. Gilchrest.

899 Mr. Gilchrest. Aye.

900 The Clerk. Mr. Gilchrest votes aye. Mr. Calvert.

901 Mr. Calvert. Aye.

902 The Clerk. Mr. Calvert votes aye. Mr. Pombo.

903 Mr. Pombo. Aye.

904 The Clerk. Mr. Pombo votes aye. Mrs. Cubin.

905 Mrs. Cubin. Aye.

906 The Clerk. Mrs. Cubin votes aye. Mrs. Chenoweth.

907 Mrs. Chenoweth. Aye.

908 The Clerk. Mrs. Chenoweth votes aye. Mr. Radanovich.

909 Mr. Radanovich. Aye.

910 The Clerk. Mr. Radanovich votes aye. Mr. Jones.

911 Mr. Jones. Aye.

912 The Clerk. Mr. Jones votes aye. Mr. Thornberry.

913 Mr. Thornberry. Aye.

914 The Clerk. Mr. Thornberry votes aye. Mr. Cannon.

915 Mr. Cannon. Aye.

916 The Clerk. Mr. Cannon votes aye. Mr. Brady.

917 [No response.]

918 The Clerk. Mr. Peterson.

919 Mr. Peterson. Aye.

920 The Clerk. Mr. Peterson votes aye. Mr. Hill.

921 [No response.]

922 The Clerk. Mr. Schaffer.

923 Mr. Schaffer. Aye.

924 The Clerk. Mr. Schaffer votes aye. Mr. Gibbons.

925 Mr. Gibbons. Aye.

926 The Clerk. Mr. Gibbons votes aye. Mr. Souder.

927 [No response.]

928 The Clerk. Mr. Walden.

929 Mr. Walden. Aye.

930 The Clerk. Mr. Walden votes aye. Mr. Sherwood.

931 [No response.]

932 The Clerk. Mr. Hayes.

933 Mr. Hayes. Aye.

934 The Clerk. Mr. Hayes votes aye. Mr. Simpson.

935 Mr. Simpson. Aye.

936 The Clerk. Mr. Simpson votes aye. Mr. Tancredo.

937 Mr. Tancredo. Aye.

938 The Clerk. Mr. Tancredo votes aye. Mr. Miller.

939 [No response.]

940 The Clerk. Mr. Rahall.

941 [No response.]

942 The Clerk. Mr. Vento.

943 Mr. Vento. No.

944 The Clerk. Mr. Vento votes no. Mr. Kildee.

945 [No response.]

946 The Clerk. Mr. DeFazio.

947 Mr. DeFazio. No.

948 The Clerk. Mr. DeFazio votes no. Mr. Faleomavaega.

949 [No response.]

950 The Clerk. Mr. Abercrombie.

951 [No response.]

952 The Clerk. Mr. Ortiz.

953 [No response.]

954 The Clerk. Mr. Pickett.

955 [No response.]

956 The Clerk. Mr. Pallone.

957 Mr. Pallone. No.

958 The Clerk. Mr. Pallone votes no. Mr. Dooley.

959 [No response.]

960 The Clerk. Mr. Romero-Barcelo.

961 Mr. Romero-Barcelo. No.

962 The Clerk. Mr. Romero-Barcelo votes no. Mr. Underwood.

963 [No response.]

964 The Clerk. Mr. Kennedy.

965 [No response.]

966 The Clerk. Mr. Smith.

967 Mr. Smith. No.

968 The Clerk. Mr. Smith votes no. Mr. John.

969 Mr. John. No.

970 The Clerk. Mr. John votes no. Ms. Christensen.

971 Ms. Christensen. No.

972 The Clerk. Ms. Christensen votes no. Mr. Kind.

973 Mr. Kind. No.

974 The Clerk. Mr. Kind votes no. Mr. Inslee.

975 [No response.]

976 The Clerk. Ms. Napolitano.

977 Ms. Napolitano. No.

978 The Clerk. Ms. Napolitano votes no. Mr. Tom Udall.

979 Mr. Tom Udall. No.

980 The Clerk. Mr. Tom Udall votes no. Mr. Mark Udall.

981 Mr. Mark Udall. No.

982 The Clerk. Mr. Mark Udall votes no. Mr. Crowley.

983 Mr. Crowley. No.

984 The Clerk. Mr. Crowley votes no. Mr. Holt.

985 [No response.]

986 The Chairman. The clerk will call the names that did not

987 respond.

988 The Clerk. Mr. Tauzin.

989 [No response.]

990 The Clerk. Mr. Duncan.

991 [No response.]

992 The Clerk. Mr. Brady.

993 Mr. Brady. How am I recorded?

994 The Clerk. Mr. Brady is not recorded.

995 Mr. Brady. Aye.

996 The Clerk. Mr. Brady votes aye.

997 The Clerk. Mr. Hill.

998 [No response.]

999 The Clerk. Mr. Souder.

1000 [No response.]

1001 The Clerk. Mr. Sherwood.

1002 [No response.]

1003 The Clerk. Mr. Miller.

1004 [No response.]

1005 The Clerk. Mr. Rahall.

1006 [No response.]

1007 The Clerk. Mr. Kildee.

1008 [No response.]

1009 The Clerk. Mr. Faleomavaega.

1010 [No response.]

1011 The Clerk. Mr. Abercrombie.

1012 [No response.]

1013 The Clerk. Mr. Ortiz.

1014 [No response.]

1015 The Clerk. Mr. Pickett.

1016 [No response.]

1017 The Clerk. Mr. Dooley.

1018 [No response.]

1019 The Clerk. Mr. Underwood.

1020 [No response.]

1021 The Clerk. Mr. Kennedy.

1022 [No response.]

1023 The Clerk. Mr. Inslee.

1024 [No response.]

1025 The Clerk. Mr. Holt.

1026 [No response.]

1027 The Chairman. The clerk will announce the results of the
1028 vote.
1029 The Clerk. On this vote, the ayes are 23 and the nays
1030 are 12.
1031 The Chairman. And the motion is agreed to.
1032 Now the gentleman?
1033 Mr. Hansen. Mr. Chairman, I move the motion that I made.
1034 The Chairman. The adoption of the motion.
1035 All in favor, signify by saying aye.
1036 All opposed, signify by saying no.
1037 The ayes appear to have it. The ayes have it and the
1038 motion is agreed to.

Committee on Resources
U.S. House of Representatives
106th Congress

Full Committee

Date 6-9-99

Roll No. 1

Bill No. _____ Short Title Motion to Issue Subpoena regarding Federal Employees

Amendment or matter voted on: Move Previous Question

Mr. Young (Chairman)	X			*Mr Miller*			
Mr. Tauzin				*Mr. Rahall*			
Mr. Hansen	X			*Mr. Vento*		X	
Mr. Saxton	X			*Mr. Kildee*			
Mr. Gallegly	X			*Mr. DeFazio*		X	
Mr. Duncan				*Mr. Faleomavaega*			
Mr. Hefley	X			*Mr. Abercrombie*			
Mr. Doolittle	X			*Mr. Ortiz*			
Mr. Gilchrest	X			*Mr. Pickett*			
Mr. Calvert	X			*Mr. Pallone*		X	
Mr. Pombo	X			*Mr. Dooley*			
Mrs. Cubin	X			*Mr. Romero-Barcelo*		X	
Mrs. Chenoweth	X			*Mr. Underwood*			
Mr. Radanovich	X			*Mr. Kennedy*			
Mr. Jones	X			*Mr. Smith*		X	
Mr. Thornberry	X			*Mr. John*		X	
Mr. Cannon	X			*Mrs. Christensen*		X	
Mr. Brady	X			*Mr. Kind*		X	
Mr. Peterson	X			*Mr. Inslee*			
Mr. Hill				*Mrs. Napolitano*		X	
Mr. Schaffer	X			*Mr. Tom Udall*		X	
Mr. Gibbons	X			*Mr. Mark Udall*		X	
Mr. Souder				*Mr. Crowley*		X	
Mr. Walden	X			*Mr. Holt*			
Mr. Sherwood							
Mr. Hayes	X						
Mr. Simpson	X						
Mr. Tancredo	X			**TOTAL**	23	12	

Exhibit C

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

March 21, 2000

Representative Barbara Cubin
United States House of Representatives
1114 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Cubin:

In May 1999, the Committee on Resources began an inquiry into payments made to an employee of the Department of the Interior and a former employee of the Department of Energy. The payments were made by the Project on Government Oversight (POGO) largely from proceeds received by sharing in the settlement of a lawsuit alleging fraudulent underpayment of royalties due on federal and Indian oil. A summary of the matter and the inquiry, to date, is attached.

I have used Committee subpoenas, official document requests, and interviews conducted by staff to isolate several critical questions concerning allegations made about these payments. This inquiry is reaching the stage at which hearings and other actions will be required. Your subcommittee, which has jurisdiction over federal oil royalty policies and procedures, is best equipped to carry this inquiry into its next phase.

Accordingly, please use the Subcommittee on Energy and Mineral Resources to advance and refine the Committee's oversight of this matter. Please focus the Subcommittee's review on the general subject of laws, policies, practices, and operations of the Department of the Interior and the Department of Energy which pertain to payments by non-government organizations or by individuals to employees involved in federal oil royalty programs and policies; participation by employees in *qui tam* litigation affecting said programs and policies of those departments; and disclosure requirements for employees participating in or promised payment from such *qui tam* suits. The Subcommittee's work should specifically review: (1) payments made by the Project on Government Oversight (POGO) to Robert A. Berman, an Interior employee and to Robert A. Speir, a now-retired Energy employee using funds derived principally from POGO's participatior in the *Johnson v. Shell* litigation under the False Claims Act; and (2) allegations that POGO's participation in *Johnson v. Shell* and consequent payments to Mr. Berman and Mr. Speir were facilitated by allegedly improper actions by federal employees.

As the need dictates, please conduct meetings of your subcommittee to consider whether the Committee and the U.S. House or Representatives should compel compliance with subpoenas issued to three parties on February 17, 2000. If necessary, also review compliance by other parties and government agencies with official requests and subpoenas issued by the Committee on Resources.

I have instructed Majority staff of the Committee on Resources to assist with this inquiry in a fair, nonpartisan manner which is respectful of witnesses and targets. Briefings for Minority staff have begun and will continue.

The oil valuation issue and new regulation are tangential to the serious questions of possible wrongdoing which I entrust to you and your subcommittee. I have full confidence that, under your leadership of the Subcommittee on Energy and Mineral Resources, all Members will consider these payments as an oversight and investigative priority.

Sincerely,

DON YOUNG
Chairman

Exhibit D

RULES

of the

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

PREPARED BY
Jeff Trandahl
Clerk of the House of Representatives
OCTOBER 18, 1999

RULE X

ORGANIZATION OF COMMITTEES

Committees and their legislative jurisdictions

1. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

(l) **Committee on Resources.**

(1) Fisheries and wildlife, including research, restoration, refuges, and conservation.

(2) Forest reserves and national parks created from the public domain.

(3) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(4) Geological Survey.

(5) International fishing agreements.

(6) Interstate compacts relating to apportionment of waters for irrigation purposes.

(7) Irrigation and reclamation, including water supply for reclamation projects and easements of public lands for irrigation projects; and acquisition of private lands when necessary to complete irrigation projects.

(8) Native Americans generally, including the care and allotment of Native American lands and general and special measures relating to claims that are paid out of Native American funds.

(9) Insular possessions of the United States generally (except those affecting the revenue and appropriations).

(10) Military parks and battlefields, national cemeteries administered by the Secretary of the Interior, parks within the District of Columbia, and the erection of monuments to the memory of individuals.

(11) Mineral land laws and claims and entries thereunder.

(12) Mineral resources of public lands.

(13) Mining interests generally.

(14) Mining schools and experimental stations.

(15) Marine affairs, including coastal zone management (except for measures relating to oil and other pollution of navigable waters).

(16) Oceanography.

(17) Petroleum conservation on public lands and conservation of the radium supply in the United States.

(18) Preservation of prehistoric ruins and objects of interest on the public domain.

(19) Public lands generally, including entry, easements, and grazing thereon.

(20) Relations of the United States with Native Americans and Native American tribes.

(21) Trans-Alaska Oil Pipeline (except ratemaking).

General oversight responsibilities

2. (a) The various standing committees shall have general oversight responsibilities as provided in paragraph (b) in order to assist the House in—

(1) its analysis, appraisal, and evaluation of—

(A) the application, administration, execution, and effectiveness of Federal laws; and

(B) conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation; and

(2) its formulation, consideration, and enactment of changes in Federal laws, and of such additional legislation as may be necessary or appropriate.

(b)(1) In order to determine whether laws and programs addressing subjects within the jurisdiction of a committee are being implemented and carried out in accordance with the intent of Congress and whether they should be continued, curtailed, or eliminated, each standing committee (other than the Committee on Appropriations) shall review and study on a continuing basis—

(A) the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;

(B) the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;

(C) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction (whether or not a bill or resolution has been introduced with respect thereto); and

(D) future research and forecasting on subjects within its jurisdiction.

(2) Each committee to which subparagraph (1) applies having more than 20 members shall establish an oversight subcommittee, or require its subcommittees to conduct oversight in their respective jurisdictions, to assist in carrying out its responsibilities under this clause. The establishment of an oversight subcommittee does not

limit the responsibility of a subcommittee with legislative jurisdiction in carrying out its oversight responsibilities.

(c) Each standing committee shall review and study on a continuing basis the impact or probable impact of tax policies affecting subjects within its jurisdiction as described in clauses 1 and 3.

(d)(1) Not later than February 15 of the first session of a Congress, each standing committee shall, in a meeting that is open to the public and with a quorum present, adopt its oversight plan for that Congress. Such plan shall be submitted simultaneously to the Committee on Government Reform and to the Committee on House Administration. In developing its plan each committee shall, to the maximum extent feasible—

(A) consult with other committees that have jurisdiction over the same or related laws, programs, or agencies within its jurisdiction with the objective of ensuring maximum coordination and cooperation among committees when conducting reviews of such laws, programs, or agencies and include in its plan an explanation of steps that have been or will be taken to ensure such coordination and cooperation;

(B) give priority consideration to including in its plan the review of those laws, programs, or agencies operating under permanent budget authority or permanent statutory authority; and

(C) have a view toward ensuring that all significant laws, programs, or agencies within its jurisdiction are subject to review every 10 years.

(2) Not later than March 31 in the first session of a Congress, after consultation with the Speaker, the Majority Leader, and the Minority Leader, the Committee on Government Reform shall report to the House the oversight plans submitted by committees together with any recommendations that it, or the House leadership group described above, may make to ensure the most effective coordination of oversight plans and otherwise to achieve the objectives of this clause.

(e) The Speaker, with the approval of the House, may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.

Special oversight functions

3. (a) The Committee on Appropriations shall conduct such studies and examinations of the organization and operation of executive departments and other executive agencies (including an agency the majority of the stock of which is owned by the United States) as it considers necessary to assist it in the determination of matters within its jurisdiction.

(b) The Committee on the Budget shall study on a continuing basis the effect on budget outlays of relevant existing and proposed legislation and report the results of such studies to the House on a recurring basis.

(c) The Committee on Commerce shall review and study on a continuing basis laws, programs, and Government activities relating to nuclear and other energy and nonmilitary nuclear energy research and development including the disposal of nuclear waste.

(d) The Committee on Education and the Workforce shall review, study, and coordinate on a continuing basis laws, programs, and Government activities relating to domestic educational programs and institutions and programs of student assistance within the jurisdiction of other committees.

(e) The Committee on Government Reform shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.

(f) The Committee on International Relations shall review and study on a continuing basis laws, programs, and Government activities relating to customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements.

(g) The Committee on Armed Services shall review and study on a continuing basis laws, programs, and Government activities relating to international arms control and disarmament and the education of military dependents in schools.

(h) The Committee on Resources shall review and study on a continuing basis laws, programs, and Government activities relating to Native Americans.

(i) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings and recommendations to the House from time to time.

(j) The Committee on Science shall review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.

(k) The Committee on Small Business shall study and investigate on a continuing basis the problems of all types of small business.

Additional functions of committees

4. (a)(1)(A) The Committee on Appropriations shall, within 30 days after the transmittal of the Budget to Congress each year, hold hearings on the Budget as a whole with particular reference to—

(i) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and

(ii) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.

(B) In holding hearings under subdivision (A), the committee shall receive testimony from the Secretary of the Treasury, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, and such other persons as the committee may desire.

(C) A hearing under subdivision (A), or any part thereof, shall be held in open session, except when the committee, in open session and with a quorum present, determines by record vote that the testimony to be taken at that hearing on that day may be related to a matter of national security. The committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy thereof furnished to each Member, Delegate, and the Resident Commissioner.

(D) A hearing under subdivision (A), or any part thereof, may be held before a joint meeting of the committee and the Committee on Appropriations of the Senate in accordance with such procedures as the two committees jointly may determine.

(2) Pursuant to section 401(b)(2) of the Congressional Budget Act of 1974, when a committee reports a bill or joint resolution that provides new entitlement authority as defined in section 3(9) of that Act, and enactment of the bill or joint resolution, as reported, would cause a breach of the committee's pertinent allocation of new budget authority under section 302(a) of that Act, the bill or joint resolution may be referred to the Committee on Appropriations with instructions to report it with recommendations (which may include an amendment limiting the total amount of new entitlement authority provided in the bill or joint resolution). If the Committee on Appropriations fails to report a bill or joint resolution so referred within 15 calendar days (not counting any day on which the House is not in session), the committee automatically shall be discharged from consideration of the bill or joint resolution, and the bill or joint resolution shall be placed on the appropriate calendar.

(3) In addition, the Committee on Appropriations shall study on a continuing basis those provisions of law that (on the first day of the first fiscal year for which the congressional budget process is effective) provide spending authority or permanent budget authority and shall report to the House from time to time its recommendations for terminating or modifying such provisions.

(4) In the manner provided by section 302 of the Congressional Budget Act of 1974, the Committee on Appropriations (after consulting with the Committee on Appropriations of the Senate) shall subdivide any allocations made to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and promptly report the subdivisions to the House as soon as practicable after a concurrent resolution on the budget for a fiscal year is agreed to.

(b) The Committee on the Budget shall—

(1) review on a continuing basis the conduct by the Congressional Budget Office of its functions and duties;

(2) hold hearings and receive testimony from Members, Senators, Delegates, the Resident Commissioner, and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as it considers desirable in developing concurrent resolutions on the budget for each fiscal year;

(3) make all reports required of it by the Congressional Budget Act of 1974;

(4) study on a continuing basis those provisions of law that exempt Federal agencies or any of their activities or outlays from inclusion in the Budget of the United States Government, and report to the House from time to time its recommendations for terminating or modifying such provisions;

(5) study on a continuing basis proposals designed to improve and facilitate the congressional budget process, and report to the House from time to time the results of such studies, together with its recommendations; and

(6) request and evaluate continuing studies of tax expenditures, devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and report the results of such studies to the House on a recurring basis.

(c)(1) The Committee on Government Reform shall—

(A) receive and examine reports of the Comptroller General of the United States and submit to the House such recommendations as it considers necessary or desirable in connection with the subject matter of the reports;

(B) evaluate the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(C) study intergovernmental relationships between the United States and the States and municipalities and between the United States and international organizations of which the United States is a member.

(2) In addition to its duties under subparagraph (1), the Committee on Government Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee. The findings and recommendations of the committee in such an investigation shall be made available to any other standing committee having jurisdiction over the matter involved and shall be included in the report of any such other committee when required by clause 3(c)(4) of rule XIII.

(d)(1) The Committee on House Administration shall—

(A) examine all bills, amendments, and joint resolutions after passage by the House and, in cooperation with the Senate, examine all bills and joint resolutions that have passed both Houses to see that they are correctly enrolled and forthwith present those bills and joint resolutions that originated in the House to the President in person after their signature by the Speaker and the President of the Senate, and report to the House the fact and date of their presentment;

(B) provide policy direction for, and oversight of, the Clerk, Sergeant-at-Arms, Chief Administrative Officer, and Inspector General;

(C) have the function of accepting on behalf of the House a gift, except as otherwise provided by law, if the gift does not involve a duty, burden, or condition, or is not made dependent on some future performance by the House; and

(D) promulgate regulations to carry out subdivision (C).

(2) An employing office of the House may enter into a settlement of a complaint under the Congressional Accountability Act of 1995 that provides for the payment of funds only after receiving the joint approval of the chairman and ranking minority member of the Committee on House Administration concerning the amount of such payment.

(e)(1) Each standing committee shall, in its consideration of all public bills and public joint resolutions within its jurisdiction, ensure that appropriations for continuing programs and activities of the Federal Government and the government of the District of Columbia will be made annually to the maximum extent feasible and consistent with the nature, requirement, and objective of the programs and activities involved. In this subparagraph programs and activities of the Federal Government and the government of the District of Columbia includes programs and activities of any department, agency, establishment, wholly owned Government corporation, or instrumentality of the Federal Government or of the government of the District of Columbia.

(2) Each standing committee shall review from time to time each continuing program within its jurisdiction for which appropriations are not made annually to ascertain whether the program should be modified to provide for annual appropriations.

Budget Act responsibilities

(f)(1) Each standing committee shall submit to the Committee on the Budget not later than six weeks after the President submits his budget, or at such time as the Committee on the Budget may request—

(A) its views and estimates with respect to all matters to be set forth in the concurrent resolution on the budget for the ensuing fiscal year that are within its jurisdiction or functions; and

(B) an estimate of the total amounts of new budget authority, and budget outlays resulting therefrom, to be provided or authorized in all bills and resolutions within its jurisdiction that it intends to be effective during that fiscal year.

(2) The views and estimates submitted by the Committee on Ways and Means under subparagraph (1) shall include a specific recommendation, made after holding public hearings, as to the appropriate level of the public debt that should be set forth in the concurrent resolution on the budget and serve as the basis for an increase or decrease in the statutory limit on such debt under the procedures provided by rule XXIII.

Elections and membership of standing committees

5. (a)(1) The standing committees specified in clause 1 shall be elected by the House within seven calendar days after the commencement of each Congress, from nominations submitted by the respective party caucus or conference. A resolution proposing to change the composition of a standing committee shall be privileged if offered by direction of the party caucus or conference concerned.

(2)(A) The Committee on the Budget shall be composed of members as follows:

(i) Members, Delegates, or the Resident Commissioner who are members of other standing committees, including five who are members of the Committee on Appropriations and five who are members of the Committee on Ways and Means;

(ii) one Member from the elected leadership of the majority party; and

(iii) one Member from the elected leadership of the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on the Budget other than one from the elected leadership of a party may not serve on the committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(C) A member of the Committee on the Budget who served as either the chairman or the ranking minority member of the committee in the immediately previous Congress and who did not serve in that respective capacity in an earlier Congress may serve as either the chairman or the ranking minority member of the committee during one additional Congress.

(3)(A) The Committee on Standards of Official Conduct shall be composed of 10 members, five from the majority party and five from the minority party.

(B) Except as permitted by subdivision (C), a member of the Committee on Standards of Official Conduct may not serve on the committee during more than three Congresses in a period of five successive Congresses (disregarding for this purpose any service

for less than a full session in a Congress).

(C) A member of the Committee on Standards of Official Conduct may serve on the committee during a fourth Congress in a period of five successive Congresses only as either the chairman or the ranking minority member of the committee.

(5)(A) At the beginning of a Congress, the Speaker or his designee and the Minority Leader or his designee each shall name 10 Members, Delegates, or the Resident Commissioner from his respective party who are not members of the Committee on Standards of Official Conduct to be available to serve on investigative subcommittees of that committee during that Congress. The lists of Members, Delegates, or the Resident Commissioner so named shall be announced to the House.

(B) Whenever the chairman and the ranking minority member of the committee on Standards of Official Conduct jointly determine that Members, Delegates, or the Resident Commissioner named under subdivision (A) should be assigned to serve on an investigative subcommittee of that committee, each of them shall select an equal number of such Members, Delegates, or Resident Commissioner from his respective party to serve on that subcommittee.

(b)(1) Membership on a standing committee during the course of a Congress shall be contingent on continuing membership in the party caucus or conference that nominated the Member, Delegate, or Resident Commissioner concerned for election to such committee. Should a Member, Delegate, or Resident Commissioner cease to be a member of a particular party caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of each standing committee to which he was elected on the basis of nomination by that caucus or conference. The chairman of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of that caucus or conference. The Speaker shall notify the chairman of each affected committee that the election of such Member, Delegate, or Resident Commissioner to the committee is automatically vacated under this subparagraph.

(2)(A) Except as specified in subdivision (B), a Member, Delegate, or Resident Commissioner may not serve simultaneously as a member of more than two standing committees or more than four subcommittees of the standing committees.

(B)(i) Ex officio service by a chairman or ranking minority member of a committee on each of its subcommittees under a committee rule does not count against the limitation on subcommittee service.

(ii) Service on an investigative subcommittee of the Committee on Standards of Official Conduct under paragraph (a)(4) does not count against the limitation on subcommittee service.

(iii) Any other exception to the limitations in subdivision (A) must be approved by the House on the recommendation of the relevant party caucus or conference.

(C) In this subparagraph the term "subcommittee" includes a panel (other than a special oversight panel of the Committee on Armed Services), task force, special subcommittee, or other subunit of a standing committee that is established for a cumulative period longer than six months in a Congress.

(c)(1) One of the members of each standing committee shall be elected by the House, on the nomination of the majority party caucus or conference, as chairman thereof. In the temporary absence of the chairman, the member next in rank (and so on, as often as the case shall happen) shall act as chairman. Rank shall be determined by the order members are named in resolutions electing them to the committee. In the case of a permanent vacancy in the elected chairmanship of a committee, the House shall elect another chairman.

(2) A member of a standing committee may not serve as chairman of the same standing committee, or of the same subcommittee of a standing committee, during more than three consecutive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(d)(1) Except as permitted by subparagraph (2), a committee may have not more than five subcommittees.

(2) A committee that maintains a subcommittee on oversight may have not more than six subcommittees. The Committee on Appropriations may have not more than 13 subcommittees. The Committee on Government Reform may have not more than seven subcommittees.

(e) The House shall fill a vacancy on a standing committee by election on the nomination of the respective party caucus or conference.

Expense resolutions

6. (a) Whenever a committee, commission, or other entity (other than the Committee on Appropriations) is granted authorization for the payment of its expenses (including staff salaries) for a Congress, such authorization initially shall be procured by one primary expense resolution reported by the Committee on House Administration. A primary expense resolution may include a reserve fund for unanticipated expenses of committees. An amount from such a reserve fund may be allocated to a committee only by the approval of the Committee on House Administration. A primary expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of the funds to be provided to the committee, commission, or other entity under the primary expense resolution for all anticipated activities and programs of the committee, commission, or other entity; and

(2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities and programs of the committee, commission, or other entity as may be appropriate to provide the House with basic estimates of the expenditures contemplated by the primary expense resolution.

(b) After the date of adoption by the House of a primary expense resolution for a committee, commission, or other entity for a Congress, authorization for the payment of additional expenses (including staff salaries) in that Congress may be procured by one or more supplemental expense resolutions reported by the Committee on House Administration, as necessary. A supplemental expense resolution reported to the House may not be considered in the House unless a printed report thereon was available on the previous calendar day. For the information of the House, such report shall—

(1) state the total amount of additional funds to be provided to the committee, commission, or other entity under the supplemental expense resolution and the purposes for which those additional funds are available; and

(2) state the reasons for the failure to procure the additional funds for the committee, commission, or other entity by means of the primary expense resolution.

(c) The preceding provisions of this clause do not apply to—

(1) a resolution providing for the payment from committee salary and expense accounts of the House of sums necessary to pay compensation for staff services performed for, or to pay other expenses of, a committee, commission, or other entity at any time after the beginning of an odd-numbered year and before the date of adoption by the House of the primary expense resolution described in paragraph (a) for that year; or

(2) a resolution providing each of the standing committees in a Congress additional office equipment, airmail and special-delivery postage stamps, supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from committee salary and expense accounts of the House of the expenses of any of the foregoing items provided by that resolution, subject to and until enactment of the provisions of the resolution as permanent law.

(d) From the funds made available for the appointment of committee staff by a primary or additional expense resolution, the chairman of each com-

mittee shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the committee and that the minority party is treated fairly in the appointment of such staff.

(e) Funds authorized for a committee under this clause and clauses 7 and 8 are for expenses incurred in the activities of the committee.

Interim funding

7. (a) For the period beginning at noon on January 3 and ending at midnight on March 31 in each odd-numbered year, such sums as may be necessary shall be paid out of the committee salary and expense accounts of the House for continuance of necessary investigations and studies by—

(1) each standing and select committee established by these rules; and

(2) except as specified in paragraph (b), each select committee established by resolution.

(b) In the case of the first session of a Congress, amounts shall be made available under this paragraph for a select committee established by resolution in the preceding Congress only if—

(1) a resolution proposing to reestablish such select committee is introduced in the present Congress; and

(2) the House has not adopted a resolution of the preceding Congress providing for termination of funding for investigations and studies by such select committee.

(c) Each committee described in paragraph (a) shall be entitled for each month during the period specified in paragraph (a) to 9 percent (or such lesser percentage as may be determined by the Committee on House Administration) of the total annualized amount made available under expense resolutions for such committee in the preceding session of Congress.

(d) Payments under this paragraph shall be made on vouchers authorized by the committee involved, signed by the chairman of the committee, except as provided in paragraph (e), and approved by the Committee on House Administration.

(e) Notwithstanding any provision of law, rule of the House, or other authority, from noon on January 3 of the first session of a Congress until the election by the House of the committee concerned in that Congress, payments under this paragraph shall be made on vouchers signed by—

(1) the member of the committee who served as chairman of the committee at the expiration of the preceding Congress; or

(2) if the chairman is not a Member, Delegate, or Resident Commissioner in the present Congress, then the ranking member of the committee as it was constituted at the expiration of the preceding Congress who is a member of the majority party in the present Congress.

(f)(1) The authority of a committee to incur expenses under this paragraph shall expire upon adoption by the House of a primary expense resolution for the committee.

(2) Amounts made available under this paragraph shall be expended in accordance with regulations prescribed by the Committee on House Administration.

(3) This clause shall be effective only insofar as it is not inconsistent with a resolution reported by the Committee on House Administration and adopted by the House after the adoption of these rules.

Travel

8. (a) Local currencies owned by the United States shall be made available to the committee and its employees engaged in carrying out their official duties outside the United States or its territories or possessions. Appropriated funds, including those authorized under this clause and clauses 6 and 8, may not be expended for the purpose of defraying expenses of members of a committee or its employees in a country where local currencies are available for this purpose.

(b) The following conditions shall apply with respect to travel outside the United States or its territories or possessions:

(1) A member or employee of a committee may not receive or expend local currencies for subsistence in a country for a day at a rate in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for his expenses for a day at the lesser of—

(A) the per diem set forth in applicable Federal law; or

(B) the actual, unreimbursed expenses (other than for transportation) he incurred during that day.

(3) Each member or employee of a committee shall make to the chairman of the committee an itemized report showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished, and funds expended for any other official purpose and shall summarize in these categories the total foreign currencies or appropriated funds expended. Each report shall be filed with the chairman of the committee not later than 60 days following the completion of travel for use in complying with reporting requirements in applicable Federal law and shall be open for public inspection.

(c)(1) In carrying out the activities of a committee outside the United States in a country where local currencies are unavailable, a member or employee of a committee may not receive reimbursement for expenses (other than for transportation) in excess of the maximum per diem set forth in applicable Federal law.

(2) A member or employee shall be reimbursed for his expenses for a day, at the lesser of—

(A) the per diem set forth in applicable Federal law; or

(B) the actual unreimbursed expenses (other than for transportation) he incurred during that day.

(3) A member or employee of a committee may not receive reimbursement for the cost of any transportation in connection with travel outside the United States unless the member or employee actually paid for the transportation.

(d) The restrictions respecting travel outside the United States set forth in paragraph (c) also shall apply to travel outside the United States by a Member, Delegate, Resident Commissioner, officer, or employee of the House authorized under any standing rule.

Committee staffs

9. (a)(1) Subject to subparagraph (2) and paragraph (f), each standing committee may appoint, by majority vote, not more than 30 professional staff members to be compensated from the funds provided for the appointment of committee staff by primary and additional expense resolutions. Each professional staff member appointed under this subparagraph shall be assigned to the chairman and the ranking minority member of the committee, as the committee considers advisable.

(2) Subject to paragraph (f) whenever a majority of the minority party members of a standing committee (other than the Committee on Standards of Official Conduct or the Permanent Select Committee on Intelligence) so request, not more than 10 persons (or one-third of the total professional committee staff appointed under this clause, whichever is fewer) may be selected, by majority vote of the minority party members, for appointment by the committee as professional staff members under subparagraph (1). The committee shall appoint persons so selected whose character and qualifications are acceptable to a majority of the committee. If the committee determines that the character and qualifications of a person so selected are unacceptable, a majority of the minority party members may select another person for appointment by the committee to the professional staff until such appointment is made. Each professional staff member appointed under this subparagraph shall be assigned to such committee business as the minority party members of the committee consider advisable.

(b)(1) The professional staff members of each standing committee—

(A) may not engage in any work other than committee business during congressional working hours; and

(B) may not be assigned a duty other than one pertaining to committee business.

(2) Subparagraph (1) does not apply to staff designated by a committee as "associate" or "shared" staff who are not paid exclusively by the committee, provided that the chairman certifies that the compensation paid by the

committee for any such staff is commensurate with the work performed for the committee in accordance with clause 8 of rule XXIV.

(3) The use of any "associate" or "shared" staff by a committee shall be subject to the review of, and to any terms, conditions, or limitations established by, the Committee on House Administration in connection with the reporting of any primary or additional expense resolution.

(4) This paragraph does not apply to the Committee on Appropriations.

(c) Each employee on the professional or investigative staff of a standing committee shall be entitled to pay at a single gross per annum rate, to be fixed by the chairman and that does not exceed the maximum rate of pay as in effect from time to time under applicable provisions of law.

(d) Subject to appropriations hereby authorized, the Committee on Appropriations may appoint by majority vote such staff as it determines to be necessary (in addition to the clerk of the committee and assistants for the minority). The staff appointed under this paragraph, other than minority assistants, shall possess such qualifications as the committee may prescribe.

(e) A committee may not appoint to its staff an expert or other personnel detailed or assigned from a department or agency of the Government except with the written permission of the Committee on House Administration.

(f) If a request for the appointment of a minority professional staff member under paragraph (a) is made when no vacancy exists for such an appointment, the committee nevertheless may appoint under paragraph (a) a person selected by the minority and acceptable to the committee. A person so appointed shall serve as an additional member of the professional staff of the committee until such a vacancy occurs (other than a vacancy in the position of head of the professional staff, by whatever title designated), at which time that person is considered as appointed to that vacancy. Such a person shall be paid from the applicable accounts of the House described in clause 1(i)(1) of rule X. If such a vacancy occurs on the professional staff when seven or more persons have been so appointed who are eligible to fill that vacancy, a majority of the minority party members shall designate which of those persons shall fill the vacancy.

(g) Each staff member appointed pursuant to a request by minority party members under paragraph (a) and each staff member appointed to assist minority members of a committee pursuant to an expense resolution described in paragraph (a) of clause 6 shall be accorded equitable treatment with respect to the fixing of the rate of pay, the assignment of work facilities, and the accessibility of committee records.

(h) Paragraph (a) may not be construed to authorize the appointment of additional professional staff members of a committee pursuant to a request under paragraph (a) by the minority party members of that committee if 10 or more professional staff members provided for in paragraph (a)(1) who are satisfactory to a majority of the minority party members are otherwise assigned to assist the minority party members.

(i) Notwithstanding paragraph (a)(2), a committee may employ nonpartisan staff, in lieu of or in addition to committee staff designated exclusively for the majority or minority party, by an affirmative vote of a majority of the members of the majority party and of a majority of the members of the minority party.

Select and joint committees

10. (a) Membership on a select or joint committee appointed by the Speaker under clause 11 of rule I during the course of a Congress shall be contingent on continuing membership in the party caucus or conference of which the Member, Delegate, or Resident Commissioner concerned was a member at the time of appointment. Should a Member, Delegate, or Resident Commissioner cease to be a member of that caucus or conference, that Member, Delegate, or Resident Commissioner shall automatically cease to be a member of any select or joint committee to which he is assigned. The chairman of the relevant party caucus or conference shall notify the Speaker whenever a Member, Delegate, or Resident Commissioner ceases to be a member of a party caucus or conference. The Speaker shall notify the chairman of each affected select or joint committee that the appointment of such Member, Delegate, or Resident Commissioner to the select or joint committee is automatically vacated under this paragraph.

(b) Each select or joint committee, other than a conference committee, shall comply with clause 2(a) of rule XI unless specifically exempted by law.

Permanent Select Committee on Intelligence

11. (a)(1) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the "select committee"). The select committee shall be composed of not more than 16 Members, Delegates, or the Resident Commissioner, of whom not more than nine may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

(A) the Committee on Appropriations;

(B) the Committee on Armed Services;

(C) the Committee on International Relations; and

(D) the Committee on the Judiciary.

(2) The Speaker and the Minority Leader shall be ex officio members of the select committee but shall have no vote in the select committee and may not be counted for purposes of determining a quorum thereof.

(3) The Speaker and Minority Leader each may designate a member of his leadership staff to assist him in his capacity as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the select committee and subject to the same security clearance and confidentiality requirements as employees of the select committee under this clause.

(4)(A) Except as permitted by subdivision (B), a Member, Delegate, or Resident Commissioner, other than the Speaker or the Minority Leader, may not serve as a member of the select committee during more than four Congresses in a period of six successive Congresses (disregarding for this purpose any service for less than a full session in a Congress).

(B) A member of the select committee who served as either the chairman or the ranking minority member of the select committee in the immediately previous Congress and who did not serve in that respective capacity in an earlier Congress may serve as either the chairman or the ranking minority member of the select committee during one additional Congress.

(b)(1) There shall be referred to the select committee proposed legislation, messages, petitions, memorials, and other matters relating to the following:

(A) The Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(B) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(C) The organization or reorganization of a department or agency of the Government to the extent that the organization or reorganization relates to a function or activity involving intelligence or intelligence-related activities.

(D) Authorizations for appropriations, both direct and indirect, for the following:

(i) The Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.

(ii) Intelligence and intelligence-related activities of all other departments and agencies of the Government, including the tactical intelligence and intelligence-related activities of the Department of Defense.

(iii) A department, agency, subdivision, or program that is a successor to an agency or program named or referred to in (i) or (ii).

(2) Proposed legislation initially reported by the select committee (other than provisions solely involving matters specified in subparagraph (1)(A) or subparagraph (1)(D)(i)) containing any matter otherwise within the jurisdiction of a standing committee shall be referred by the Speaker to that standing committee. Proposed legislation initially reported by another committee that contains matter within the jurisdiction of the select committee shall be referred by the Speaker to the select committee if requested by the chairman of the select committee.

(3) Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review an intelligence or intelligence-related activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.

(4) Nothing in this clause shall be construed as amending, limiting, or otherwise changing the authority of a standing committee to obtain full and prompt access to the product of the intelligence and intelligence-related activities of a department or agency of the Government relevant to a matter otherwise within the jurisdiction of that committee.

(c)(1) For purposes of accountability to the House, the select committee shall make regular and periodic reports to the House on the nature and extent of the intelligence and intelligence-related activities of the various departments and agencies of the United States. The select committee shall promptly call to the attention of the House, or to any other appropriate committee, a matter requiring the attention of the House or another committee. In making such report, the select committee shall proceed in a manner consistent with paragraph (g) to protect national security.

(2) The select committee shall obtain annual reports from the Director of the Central Intelligence Agency, the Secretary of Defense, the Secretary of State, and the Director of the Federal Bureau of Investigation. Such reports shall review the intelligence and intelligence-related activities of the agency or department concerned and the intelligence and intelligence-related activities of foreign countries directed at the United States or its interests. An unclassified version of each report may be made available to the public at the discretion of the select committee. Nothing herein shall be construed as requiring the public disclosure in such reports of the names of persons engaged in intelligence or intelligence-related activities for the United States or the divulging of intelligence methods employed or the sources of information on which the reports are based or the amount of funds authorized to be appropriated for intelligence and intelligence-related activities.

(3) Within six weeks after the President submits a budget under section 1105(a) of title 31, United States Code, or at such time as the Committee on the Budget may request, the select committee shall submit to the Committee on the Budget the views and estimates described in section 301(d) of the Congressional Budget Act of 1974 regarding matters within the jurisdiction of the select committee.

(d)(1) Except as specified in subparagraph (2), clauses 8(a), (b), and (c) and 9(a), (b), and (c) of this rule, and clauses 1, 2, and 4 of rule XI shall apply to the select committee to the extent not inconsistent with this clause.

(2) Notwithstanding the requirements of the first sentence of clause 2(g)(2) of rule XI, in the presence of the number of members required under the rules of the select committee for the purpose of taking testimony or receiving evidence, the select committee may vote to close a hearing whenever a majority of those present determines that the testimony or evidence would endanger the national security.

(e) An employee of the select committee, or a person engaged by contract or otherwise to perform services for or at the request of the select committee, may not be given access to any classified information by the select committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the Rules of the House, including the jurisdiction of the Committee on Standards of Official Conduct and of the select committee concerning the security of classified information during and after the period of his employment or contractual agreement with the select committee; and

(2) received an appropriate security clearance, as determined by the select committee in consultation with the Director of Central Intelligence, that is commensurate with the sensitivity of the classified information to which such employee or person will be given access by the select committee.

(f) The select committee shall formulate and carry out such rules and procedures as it considers necessary to prevent the disclosure, without the consent of each person concerned, of information in the possession of the select committee that unduly infringes on the privacy or that violates the constitutional rights of such person. Nothing herein shall be construed to prevent the select committee from publicly disclosing classified information in a case in which it determines that national interest in the disclosure of classified information clearly outweighs any infringement on the privacy of a person.

(g)(1) The select committee may disclose publicly any information in its possession after a determination by the select committee that the public interest would be served by such disclosure. With respect to the disclosure of information for which this paragraph requires action by the select committee—

(A) the select committee shall meet to vote on the matter within five days after a member of the select committee requests a vote; and

(B) a member of the select committee may not make such a disclosure before a vote by the select committee on the matter, or after a vote by the select committee on the matter except in accordance with this paragraph.

(2)(A) In a case in which the select committee votes to disclose publicly any information that has been classified under established security procedures, that has been submitted to it by the executive branch, and that the executive branch requests be kept secret, the select committee shall notify the President of such vote.

(B) The select committee may disclose publicly such information after the expiration of a five-day period following the day on which notice of the vote to disclose is transmitted to the President unless, before the expiration of the five-day period, the President, personally in writing, notifies the select committee that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by the disclosure is of such gravity that it outweighs any public interest in the disclosure.

(C) If the President, personally in writing, notifies the select committee of his objections to the disclosure of information as provided in subdivision (B), the select committee may, by majority vote, refer the question of the disclosure of such information, with a recommendation thereon, to the House. The select committee may not publicly disclose such information without leave of the House.

(D) Whenever the select committee votes to refer the question of disclosure of any information to the House under subdivision (C), the chairman shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(E) If the chairman of the select committee does not offer in the House a motion to consider in closed session a matter reported under subdivision (D) within four calendar days on which the House is in session after the recommendation described in subdivision (C) is reported, then such a motion shall be privileged when offered by a Member, Delegate, or Resident Commissioner. In either case such a motion shall be decided without debate or intervening motion except one that the House adjourn.

(F) Upon adoption by the House of a motion to resolve into closed session as described in subdivision (E), the Speaker may declare a recess subject to the call of the Chair. At the expiration of the recess, the pending question, in closed session, shall be, "Shall the

House approve the recommendation of the select committee?".

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chairman and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Standards of Official Conduct shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence and intelligence-related activities of the Department of State.

(6) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

RULE XI

PROCEDURES OF COMMITTEES AND UNFINISHED BUSINESS

In general

1. (a)(1)(A) Except as provided in subdivision (B), the Rules of the House are the rules of its committees and subcommittees so far as applicable.

(B) A motion to recess from day to day, and a motion to dispense with the first reading (in full) of a bill or resolution, if printed copies are available, each shall be privileged in committees and subcommittees and shall be decided without debate.

(2) Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly, provided that each of the committees complies independently with all requirements for approval and filing of the report.

Exhibit E

RULES

of the

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

PREPARED BY

Jeff Trandahl

Clerk of the House of Representatives

OCTOBER 18, 1999

House approve the recommendation of the select committee?".

(G) Debate on the question described in subdivision (F) shall be limited to two hours equally divided and controlled by the chairman and ranking minority member of the select committee. After such debate the previous question shall be considered as ordered on the question of approving the recommendation without intervening motion except one motion that the House adjourn. The House shall vote on the question in open session but without divulging the information with respect to which the vote is taken. If the recommendation of the select committee is not approved, then the question is considered as recommitted to the select committee for further recommendation.

(3)(A) Information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of a department or agency of the United States that has been classified under established security procedures, and that the select committee has determined should not be disclosed under subparagraph (1) or (2), may not be made available to any person by a Member, Delegate, Resident Commissioner, officer, or employee of the House except as provided in subdivision (B).

(B) The select committee shall, under such regulations as it may prescribe, make information described in subdivision (A) available to a committee or a Member, Delegate, or Resident Commissioner, and permit a Member, Delegate, or Resident Commissioner to attend a hearing of the select committee that is closed to the public. Whenever the select committee makes such information available, it shall keep a written record showing, in the case of particular information, which committee or which Member, Delegate, or Resident Commissioner received the information. A Member, Delegate, or Resident Commissioner who, and a committee that, receives information under this subdivision may not disclose the information except in a closed session of the House.

(4) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, Delegate, Resident Commissioner, officer, or employee of the House in violation of subparagraph (3) and report to the House concerning any allegation that it finds to be substantiated.

(5) Upon the request of a person who is subject to an investigation described in subparagraph (4), the Committee on Standards of Official Conduct shall release to such person at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, Delegate, Resident Commissioner, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action. Recommendations may include censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

(h) The select committee may permit a personal representative of the President, designated by the President to serve as a liaison to the select committee, to attend any closed meeting of the select committee.

(i) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, a department or agency of the United States to carry out any of the following activities, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year:

(1) The activities of the Central Intelligence Agency and the Director of Central Intelligence.

(2) The activities of the Defense Intelligence Agency.

(3) The activities of the National Security Agency.

(4) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense.

(5) The intelligence and intelligence-related activities of the Department of State.

(6) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

(j)(1) In this clause the term "intelligence and intelligence-related activities" includes—

(A) the collection, analysis, production, dissemination, or use of information that relates to a foreign country, or a government, political group, party, military force, movement, or other association in a foreign country, and that relates to the defense, foreign policy, national security, or related policies of the United States and other activity in support of the collection, analysis, production, dissemination, or use of such information;

(B) activities taken to counter similar activities directed against the United States;

(C) covert or clandestine activities affecting the relations of the United States with a foreign government, political group, party, military force, movement, or other association;

(D) the collection, analysis, production, dissemination, or use of information about activities of persons within the United States, its territories and possessions, or nationals of the United States abroad whose political and related activities pose, or may be considered by a department, agency, bureau, office, division, instrumentality, or employee of the United States to pose, a threat to the internal security of the United States; and

(E) covert or clandestine activities directed against persons described in subdivision (D).

(2) In this clause the term "department or agency" includes any organization, committee, council, establishment, or office within the Federal Government.

(3) For purposes of this clause, reference to a department, agency, bureau, or subdivision shall include a reference to any successor department, agency, bureau, or subdivision to the extent that a successor engages in intelligence or intelligence-related activities now conducted by the department, agency, bureau, or subdivision referred to in this clause.

(k) Clause 12(a) of rule XXII does not apply to meetings of a conference committee respecting legislation (or any part thereof) reported by the Permanent Select Committee on Intelligence.

RULE XI

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In general

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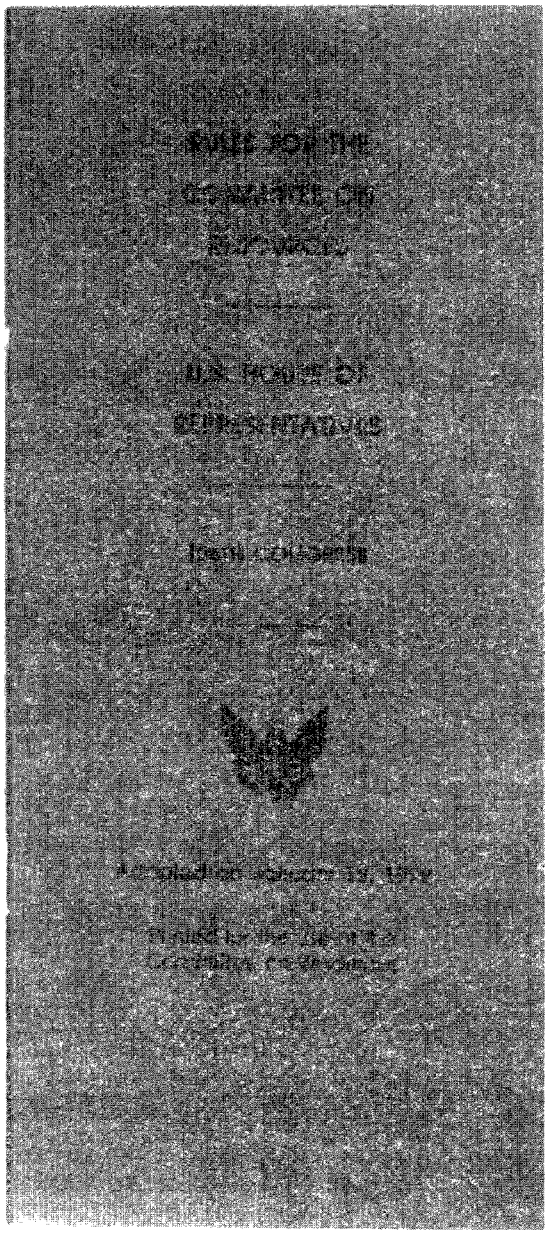
(B) A motion to recess from day to day, and a motion to dispense with the first reading (in full) of a bill or resolution, if printed copies are available, each shall be privileged in committees and subcommittees and shall be decided without debate.

(2) Each subcommittee is a part of its committee and is subject to the authority and direction of that committee and to its rules, so far as applicable.

(b)(1) Each committee may conduct at any time such investigations and studies as it considers necessary or appropriate in the exercise of its responsibilities under rule X. Subject to the adoption of expense resolutions as required by clause 6 of rule X, each committee may incur expenses, including travel expenses, in connection with such investigations and studies.

(2) A proposed investigative or oversight report shall be considered as read in committee if it has been available to the members for at least 24 hours (excluding Saturdays, Sundays, or legal holidays except when the House is in session on such a day).

(3) A report of an investigation or study conducted jointly by more than one committee may be filed jointly, provided that each of the committees complies independently with all requirements for approval and filing of the report.



from the Committee, the Chairman or his designee shall report the same to the House of Representatives and shall take all steps necessary to secure its passage without any additional authority needing to be set forth in the motion to report each individual measure. In appropriate cases, the authority set forth in this rule shall extend to moving in accordance with the Rules of the House of Representatives that the House be resolved into the Committee of the Whole House on the State of the Union for the consideration of the measure; and to moving in accordance with the Rules of the House of Representatives for the disposition of a Senate measure that is substantially the same as the House measure as reported.

(*b*) Filing.—A report on a measure which has been approved by the Committee shall be filed within seven calendar days (exclusive of days on which the House of Representatives is not in session) after the day on which there has been filed with the Committee Clerk a written request, signed by a majority of the Members of the Committee, for the reporting of that measure. Upon the filing with the Committee Clerk of this request, the Clerk shall transmit immediately to the Chairman notice of the filing of that request.

(*c*) Supplemental, Additional or Minority Views.—Any Member may, if notice is given at the time a bill or resolution is approved by the Committee, file supplemental, additional, or minority views. These views must be in writing and signed by each Member joining therein and be filed with the Committee Clerk not less than two additional calendar days (excluding Saturdays, Sundays and legal holidays except when the House is in session on those days) of the time the bill or resolution is approved by the Committee. This paragraph shall not preclude the filing of any supplemental report on any bill or resolution that may be required for the correction of any technical error in a previous report made by the Committee on that bill or resolution.

(*d*) Review by Members.—Each Member of the Committee shall be given an opportunity to review each proposed Committee report before it is filed with the Clerk of the House of Representatives. Nothing in this paragraph extends the time allowed for filing supplemental, additional or minority views under paragraph (c).

(*e*) Disclaimer.—All Committee or Subcommittee reports printed pursuant to legislative study or investigation and not approved by a majority vote of the Committee or Subcommittee, as appropriate, shall contain the following disclaimer on the cover of the report:

"This report has not been officially adopted by the {Committee on Resources} {Subcommittee} and may not therefore necessarily reflect the views of its Members.".

Rule 6. Establishment of Subcommittees; Full Committee Jurisdiction; Bill Referrals.—(*a*) Subcommittees.—There shall be five standing Subcommittees of the Committee, with the following jurisdiction and responsibilities:

Subcommittee on National Parks and Public Lands

(1) Measures and matters related to the National Park System and its units, including Federal reserve water rights.

(2) The National Wilderness Preservation System, except for wilderness created from forest reserves from the public domain, and wilderness in Alaska.

(3) Wild and Scenic Rivers System, National Trails System, national her-

itage areas and other national units established for protection, conservation, preservation or recreational development administered by the Secretary of the Interior, other than coastal barriers.

(4) Military parks and battlefields, national cemeteries administered by the Secretary of the Interior, parks in and within the vicinity of the District of Columbia and the erection of monuments to the memory of individuals.

(5) Federal outdoor recreation plans, programs and administration including the Land and Water Conservation Fund, except those in public forests.

(6) Plans and programs concerning non-Federal outdoor recreation and land use, including related plans and programs authorized by the Land and Water Conservation Fund Act of 1965 and the Outdoor Recreation Act of 1963, except those in public forests.

(7) Preservation of prehistoric ruins and objects of interest on the public domain and other historic preservation programs and activities, including national monuments, historic sites and programs for international cooperation in the field of historic preservation.

(8) Matters concerning the following agencies and programs: Urban Parks and Recreation Recovery Program, Historic American Buildings Survey, Historic American Engineering Record, and U.S. Holocaust Memorial.

(9) Except for public lands in Alaska, public lands generally, including measures or matters relating to entry, easements, withdrawals, grazing and Federal reserved water rights.

(10) Forfeiture of land grants and alien ownership, including alien ownership of mineral lands.

(11) General and continuing oversight and investigative authority over activities, policies and programs within the jurisdiction of the Subcommittee.

Subcommittee on Forests and Forest Health

(1) Except in Alaska, forest reservations, including management thereof, created from the public domain.

(2) Except for forest lands in Alaska, public forest lands generally, including measures or matters related to entry, easements, withdrawals and grazing.

(3) Except in Alaska, Federal reserved water rights on forest reserves.

(4) Wild and Scenic Rivers System, National Trails System, national heritage areas and other national units established for protection, conservation, preservation or recreational development administered by the Secretary of Agriculture.

(5) Federal and non-Federal outdoor recreation plans, programs and administration in public forests.

(6) General and continuing oversight and investigative authority over activities, policies and programs within the jurisdiction of the Subcommittee.

Subcommittee on Fisheries Conservation, Wildlife and Oceans

(1) Fisheries management and fisheries research generally, including the management of all commercial and recreational fisheries, the Magnuson-Stevens Fishery Conservation and Management Act, interjurisdictional fisheries, international fisheries agreements, aquaculture, seafood safety and fisheries promotion.

(2) Wildlife resources, including research, restoration, refuges and conservation.

(3) All matters pertaining to the protection of coastal and marine environments, including estuarine protection.

(4) Coastal barriers.

(5) Oceanography.

(6) Ocean engineering, including materials, technology and systems.

(7) Coastal zone management.

(8) Marine sanctuaries.

(9) U.N. Convention on the Law of the Sea.

(10) Sea Grant programs and marine extension services.

(11) General and continuing oversight and investigative authority over activities, policies and programs within the jurisdiction of the Subcommittee.

Subcommittee on Water and Power

(1) Generation and marketing of electric power from Federal water projects by Federally chartered or Federal regional power marketing authorities.

(2) All measures and matters concerning water resources planning conducted pursuant to the Water Resources Planning Act, water resource research and development programs and saline water research and development.

(3) Compacts relating to the use and apportionment of interstate waters, water rights and major interbasin water or power movement programs.

(4) All measures and matters pertaining to irrigation and reclamation projects and other water resources development programs, including policies and procedures.

(5) General and continuing oversight and investigative authority over activities, policies and programs within the jurisdiction of the Subcommittee.

Subcommittee on Energy and Mineral Resources

(1) All measures and matters concerning the U.S. Geological Survey, except for the activities and programs

of the Water Resources Division or its successor.

(2) All measures and matters affecting geothermal resources.

(3) Conservation of United States uranium supply.

(4) Mining interests generally, including all matters involving mining regulation and enforcement, including the reclamation of mined lands, the environmental effects of mining, and the management of mineral receipts, mineral land laws and claims, long-range mineral programs and deep seabed mining.

(5) Mining schools, experimental stations and long-range mineral programs.

(6) Mineral resources on public lands.

(7) Conservation and development of oil and gas resources of the Outer Continental Shelf.

(8) Petroleum conservation on the public lands and conservation of the radium supply in the United States.

(9) General and continuing oversight and investigative authority over activities, policies and programs within the jurisdiction of the Subcommittee.

(*b*) Full Committee.—The Full Committee shall have the following jurisdiction and responsibilities:

(1) Measures and matters concerning the transportation of natural gas from or within Alaska and disposition of oil transported by the trans-Alaska oil pipeline.

(2) Measures and matters relating to Alaska public lands, including forestry and forest management issues, and Federal reserved water rights.

(3) Environmental and habitat measures and matters of general applicability.

(4) Measures relating to the welfare of Native Americans, including management of Indian lands in

general and special measures relating to claims which are paid out of Indian funds.

(5) All matters regarding the relations of the United States with Native Americans and Native American tribes, including special oversight functions under clause 3(h) of Rule X of the Rules of the House of Representatives.

(6) All matters regarding Native Alaskans and Native Hawaiians.

(7) All matters related to the Federal trust responsibility to Native Americans and the sovereignty of Native Americans.

(8) All matters regarding insular areas of the United States.

(9) All measures or matters regarding the Freely Associated States and Antarctica.

(10) Cooperative efforts to encourage, enhance and improve international programs for the protection of the environment and the conservation of natural resources within the jurisdiction of the Committee.

(11) All measures and matters retained by the Full Committee under Committee rule 6(e).

(12) General and continuing oversight and investigative authority over activities, policies and programs within the jurisdiction of the Committee under House Rule X.

(c) Ex-officio Members.—The Chairman and Ranking Minority Member of the Committee may serve as ex-officio, Members of each standing Subcommittee to which the Chairman or the Ranking Minority Member have not been assigned. Ex-officio Members shall have the right to fully participate in Subcommittee activities but may not vote and may not be counted in establishing a quorum.

(d) Powers and Duties of Subcommittees.—Each Subcommittee is authorized to meet, hold hearings, receive evidence and report to the Committee on all matters within its jurisdiction. Each Subcommittee shall review and study, on a continuing basis, the application, administration, execution and effectiveness of those statutes, or parts of statutes, the subject matter of which is within that Subcommittee's jurisdiction; and the organization, operation, and regulations of any Federal agency or entity having responsibilities in or for the administration of such statutes, to determine whether these statutes are being implemented and carried out in accordance with the intent of Congress. Each Subcommittee shall review and study any conditions or circumstances indicating the need of enacting new or supplemental legislation within the jurisdiction of the Subcommittee.

(e) Referral to Subcommittees; Recall.—(1) Except as provided in paragraph (2) and for those matters within the jurisdiction of the Full Committee, every legislative measure or other matter referred to the Committee shall be referred to the Subcommittee of jurisdiction within two weeks of the date of its referral to the Committee. If any measure or matter is within or affects the jurisdiction of one or more Subcommittees, the Chairman may refer that measure or matter simultaneously to two or more Subcommittees for concurrent consideration or for consideration in sequence subject to appropriate time limits, or divide the matter into two or more parts and refer each part to a Subcommittee.

(2) The Chairman, with the approval of a majority of the Majority Members of the Committee, may refer a legislative measure or other matter to a select or special Subcommittee. A legislative measure or other matter referred by the Chairman to a Subcommittee may be recalled from the Subcommittee for direct consideration by the Full Committee, or for referral

to another Subcommittee, provided Members of the Committee receive one week written notice of the recall and a majority of the Members of the Committee do not object. In addition, a legislative measure or other matter referred by the Chairman to a Subcommittee may be recalled from the Subcommittee at any time by majority vote of the Committee for direct consideration by the Full Committee or for referral to another Subcommittee.

(*f*) Consultation.—Each Subcommittee Chairman shall consult with the Chairman of the Full Committee prior to setting dates for Subcommittee meetings with a view towards avoiding whenever possible conflicting Committee and Subcommittee meetings.

(*g*) Vacancy.—A vacancy in the membership of a Subcommittee shall not affect the power of the remaining Members to execute the functions of the Subcommittee.

Exhibit F

(4) After an adjournment sine die of the last regular session of a Congress, an investigative or oversight report may be filed with the Clerk at any time, provided that a member who gives timely notice of intention to file supplemental, minority, or additional views shall be entitled to not less than seven calendar days in which to submit such views for inclusion in the report.

(c) Each committee may have printed and bound such testimony and other data as may be presented at hearings held by the committee or its subcommittees. All costs of stenographic services and transcripts in connection with a meeting or hearing of a committee shall be paid from the applicable accounts of the House described in clause 1(t)(1) of rule X.

(d)(1) Each committee shall submit to the House not later than January 2 of each odd-numbered year a report on the activities of that committee under this rule and rule X during the Congress ending at noon on January 3 of such year.

(2) Such report shall include separate sections summarizing the legislative and oversight activities of that committee during that Congress.

(3) The oversight section of such report shall include a summary of the oversight plans submitted by the committee under clause 2(d) of rule X, a summary of the actions taken and recommendations made with respect to each such plan, a summary of any additional oversight activities undertaken by that committee, and any recommendations made or actions taken thereon.

(4) After an adjournment sine die of the last regular session of a Congress, the chairman of a committee may file an activities report under subparagraph (1) with the Clerk at any time and without approval of the committee, provided that—

(A) a copy of the report has been available to each member of the committee for at least seven calendar days; and

(B) the report includes any supplemental, minority, or additional views submitted by a member of the committee.

Adoption of written rules

2. (a)(1) Each standing committee shall adopt written rules governing its procedure. Such rules—

(A) shall be adopted in a meeting that is open to the public unless the committee, in open session and with a quorum present, determines by record vote that all or part of the meeting on that day shall be closed to the public;

(B) may not be inconsistent with the Rules of the House or with those provisions of law having the force and effect of Rules of the House; and

(C) shall in any event incorporate all of the succeeding provisions of this clause to the extent applicable.

(2) Each committee shall submit its rules for publication in the Congressional Record not later than 30 days after the committee is elected in each odd-numbered year.

Regular meeting days

(b) Each standing committee shall establish regular meeting days for the conduct of its business, which shall be not less frequent than monthly. Each such committee shall meet for the consideration of a bill or resolution pending before the committee or the transaction of other committee business on all regular meeting days fixed by the committee unless otherwise provided by written rule adopted by the committee.

Additional and special meetings

(c)(1) The chairman of each standing committee may call and convene, as he considers necessary, additional and special meetings of the committee for the consideration of a bill or resolution pending before the committee or for the conduct of other committee business, subject to such rules as the committee may adopt. The committee shall meet for such purpose under that call of the chairman.

(2) Three or more members of a standing committee may file in the offices of the committee a written request that the chairman call a special meeting of the committee. Such request shall specify the measure or matter to be considered. Immediately upon the filing of the request, the clerk of the committee shall notify the chairman of the filing of the request. If the chairman does not call the requested special meeting within three calendar days after the filing of the request (to be held within seven calendar days after the filing of the request) a majority of the members of the committee may file in the offices of the committee their written notice that a special meeting of the committee will be held. The written notice shall specify the date and hour of the special meeting and the measure or matter to be considered. The committee shall meet on that date and hour. Immediately upon the filing of the notice, the clerk of the committee shall notify all members of the committee that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Only the measure or matter specified in that notice may be considered at that special meeting.

Temporary absence of chairman

(d) A member of the majority party on each standing committee or subcommittee thereof shall be designated by the chairman of the full committee as the vice chairman of the committee or subcommittee, as the case may be, and shall preside during the absence of the chairman from any meeting. If the chairman and vice chairman of a committee or subcommittee are not present at any meeting of the committee or subcommittee, the ranking majority member who is present shall preside at that meeting.

Committee records

(e)(1)(A) Each committee shall keep a complete record of all committee action which shall include—

(i) in the case of a meeting or hearing transcript, a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved; and

(ii) a record of the votes on any question on which a record vote is demanded.

(B)(i) Except as provided in subdivision (B)(ii) and subject to paragraph (k)(7), the result of each such record vote shall be made available by the committee for inspection by the public at reasonable times in its offices. Information so available for public inspection shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting.

(ii) The result of any record vote taken in executive session in the Committee on Standards of Official Conduct may not be made available for inspection by the public without an affirmative vote of a majority of the members of the committee.

(2)(A) Except as provided in subdivision (B), all committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the member serving as its chairman. Such records shall be the property of the House, and each Member, Delegate, and the Resident Commissioner shall have access thereto.

(B) A Member, Delegate, or Resident Commissioner, other than members of the Committee on Standards of Official Conduct, may not have access to the records of that committee respecting the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House without the specific prior permission of that committee.

(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule VII. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause 4(b) of rule VII, including a requirement that nonavailability of a record for a period longer than the period otherwise applicable under that rule shall be approved by vote of the committee.

(4) Each committee shall make its publications available in electronic form to the maximum extent feasible.

Prohibition against proxy voting

(f) A vote by a member of a committee or subcommittee with respect

to any measure or matter may not be cast by proxy.

Open meetings and hearings

(g)(1) Each meeting for the transaction of business, including the markup of legislation, by a standing committee or subcommittee thereof (other than the Committee on Standards of Official Conduct or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be in executive session 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 a law or rule of the House. Persons, other than members of the committee and such noncommittee Members, Delegates, Resident Commissioner, congressional staff, or departmental representatives as the committee may authorize, may not be present at a business or markup session that is held in executive session. This subparagraph does not apply to open committee hearings, which are governed by clause 4(a)(1) of rule X or by subparagraph (2).

(2)(A) Each hearing conducted by a committee or subcommittee (other than the Committee on Standards of Official Conduct or its subcommittees) shall be open to the public, including to radio, television, and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would violate a law or rule of the House.

(B) Notwithstanding the requirements of subdivision (A), in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, a majority of those present may—

(i) agree to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger national security, would compromise sensitive law enforcement information, or would violate clause 2(k)(5); or

(ii) agree to close the hearing as provided in clause 2(k)(5).

(C) A Member, Delegate, or Resident Commissioner may not be excluded from nonparticipatory attendance at a hearing of a committee or subcommittee (other than the Committee on Standards of Official Conduct or its subcommittees) unless the House by majority vote authorizes a particular committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members, Delegates, and the Resident Commissioner by the same procedures specified in this subparagraph for closing hearings to the public.

(D) The committee or subcommittee may vote by the same procedure described in this subparagraph to close one subsequent day of hearing, except that the Committee on Appropriations, the Committee on Armed Services, and the Permanent Select Committee on Intelligence, and the subcommittees thereof, may vote by the same procedure to close up to five additional, consecutive days of hearings.

(3) The chairman of each committee (other than the Committee on Rules) shall make public announcement of the date, place, and subject matter of a committee hearing at least one week before the commencement of the hearing. If the chairman of the committee, with the concurrence of the ranking minority member, determines that there is good cause to begin a hearing sooner, or if the committee so determines by majority vote in the presence of the number of members required under the rules of the committee for the transaction of business, the chairman shall make the announcement at the earliest possible date. An announcement made under this subparagraph shall be published promptly in the Daily Digest and made available in electronic form.

(4) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

(5)(A) Except as provided in subdivision (B), a point of order does not lie with respect to a measure reported by a committee on the ground that hearings on such measure were not conducted in accordance with this clause.

(B) A point of order on the ground described in subdivision (A) may be made by a member of the committee that reported the measure if such point of order was timely made and improperly disposed of in the committee.

(6) This paragraph does not apply to hearings of the Committee on Appropriations under clause 4(a)(1) of rule X.

Quorum requirements

(h)(1) A measure or recommendation may not be reported by a committee unless a majority of the committee is actually present.

(2) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which may not be less than two.

(3) Each committee (other than the Committee on Appropriations, the Committee on the Budget, and the Committee on Ways and Means) may fix the number of its members to constitute a quorum for taking any action other than the reporting of a measure or recommendation, which may not be less than one-third of the members.

Limitation on committee sittings

(i) A committee may not sit during a joint session of the House and Senate or during a recess when a joint meeting of the House and Senate is in progress.

Calling and questioning of witnesses

(j)(1) Whenever a hearing is conducted by a committee on a measure or matter, the minority members of the committee shall be entitled, upon request to the chairman by a majority of them before the completion of the hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

(2)(A) Subject to subdivisions (B) and (C), each committee shall apply the five-minute rule during the questioning of witnesses in a hearing until such time as each member of the committee who so desires has had an opportunity to question each witness.

(B) A committee may adopt a rule or motion permitting a specified number of its members to question a witness for longer than five minutes. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

(C) A committee may adopt a rule or motion permitting committee staff for its majority and minority party members to question a witness for equal specified periods. The time for extended questioning of a witness under this subdivision shall be equal for the majority party and the minority party and may not exceed one hour in the aggregate.

Investigative hearing procedures

(k)(1) The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

(2) A copy of the committee rules and of this clause shall be made available to each witness.

(3) Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(4) The chairman may punish breaches of order and decorum, and of

professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

(5) Whenever it is asserted that the evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person—

(A) notwithstanding paragraph (g)(2), such testimony or evidence shall be presented in executive session if, in the presence of the number of members required under the rules of the committee for the purpose of taking testimony, the committee determines by vote of a majority of those present that such evidence or testimony may tend to defame, degrade, or incriminate any person; and

(B) the committee shall proceed to receive such testimony in open session only if the committee, a majority being present, determines that such evidence or testimony will not tend to defame, degrade, or incriminate any person.

In either case the committee shall afford such person an opportunity voluntarily to appear as a witness, and receive and dispose of requests from such person to subpoena additional witnesses.

(6) Except as provided in subparagraph (5), the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses.

(7) Evidence or testimony taken in executive session, and proceedings conducted in executive session, may be released or used in public sessions only when authorized by the committee, a majority being present.

(8) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

(9) A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

Supplemental, minority, or additional views

(l) If at the time of approval of a measure or matter by a committee (other than the Committee on Rules) a member of the committee gives notice of intention to file supplemental, minority, or additional views for inclusion in the report to the House thereon, that member shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays except when the House is in session on such a day) to file such views, in writing and signed by that member, with the clerk of the committee.

Power to sit and act; subpoena power

(m)(1) For the purpose of carrying out any of its functions and duties under this rule and rule X (including any matters referred to it under clause 2 of rule XII), a committee or subcommittee is authorized (subject to subparagraph (3)(A))—

(A) to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, and to hold such hearings as it considers necessary; and

(B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.

(2) The chairman of the committee, or a member designated by the chairman, may administer oaths to witnesses.

(3)(A)(i) Except as provided in subdivision (A)(ii), a subpoena may be authorized and issued by a committee or subcommittee under subparagraph (1)(B) in the conduct of an investigation or series of investigations or activities only when authorized by the committee or subcommittee, a majority being present. The power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to the chairman of the committee under such rules and under such limitations as the committee may prescribe. Authorized subpoenas shall be signed by the chairman of the committee or by a member designated by the committee.

(ii) In the case of a subcommittee of the Committee on Standards of Official Conduct, a subpoena may be authorized and issued only by an affirmative vote of a majority of its members.

(B) A subpoena duces tecum may specify terms of return other than at a meeting or hearing of the committee or subcommittee authorizing the subpoena.

(C) Compliance with a subpoena issued by a committee or subcommittee under subparagraph (1)(B) may be enforced only as authorized or directed by the House.

Committee on Standards of Official Conduct

3. (a) The Committee on Standards of Official Conduct has the following functions:

(1) The committee may recommend to the House from time to time such administrative actions as it may consider appropriate to establish or enforce standards of official conduct for Members, Delegates, the Resident Commissioner, officers, and employees of the House. A letter of reproval or other administrative action of the committee pursuant to an investigation under subparagraph (2) shall only be issued or implemented as a part of a report required by such subparagraph.

(2) The committee may investigate, subject to paragraph (b), an alleged violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House of the Code of Official Conduct or of a law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, Delegate, Resident Commissioner, officer, or employee in the performance of his duties or the discharge of his responsibilities. After notice and hearing (unless the right to a hearing is waived by the Member, Delegate, Resident Commissioner, officer, or employee), the committee shall report to the House its findings of fact and recommendations, if any, for the final disposition of any such investigation and such action as the committee may consider appropriate in the circumstances.

(3) The committee may report to the appropriate Federal or State authorities, either with the approval of the House or by an affirmative vote of two-thirds of the members of the committee, any substantial evidence of a violation by a Member, Delegate, Resident Commissioner, officer, or employee of the House, of a law applicable to the performance of his duties or the discharge of his responsibilities that may have been disclosed in a committee investigation.

(4) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, Delegate, Resident Commissioner, officer, or employee. With appropriate deletions to ensure the privacy of the person concerned, the committee may publish such opinion for the guidance of other Members, Delegates, the Resident Commissioner, officers, and employees of the House.

(5) The committee may consider the request of a Member, Delegate, Resident Commissioner, officer, or employee of the House for a written waiver in exceptional circumstances with respect to clause 4 of rule XXIV.

(b)(1)(A) Unless approved by an affirmative vote of a majority of its members, the Committee on Standards of Official Conduct may not report a resolution, report, recommendation, or advisory opinion relating to the official conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or, except as provided in subparagraph (2), undertake an investigation of such conduct.

(B)(i) Upon the receipt of information offered as a complaint that is in compliance with this rule and the rules of the committee, the chairman and ranking minority member jointly may appoint members to serve as an investigative subcommittee.

(ii) The chairman and ranking minority member of the committee jointly may gather additional information concerning alleged conduct that is the basis of a complaint or of information offered as a complaint until they have established an investigative subcommittee or either of them has placed on the agenda of the committee the

issue of whether to establish an investigative subcommittee.

(2) Except in the case of an investigation undertaken by the committee on its own initiative, the committee may undertake an investigation relating to the official conduct of an individual Member, Delegate, Resident Commissioner, officer, or employee of the House only—

(A) upon receipt of information offered as a complaint, in writing and under oath, from a Member, Delegate, or Resident Commissioner and transmitted to the committee by such Member, Delegate, or Resident Commissioner; or

(B) upon receipt of information offered as a complaint, in writing and under oath, from a person not a Member, Delegate, or Resident Commissioner provided that a Member, Delegate, or Resident Commissioner certifies in writing to the committee that he believes the information is submitted in good faith and warrants the review and consideration of the committee.

If a complaint is not disposed of within the applicable periods set forth in the rules of the Committee on Standards of Official Conduct, the chairman and ranking minority member shall establish jointly an investigative subcommittee and forward the complaint, or any portion thereof, to that subcommittee for its consideration. However, if at any time during those periods either the chairman or ranking minority member places on the agenda the issue of whether to establish an investigative subcommittee, then an investigative subcommittee may be established only by an affirmative vote of a majority of the members of the committee.

(3) The committee may not undertake an investigation of an alleged violation of a law, rule, regulation, or standard of conduct that was not in effect at the time of the alleged violation. The committee may not undertake an investigation of such an alleged violation that occurred before the third previous Congress unless the committee determines that the alleged violation is directly related to an alleged violation that occurred in a more recent Congress.

(4) A member of the committee shall be ineligible to participate as a member of the committee in a committee proceeding relating to the member's official conduct. Whenever a member of the committee is ineligible to act as a member of the committee under the preceding sentence, the Speaker shall designate a Member, Delegate, or Resident Commissioner from the same political party as the ineligible member to act in any proceeding of the committee relating to that conduct.

(5) A member of the committee may disqualify himself from participating in an investigation of the conduct of a Member, Delegate, Resident Commissioner, officer, or employee of the House upon the submission in writing and under oath of an affidavit of disqualification stating that the member cannot render an impartial and unbiased decision in the case in which the member seeks to be disqualified. If the committee approves and accepts such affidavit of disqualification, the chairman shall so notify the Speaker and request the Speaker to designate a Member, Delegate, or Resident Commissioner from the same political party as the disqualifying member to act in any proceeding of the committee relating to that case.

(6) Information or testimony received, or the contents of a complaint or the fact of its filing, may not be publicly disclosed by any committee or staff member unless specifically authorized in each instance by a vote of the full committee.

(7) The committee shall have the functions designated in titles I and V of the Ethics in Government Act of 1978, in sections 7342, 7351, and 7353 of title 5, United States Code, and in clause 11(g)(4) of rule X.

(c)(1) Notwithstanding clause 2(g)(1) of rule XI, each meeting of the Committee on Standards of Official Conduct or a subcommittee thereof shall occur in executive session unless the committee or subcommittee, by an affirmative vote of a majority of its members, opens the meeting to the public.

(2) Notwithstanding clause 2(g)(2) of rule XI, each hearing of an adjudicatory subcommittee or sanction hearing of the Committee on Standards of Official Conduct shall be held in open session unless the committee or subcommittee, in open session by an affirmative vote of a majority of its members, closes all or part of the remainder of the hearing on that day to the public.

(d) Before a member, officer, or employee of the Committee on Standards of Official Conduct, including members of a subcommittee of the committee selected under clause 5(a)(4) of rule X and shared staff, may have access to information that is confidential under the rules of the committee, the following oath (or affirmation) shall be executed:

"I do solemnly swear (or affirm) that I will not disclose, to any person or entity outside the Committee on Standards of Official Conduct, any information received in the course of my service with the committee, except as authorized by the committee or in accordance with its rules."

Copies of the executed oath shall be retained by the Clerk as part of the records of the House. This paragraph establishes a standard of conduct within the meaning of paragraph (a)(2). Breaches of confidentiality shall be investigated by the Committee on Standards of Official Conduct and appropriate action shall be taken.

(e)(1) If a complaint or information offered as a complaint is deemed frivolous by an affirmative vote of a majority of the members of the Committee on Standards of Official Conduct, the committee may take such action as it, by an affirmative vote of a majority of its members, considers appropriate in the circumstances.

(2) Complaints filed before the One Hundred Fifth Congress may not be deemed frivolous by the Committee on Standards of Official Conduct.

Audio and visual coverage of committee proceedings

4. (a) The purpose of this clause is to provide a means, in conformity with acceptable standards of dignity, propriety, and decorum, by which committee hearings or committee meetings that are open to the public may be covered by audio and visual means—

(1) for the education, enlightenment, and information of the general public, on the basis of accurate and impartial news coverage, regarding the operations, procedures, and practices of the House as a legislative and representative body, and regarding the measures, public issues, and other matters before the House and its committees, the consideration thereof, and the action taken thereon; and

(2) for the development of the perspective and understanding of the general public with respect to the role and function of the House under the Constitution as an institution of the Federal Government.

(b) In addition, it is the intent of this clause that radio and television tapes and television film of any coverage under this clause may not be used, or made available for use, as partisan political campaign material to promote or oppose the candidacy of any person for elective public office.

(c) It is, further, the intent of this clause that the general conduct of each meeting (whether of a hearing or otherwise) covered under authority of this clause by audio or visual means, and the personal behavior of the committee members and staff, other Government officials and personnel, witnesses, television, radio, and press media personnel, and the general public at the hearing or other meeting, shall be in strict conformity with and observance of the acceptable standards of dignity, propriety, courtesy, and decorum traditionally observed by the House in its operations, and may not be such as to—

(1) distort the objects and purposes of the hearing or other meeting or the activities of committee members in connection with that hearing or meeting or in connection with the general work of the committee or of the House; or

(2) cast discredit or dishonor on the House, the committee, or a Member, Delegate, or Resident Commissioner or bring the House, the committee, or a Member, Delegate, or Resident Commissioner into disrepute.

(d) The coverage of committee hearings and meetings by audio and visual means shall be permitted and conducted only in strict conformity with

the purposes, provisions, and requirements of this clause.

(e) Whenever a hearing or meeting conducted by a committee or subcommittee is open to the public, those proceedings shall be open to coverage by audio and visual means. 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 shall adopt written rules to govern its implementation of this clause. Such rules shall contain provisions to the following effect:

(1) If audio or visual coverage of the hearing or meeting is to be presented to the public as live coverage, that coverage shall be conducted and presented without commercial sponsorship.

(2) The allocation among the television media of the positions or 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.

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

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

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

(6)(A) Except as provided in subdivision (B), floodlights, spotlights, strobelights, and flashguns may not be used in providing any method of coverage of the hearing or meeting.

(B) The television media may install additional lighting in a hearing or meeting room, without cost to the Government, in order to raise the ambient lighting level in a hearing or meeting room to the lowest level necessary to provide adequate television coverage of a hearing or meeting at the current state of the art of television coverage.

(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 a hearing or meeting by still photography, that coverage shall be permitted on the basis of a fair and equitable pool arrangement devised by the Standing Committee of Press Photographers.

(8) Photographers may not position themselves between the witness table and the members of the committee at any time during the course of a hearing or meeting.

(9) Photographers may not place themselves in positions that obstruct unnecessarily the coverage of the hearing by the other media.

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

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

(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.

Pay of witnesses

5. Witnesses appearing before the House or any of its committees shall be paid the same per diem rate as established, authorized, and regulated by the Committee on House Administration for Members, Delegates, the Resident Commissioner, and employees of the House, plus actual expenses of travel to or from the place of examination. Such per diem may not be paid when a witness has been summoned at the place of examination.

Unfinished business of the session

6. All business of the House at the end of one session shall be resumed at the commencement of the next session of the same Congress in the same manner as if no adjournment had taken place.

RULE XII

RECEIPT AND REFERRAL OF MEASURES AND MATTERS

Messages

1. Messages received from the Senate, or from the President, shall be entered on the Journal and published in the Congressional Record of the proceedings of that day.

Referral

2. (a) The Speaker shall refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of rule X in accordance with the provisions of this clause.

(b) The Speaker shall refer matters under paragraph (a) in such manner as to ensure to the maximum extent feasible that each committee that has jurisdiction under clause 1 of rule X over the subject matter of a provision thereof may consider such provision and report to the House thereon. Precedents, rulings, or procedures in effect before the Ninety-Fourth Congress shall be applied to referrals under this clause only to the extent that they will contribute to the achievement of the objectives of this clause.

(c) In carrying out paragraphs (a) and (b) with respect to the referral of a matter, the Speaker—

(1) shall designate a committee of primary jurisdiction;

(2) may refer the matter to one or more additional committees for consideration in sequence, either initially or after the matter has been reported by the committee of primary jurisdiction;

(3) may refer portions of the matter reflecting different subjects and jurisdictions to one or more additional committees;

(4) may refer the matter to a special, ad hoc committee appointed by the Speaker with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon;

(5) may subject a referral to appropriate time limitations; and

(6) may make such other provision as may be considered appropriate.

(d) A bill for the payment or adjudication of a private claim against the Government may not be referred to a committee other than the Committee on International Relations or the Committee on the Judiciary, except by unanimous consent.

Petitions, memorials, and private bills

3. If a Member, Delegate, or Resident Commissioner has a petition, memorial, or private bill to present, he shall endorse his name, deliver it to the Clerk, and may specify the reference or disposition to be made thereof. Such petition, memorial, or private bill (except when judged by the Speaker to be obscene or insulting) shall be entered on the Journal with the name of the Member, Delegate, or Resident Commissioner presenting it and shall be printed in the Congressional Record.

4. A private bill or private resolution (including an omnibus claim or pension bill), or amendment thereto, may not be received or considered in the House if it authorizes or directs—

(a) the payment of money for property damages, for personal injuries or death for which suit may be instituted under the Tort Claims Procedure provided in title 28, United States Code, or for a pension (other than to carry out a provision of law or treaty stipulation);

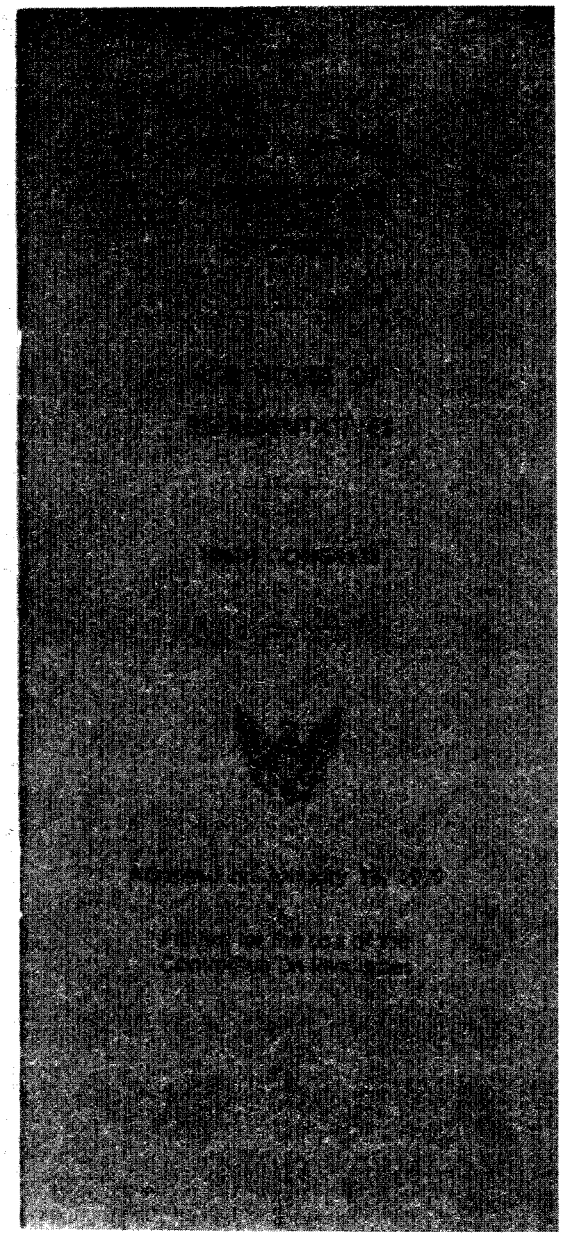
(b) the construction of a bridge across a navigable stream; or

(c) the correction of a military or naval record.

Prohibition on commemorations

5. (a) A bill or resolution, or an amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration.

Exhibit G



Rule 4. Hearing Procedures.—

(*e*) Subpoenas.—The Committee may authorize and issue a subpoena under clause 2(m) of House Rule XI if authorized by a majority of the Members voting. In addition, the Chairman of the Committee may authorize and issue subpoenas during any period of time in which the House of Representatives has adjourned for more than three days. Subpoenas shall be signed by the Chairman of the Committee, or any Member of the Committee authorized by the Committee, and may be served by any person designated by the Chairman or Member.

Exhibit H

APPENDIX H

Mr. Henry M. Banta

Henry M. Banta is an attorney in private practice in the District of Columbia. From 1991 until February 1998, he served as Chairman of the Board of POGO. He continues to serve as a Director. Mr. Banta is a member of the law firm of Lobel, Novins & Lamont which represents clients with federal oil valuation and royalty interests directly affected by POGO's efforts in that area.

Mr. Banta, Mr. Berman, and Mr. Speir are believed to have a professional association which dates back approximately fifteen years. As Chairman of the POGO Board, Mr. Banta participated in making the POGO/Berman/Speir agreement of December 1996 and had contemporaneous knowledge of the January 1998 memorialization of that pact.

In various court and congressional testimony taken at various times, Mr. Banta has made differing claims to have recused himself from some or all aspects of POGO's oil campaign, including relations with Mr. Berman and Mr. Speir. The Committee has been unable to confirm that such a disqualification took place or that it was honored by Mr. Banta, if it did occur.

The Committee issued subpoenas duces tecum to Mr. Banta on February 17, 2000; April 10, 2000; and May 9, 2000. Subpoenas for testimony before the Subcommittee on Energy and Mineral Resources were issued for hearings on May 4, 2000, and May 18, 2000.

Subpoena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Henry M. Banta

You are hereby commanded to produce the things identified on the attached schedule before the XXX Committee on Resources of the House of Representatives of the United States, of which the Hon. Don Young XXX is chairman, by producing such things in Room 1334 of the Longworth Building XXX, in the city of Washington, on February 28, 2000 at the hour of 4:00 p.m. EST

To United States Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 17 day of February 2000

Don Young
Chairman.

Attest:

Lee Trandahl
Clerk.

Subpoena for Mr. Henry M. Banta

Lobel, Novins, and Lamont

Suite 770

1275 K Street, N.W.
Washington D.C. 20005

before the Committee on [redacted] Resources

of the House of Representatives

Served Henry M. Banta

on 2/22/00, at 10:00 AM

MICHAEL C. JONES

DEPUTY U.S. MARSHAL

Michael C. Jones

1ST ENDEAVOR, 1275 K ST, NW @ 4:15PM

House of Representatives

GPO, 1998 31-015 (mar)

SB.-22'00(TUE) 12:24 SPEC SERVICES TEL:202 273 0288 P.003

Schedule of Records
Henry M. Banta

Pursuant to the attached subpoena, please deliver to the Committee by the date specified any and all materials that meet the following descriptions. Please read this entire schedule, and note the definitions and administrative requirements listed below.

Descriptions:

Please provide to the Committee all records in your possession or control, or to which you have access in your private or professional capacity, or in your role as a Director of the Project on Government Oversight that:

1. were created by, were directed to, relate to or mention any communication between you and Robert A. Berman, Robert A. Speir, Danielle Brian Stockton, or Robert Armstrong;

2. relate to or mention communications between you and Wayne Reaud, James B. Helmer, Jr., Frederick Morgan, Jr., Clayton E. Dark, Jr., Lon Packard, Joann Shields, Von Packard, Daniel Packard, Carl A. Parker, Michael Angelovich, or Andrew Herman;

3. Relate to or mention the *Johnson v. Shell* litigation.

Definitions:
For purposes of this subpoena:

- The term "record" or "records" includes, but is not limited to, copies of any item, whether written, typed, printed, recorded, transcribed, filmed, graphically portrayed, video-taped or audio-taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all computer entries, accounting materials, memoranda, diaries, telephone logs, telephone message slips, electronic messages (e-mails), tapes, notes, talking points, letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, disks, briefing materials, notes, cover sheets or routing cover sheets or any other machine-readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation and shall also include redacted and unredacted versions of the same record. The term includes records that are in your physical possession and records that were formally in your physical possession as well as records that are in storage;

- The terms "refer," "relate," and "concerning" mean anything that constitutes, contains, embodies, identifies, mentions, or deals with in any manner the matter under review;

- POGO refers to the Project on Government Oversight and its' employees, officers, and directors;

- *Johnson v. Shell* refers to *United States of America ex rel. J. Benjamin Johnson, Jr. v. Shell Oil Company, et al*, docket Number 9:96CV66 in the United States District Court for the Eastern District of Texas, Lufkin Division.

Administrative Requirements

- Please specify as to each record provided which bullet number the record is responsive to. If materials have already been provided to the Committee pursuant to a previous subpoena, please provide a descriptive log of such materials rather than duplicate copies.

- Also provide the Committee by the date specified the names of all individuals involved in any way in deciding how to respond to this subpoena, in responding to this subpoena, or in searching for or gathering materials in response to this subpoena, with a brief identification of what each individual did as part of the effort. The testimony of such individuals as to the completeness of searches and production may be sought later by the Committee.

- If you assert a privilege or objection in regard to producing any particular record, specify and characterize the record so withheld and specify the objection or privilege under which the record is withheld.

HR-71

Subpoena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Henry M. Banta

You are hereby commanded to produce the things identified on the attached schedule before the XXX Committee on Resources of the House of Representatives of the United States, of which the Hon Don Young XXX is chairman, by producing such things in Room 1334 of the Longworth Building XXX, in the city of Washington, on April 21, 2000, at the hour of 12:00 p.m. EDT

To United States Marshals Service

to serve and make return.

RECEIVED
APR 12 10 45 AM '00
U.S. MARSHAL
DISTRICT OF COLUMBIA

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 10 day of April, A.D. 2000

Don Young
Chairman.

Attest:

Jeff Trandahl
Clerk.

Subpoena for Mr. Henry M. Banta
Lobel, Novins and Lamont
Suite 770
1275 K Street, N.W.
Washington, D.C. 20005
before the Committee on the Resources
of the House of Representatives

Served x Henry M Banta
ON THE 12TH DAY OF APRIL AT 1:00P.M.
TO THE ABOVED NAMED ADDRESS BY DEPUTY
U.S. MARSHAL MICHAEL JONES
Michael Jones

House of Representatives

GPO: 1998 51-013 (mar)

Schedule of Records
POGO Board of Directors
Former POGO Directors

Pursuant to the attached subpoena, provide to the Subcommittee on Energy and Mineral Resources all records in your possession or control, or to which you have access that relate to or mention:

1. The deliberations and discussions of the POGO Board of Directors concerning the establishment of a program of monetary public service awards, including but not limited to discussions concerning Internal Revenue Service requirements and filings related to establishing such a program;

2. The deliberations and discussions of the POGO Board of Directors concerning the selection of Robert A. Berman and Robert A. Speir to receive such awards;

3. The deliberations and discussions of the POGO Board of Directors concerning the consideration or nomination of other individuals for such awards;

4. The deliberations and discussions of the POGO Board of Directors concerning oil royalty litigation, including but not limited to the suit filed in Lufkin, Texas on June 9, 1997, *Johnson v. Shell,* and litigation concerning the Elk Hills Naval Petroleum Reserve;

5. The authorization by the POGO Board of Directors of the filing of the June 9, 1997 suit and the authorization for POGO's signing of the Multi / Relator Counsel Agreement in *Johnson v. Shell*;

6. The deliberations and discussions of the POGO Board of Directors concerning the hiring of the law firms of Packard & Packard; Packard, Packard & Johnson; and Reaud, Morgan & Quinn;

7. The deliberations and discussions of the POGO Board of Directors concerning the participation of Leonard W. Brock in the Lufkin *qui tam* suit filed on June 9, 1997 and the sharing of costs and proceeds with Mr. Brock, including but not limited to any written agreements with Mr. Brock concerning his participation in and payment from that suit;

8. The deliberations and discussions of the POGO Board of Directors concerning an offer by Danielle Brian and/or Henry M. Banta on behalf of POGO to Robert A. Berman and Robert A. Speir to join as co-Relators in a *qui tam* suit alleging oil royalty under-payments;

9. The deliberations and discussions of the POGO Board of Directors and staff during Board meetings in October 1996, on December 6, 1996, in January 1998, on October 27, 1998, and on any other date up to the present concerning oil royalty litigation and/or payments from such litigation to any individual or entity including but not limited to Robert A. Berman and Robert A. Speir;

10. Deliberations and discussions of the POGO Board of Directors concerning the document dated January 5, 1998 signed by Mr. Berman, Mr. Speir and Ms. Brian, including but not limited to the revocation, repudiation, abandonment, suspension, or alteration of that document;

11. Information provided to or discussed by the POGO Board of Directors regarding Robert.A. Berman, Robert A. Speir, J. Benjamin Johnson, Jr., John Martineck, Harold "Gene" Wright, Brian McMahon, Esq., or Leonard W. Brock.

Definitions:
For purposes of this subpoena:

- The term "record" or "records" includes, but is not limited to, copies of any item, whether written, typed, printed, recorded, transcribed, filmed, graphically portrayed, video-taped or audio-taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all computer entries, accounting materials, memoranda, diaries, telephone logs, telephone message slips, electronic messages (e-mails), tapes, notes, talking points, letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, disks, briefing materials, notes, cover sheets or routing cover sheets or any other machine-readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation and shall also include redacted and un-redacted versions of the same record. The term includes records that are in your physical possession and records that were formally in your physical possession as well as records that are in storage.

- The terms "refer," "relate," and "concerning" mean anything that constitutes, contains, embodies, identifies, mentions, or deals with in any manner the matter under review.

- POGO refers to the Project on Government Oversight and its' employees, officers, and directors.

- *Johnson v. Shell* refers to *United States of America ex rel. J. Benjamin Johnson, Jr. v. Shell Oil Company, et al,* docket Number 9:96CV66 in the United States District Court for the Eastern District of Texas, Lufkin Division.

Administrative Requirements

- Please specify as to each record provided which bullet number the record is responsive to. If materials have already been provided to the Committee pursuant to a previous subpoena, please provide a descriptive log of such materials rather than duplicate copies.

- If you assert a constitutional privilege or an objection in regard to producing any particular record, specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld.

- Provide the Subcommittee with three copies of each record.

Subpena to Testify (Hearing)

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Henry M. Banta

You are hereby commanded to be and appear before the Sub Committee on Energy and Mineral Resources of the House of Representatives of the United States, of which the Hon. Barbara Cubin is chairman, in Room 1324 of the Longworth Building XXX, in the city of Washington, on May 18, 2000, at the hour of 2:00 p.m. EDT, then and there to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To United States Marshals Service or authorized Committee staff to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 09 day of May, 2000

Chairman.

RECEIVED
MAY 10 10 13 AM '00
U.S. MARSHAL
DISTRICT OF COLUMBIA

Attest:

Clerk.

Subpena for Mr. Henry M. Banta
Lobel, Novins & Lamont
Suite 770
1275 K Street, N.W.
Washington, D.C. 20005

before the Committee on ~~the~~ Resources
of the House of Representatives

Served Henry Banta on
5-10-00 @ 11:45 A.M.

Schanta C. Jones DUSM

House of Representatives

GPO 1998 21697(n)

10' 00 (WED) 11:29 SPEC SERVICES TEL:202 273 0288 P.007

Exhibit I

POGO

Project On Government Oversight
Watchdog since 1981

February 5, 1998

REDACTED BASED UPON LACK OF PERTINENCY

III. Oil Case Discussion

REDACTED BASED UPON LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

Exhibit J

POGO

Project On Government Oversight
Watchdog since 1981

February 5, 1998

To: Board Members
From: Danielle
Re: Board Meeting
When: Tuesday, February 17, 1998 at 5:00 PM
Where: At a new place ***

Center for International Environmental Law
1367 Connecticut Ave., NW, Ste. 300 (The building sits on Dupont Circle)

Of note: After seven years of dedicated service Hank Banta is resigning as Chair of our board. The staff is eternally grateful for Hank's incredible contribution to POGO. We will need to nominate and vote for a new Chair to fill that position.

NON-RESPONSIVE

III. Oil Case Discussion

NON-RESPONSIVE

NON-RESPONSIVE

Exhibit K

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

April 6, 2000

Stanley M. Brand, Esq.
Brand & Frulla
923 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Brand:

On February 17, 2000, I issued subpoenas to your clients Danielle Brian Stockton, Henry M. Banta, and the Project on Government Oversight. By letter dated February 28, 2000, you informed me that Ms. Brian and the Project on Government Oversight would not comply with the subpoena and that Mr. Banta would comply in part.

On March 10, 2000, I received the oft-promised log of records withheld by Mr. Banta. That log of specific records and the stated reason for refusing to produce each record has been reviewed. In some cases, Mr. Banta's objections to production are rejected. In other cases, more information about the record and/or objection is requested or an accommodation is offered. A summary of the Committee's response to each withheld record is included below.

On the question of pertinency raised by each of your clients, I call your attention to prior correspondence in which you were notified that this inquiry is conducted pursuant to legislative, oversight, and investigative authority under Rule X and Rule XI of the Rules of the United States House of Representatives; Rule 6 of the Rules For the Committee on Resources (the Committee), 106th Congress, pursuant to which the Committee has general oversight jurisdiction over the laws, policies, practices, and operation of the Department of the Interior (DOI) and elements of the Department of Energy (DOE); and Article I and Article IV of the United States Constitution.

I also call your attention to my letter of March 21, 2000 to Representative Barbara Cubin directing her to continue this inquiry through the Subcommittee on Energy and Mineral Resources. This letter constitutes the most recent statement of the areas under review and takes into account information received and reviewed since the inquiry began in May, 1999. The inquiry is well within the jurisdiction of the Committee on Resources and the powers and prerogatives of the House of Representatives. My letter to Chairman Cubin directs her and the Subcommittee on Energy and Mineral Resources to:

> "...focus...on the general subject of laws, policies, practices, and operations of the Department of the Interior and the Department of Energy which pertain to

> payments by non-government organizations or by individuals to employees involved in federal oil royalty programs and policies; participation by employees in *qui tam* litigation affecting said programs and policies of those departments; and disclosure requirements for employees participating in or promised payment from such *qui tam* suits. The Subcommittee's work should specifically review: (1) payments made by the Project on Government Oversight (POGO) to Robert A. Berman, an Interior employee and to Robert A. Speir, a now-retired Energy employee using funds derived principally from POGO's participation in the *Johnson v. Shell* litigation under the False Claims Act; and (2) allegations that POGO's participation in *Johnson v. Shell* and consequent payments to Mr. Berman and Mr. Speir were facilitated by allegedly improper actions by federal employees."

During the course of this inquiry, the Committee learned of sworn testimony given by J. Benjamin Johnson, Jr. on November 29, 1999. That testimony suggests that your client, Danielle Brian, had knowledge of the *Johnson v. Shell* matter while it was under seal.

After filing a separate but nearly identical *qui tam* complaint on behalf of herself and POGO, in the same court hearing *Johnson,* POGO and Ms. Brian signed a written agreement to share litigation proceeds with Mr. Berman and Mr. Speir. Determining whether improper assistance was provided to POGO and Ms. Brian in selecting a venue and/or in preparing their suit and thus acquiring the funds which were turned over to Mr. Berman and Mr. Speir is highly pertinent to this inquiry. Thus, the Committee seeks to ascertain whether the conversations described by Mr. Johnson occurred.

You have the benefit of the controlling statement of the areas under review. This inquiry necessarily includes allegations that improper actions may have led to the sharing of POGO's litigation proceeds with two federal employees and that possible improper actions by one or both of these employees may have benefitted the participation of Danielle Brian and POGO in the Multi Relator / Counsel Agreement in *Johnson v. Shell.*

Since well before the February 17 subpoena was made necessary by your refusal to voluntarily provide telephone numbers, you have been aware that the Committee's intent is to use that information to subpoena from phone service providers only call records which may support or refute Mr. Johnson's testimony.

In the interest of rapidly moving toward a conclusion which makes known relevant and necessary facts about the areas under inquiry, I make available to your clients an alternative means of complying with portions of the February 17, 2000 subpoena.

If POGO and/or Ms. Brian elect, all telephone-related records which are covered by the subpoena shall be made available for inspection by Committee staff in your office or in their

office. This must be done no later than Noon EDT on April 12, 2000. Committee staff will examine the records and photocopy only those which reflect the telephone numbers in use by POGO and Ms. Brian during the stated period; and/or which indicate the information we seek about cell phone and long distance service providers; and/or which reflect calls during the stated time period between Mr.Johnson's and Mr. Martineck's numbers and those in use by POGO and/ or Ms. Brian.

Records relating to purely personal calls will not be photocopied. Records relating business calls will not be photocopied unless they involve numbers used by J. Benjamin Johnson, Jr., John Martineck, or Summit Resource Management, Inc. during the stated time period. Because this alternative means of production is offered to accommodate your concerns, I require full cooperation in making redactions prior to photocopying; and in making available sufficient time, space, and other resources for inspecting and copying records.

This offer of an alternative means of production for telephone-related records covered by the February 17, 2000 subpoenas addressed to POGO and to Ms. Brian must be accepted in writing before 4:00 PM EDT on April 10, 2000.

Your February 28, 2000 letter ignores the requirement to produce records reflecting the names and office addresses and office telephone numbers of those serving on the POGO Board of Directors since 1994. The Committee's inquiry has found no record of any Board discussion of the merits or fiduciary soundness of awarding cash to federal employees. To pursue evidence to substantiate POGO's own claim, it may be necessary to contact Directors to learn more about the decisions to file an oil royalty law suit and to share the proceeds thereof with two federal employees.

All records answering this item of the February 17, 2000 POGO subpoena must be delivered to the Committee no later than 4:00 PM EDT on April 10, 2000.

My responses to your itemized log of records withheld by Mr. Banta are stated below. For convenience, each withheld record has been numbered. The first page of the log includes records numbered 1 through 12, page two of the log includes records 13 through 23, page three includes records 24 through 39, page four includes records 40 through 54, page five concludes with records 55 through 60.

Title 29, United States Code, section 1733 contains no confidentiality provision applicable to any record withheld under that claim. That objection is frivolous and is rejected. Records numbered 15, 22, 23, 24, and 25 are to be delivered to the Committee no later than 4:00 PM EDT on April 10, 2000.

Judge John H. Hannah, Jr. of the United States District Court for the Eastern District of Texas provided without restriction the record of the November 29, 1999 hearing to consider a

motion to void the Multi Relator / Counsel Agreement in *Johnson v. Shell*. The Committee believes that you are free to produce the records in question. Unless you can establish that you sought permission from the court to produce the records and that permission was denied, records 53, 54, 55, 56, 57, 59, and 60 are to be delivered to the Committee no later than 4:00 PM EDT on April12, 2000.

You are aware that Congress is not bound by court-created and statutory privileges including the attorney-client and attorney work product privileges. During an investigation conducted in the 102nd Congress, then-Chairman George Miller refused to tolerate such a claim for withholding documents subpoenaed by this Committee. I stand with the precedents and powers of the House and the Committee on Resources in rejecting a blanket invocation of these claims.

The Committee has information that intervention in the *Johnson v. Shell* case was not the only *qui tam* litigation opportunity contemplated by individuals central to our inquiry.

Qui tam or other litigation dealing with federal and Indian oil royalty matters considered by Robert A. Speir, Robert A. Berman, Danielle Brian, Leonard W. Brock, or POGO is highly pertinent to our inquiry. For that reason and in the interest of a thorough oversight review, the Committee is unable to honor your claims with respect to certain records. Records 11, 12, and 51 must be delivered to the Committee no later than 4:00 PM EST on April 12, 2000. At that time also produce any other record withheld from production under the February 17, 2000 Banta subpoena which relates to the roles of, relationship to, or interest in *Johnson v. Shell* by POGO, Danielle Brian, Robert. A. Berman, and/or Robert A. Speir; or any other *qui tam* suit or other litigation concerning federal or Indian oil matters investigated, researched, considered, planned, or contemplated by Robert A. Speir, Robert A. Berman, Danielle Brian, or the Project on Government Oversight.

If a client of Mr. Banta or his firm other than POGO, Danielle Brian, Robert A. Speir, or Robert A. Berman wishes to refuse production of a record other than 11,12, or 51, please send me a confidential letter identifying the client and describing the document. The Committee may excuse that record or require an examination of the record, in your office or in Mr. Banta's office, before making a decision to require or excuse production.

The controlling statement of the areas under review is quoted above.

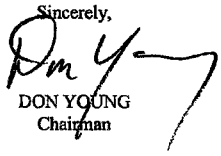
With reference to that statement, your objection to production on grounds of pertinency is rejected with respect to certain records. The following records are deemed pertinent based on your log descriptions and must be delivered to the Committee no later than 4:00 PM EDT on April 12, 2000: 26, 28, 40, 46, 47, 48, 49, and 50. Any record not cited but which relates to any aspect of the February 17 subpoena and which is listed on the log as withheld on grounds of pertinency must also be produced at that time.

Unless related to *Johnson v. Shell*; and/or to other federal oil royalty litigation; and/or to any of the individuals named in bullets 2 and 3 of the February 17, 2000 Banta subpoena, the Committee will not require immediate production of records numbered: 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45. But, if any of these records include information covered by the February 17, 2000 subpoena, a properly redacted copy must be delivered to the Committee no later than 4:00 PM EDT on April 12, 2000.

This letter dispels any question that the February 17, 2000 subpoenas covered areas not pertinent to the Committee's inquiry or that the Committee seeks access to purely personal telephone calls or to business calls other than to relevant parties. With regard to clients of Mr. Banta or his firm with no relation to the areas under inquiry, the Committee is willing to consider excusing production of records after establishing that the withheld record is not necessary to our work.

Failure to meet the deadlines set forth in this letter will make it necessary for me to ask the Subcommittee on Energy and Mineral Resources to begin contempt proceedings against Mr. Banta, and/or Ms. Brian, and/or the Board of Directors of the Project on Government Oversight to produce the records described by the February 17, 2000 subpoenas.

Sincerely,



DON YOUNG
Chairman

CC: The Honorable George Miller
The Honorable Barbara Cubin

Exhibit L

STENOGRAPHIC MINUTES
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Duplication

OVERSIGHT HEARING TO EXAMINE THE LAWS, POLICIES, PRACTICES, AND OPERATIONS OF THE DEPARTMENT OF THE INTERIOR, DEPARTMENT OF ENERGY, AND OTHER AGENCIES PERTAINING TO PAYMENTS TO THEIR EMPLOYEES, INCLUDING PAYMENTS RELATIVE TO MINERAL ROYALTY PROGRAMS AND POLICIES FROM PUBLIC LANDS AND INDIAN LANDS

Thursday, May 18, 2000

House of Representatives,

Subcommittee on Energy and Mineral Resources,

Committee on Resources,

Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES

UNREVISED AND UNEDITED, NOT FOR QUOTATION
OR DUPLICATION IN ANY FORM
COMMITTEE ON RESOURCES

OFFICE OF THE CLERK
Office of Official Reporters

4326 Mr. BRADY. But you were still in question that it had
4327 been agreed to?
4328 Mr. BANTA. Yeah.
4329 Mr. BRADY. But you told the board you'd reached an
4330 agreement.
4331 Mr. BANTA. I don't remember what I told the board.
4332 Mr. BRADY. Unfortunately, this again damages your
4333 credibility to a degree that's almost stunning, for all
4334 the--we may disagree on the issue of oil royalties, but I
4335 know what your reputation is, and it isn't what you're doing
4336 tonight. I'll just tell you that.
4337 Let me ask you a final question. Did you have any
4338 knowledge of the Johnson lawsuit while it was under seal?
4339 Did you as an individual or professional, in any role, have
4340 knowledge of the Johnson lawsuit while it was under seal?
4341 And you are under oath, Mr. Banta.
4342 [Conferring with counsel.]
4343 Mr. BANTA. I believe that that issue is not pertinent to
4344 the inquiry of this Committee.
4345 Mr. BRADY. So you refuse to answer?
4346 Mr. BANTA. I do.
4347 Mr. BRADY. Thank you. I think that--
4348 Mr. BANTA. On advice of counsel.
4349 Mr. BRADY. I think that speaks volumes.
4350 Mrs. CUBIN. Would the clerk please stop the time?

4351 The Chair understands that Witness Banta has entered an
4352 objection because he believes that the answer to the question
4353 is not pertinent to the subject under inquiry. The Chair
4354 will address the issue and poll the members as to whether
4355 they believe the question is pertinent.
4356 The Chair announced in the opening statement that the
4357 purpose of this hearing includes an explanation of the
4358 policies, practices and operations of the Department of
4359 Interior and Department of Energy related to payments by
4360 organizations or individuals to employees of those
4361 departments who deal with oil royalty policy. The Chair
4362 further announced that we were examining one instance of
4363 where such payments were made to Mr. Berman and to Mr. Speir
4364 by POGO. We are examining where the money for the payments
4365 came from, the agreements and transactions that resulted in
4366 the payments, the work of the government employees who took
4367 the payments, and differing accounts of the payments.
4368 The gentlemen who took the payments were policy advisors
4369 concerning subjects and programs that are within the
4370 jurisdiction of this Committee. Our purposes for this
4371 oversight relates to the integrity of the Executive Branch
4372 and regulatory decision-making concerning programs within the
4373 Department of Energy, the Department of Interior, and the
4374 Minerals Management Service, about matters under the
4375 jurisdiction of the Committee on Resources.

4376 As we learn more, our purpose was spelled out in the
4377 following documents which have been made available publicly:
4378 my opening statement for the May 4, 2000 hearing of this
4379 Subcommittee; the opening statement of this hearing; a letter
4380 from Mr. Young to me, dated March 21st, 2000, that
4381 transmitted this inquiry to the Subcommittee; and numerous
4382 pieces of correspondence, including letter requests for
4383 records to the witnesses and their organizations.
4384 I want to make sure that our purpose is clearly
4385 understood, because the Chair rules that the question put to
4386 the witness can yield an answer that allows the Subcommittee
4387 to better understand the subject matter we are examining.
4388 Specifically, the answer to the question will reveal facts
4389 about the transactions and true policy agreements related to
4390 the payments and their influence on the public domain oil
4391 royalty policy; facts about whether the operation of the
4392 departments and the Minerals Management Service was subject
4393 to influence by the 1996 agreement between POGO, Mr. Berman,
4394 Mr. Speir, at a time when you were chairman of the board of
4395 POGO; facts about the operation of the departments and
4396 possible effects on oil royalty policy rules that have
4397 recently been promulgated; facts related to the formulation
4398 of agency responses to congressional proposals for new oil
4399 valuation systems such as the royalty-in-kind proposal
4400 considered by this Subcommittee; facts related to how the

4401 payments were able to be made and accepted by employees who
4402 worked in oil royalty policy areas, so that the Subcommittee
4403 can formulate legislation if need be to raise standards to
4404 insure these type of payments and side agreements that bring
4405 windfalls to federal employees will never be allowed to
4406 happen again; facts that may be in evidence where the
4407 Department of Interior or personnel within the Department of
4408 Interior have access to sealed lawsuits, and where the
4409 information is leaked out to many people.
4410 The answer is necessary to understand the issues and
4411 subject matter of our hearing. The Chair therefore
4412 determines that the question relates to a constitutionally
4413 legitimate purpose. The Chair also determines that the
4414 question falls within the authority granted to Congress by
4415 the Constitution and by the House to the Committee and
4416 Subcommittee. I also want to be clear that our jurisdiction
4417 comes in part from Article IV, Section 3 of the US
4418 Constitution, which states that, quote: ''That Congress shall
4419 have power to dispose of and make all needful rules and
4420 regulations, respecting the territory or other property
4421 belonging to the United States.'' Unquote. Thus, our
4422 jurisdiction and authority is directly conferred by the
4423 Constitution, which is unlike the jurisdiction and authority
4424 for inquiries of any other committees, and this enhances our
4425 jurisdiction and authority.

4426 , Article I of the Constitution, related to Legislative
4427 Branch power, also serves as a basis for our jurisdiction
4428 over the subject matter of this hearing. This jurisdiction
4429 has also been delegated under House Rule X (1)(1)(11), (12),
4430 (17) and (19) to the Committee on Resources, and further
4431 delegated to this Subcommittee under Rule VI of the Rules for
4432 the Committee on Resources.
4433 Finally, our jurisdiction is additionally based on Rule X
4434 (2) of the House Rules, which confers general oversight
4435 authority and jurisdiction over the organization and
4436 operation of the departments that administer programs under
4437 the jurisdiction of the Committee and the Subcommittee.
4438 Clearly, oil royalties fall within the Subcommittee's
4439 jurisdiction, as do factors that influence oil royalty policy
4440 development and implementation within the department, which
4441 is clearly an aspect of the operation of the department.
4442 Thus, the question asked falls within the grant of my
4443 authority made by the Constitution to the Congress and to the
4444 Committee and the Subcommittee by the House.
4445 The Chair wishes to inform the witness that the question
4446 meets the two requirements of pertinency. We have a
4447 constitutionally legitimate legislative purpose, and the
4448 question is within the grant of authority to the
4449 Subcommittee. Let me further explain why the question is
4450 pertinent. Payments, let alone payments of the magnitude

4451 received to date by policy advisors in the departments,
4452 certainly can and likely will influence agency decisions. We
4453 heard testimony at our last hearing that the payments to
4454 Berman and Speir were agreed to in 1996 and that the
4455 operation of the department was used to develop the
4456 POGO/Brian lawsuit, which led to the payments to Mr. Berman
4457 and Mr. Speir. Rules and procedures must be in place to
4458 prevent the department and its resources from being used to
4459 help litigants learn how to frame competing lawsuits, develop
4460 their cases, and prosecute their claims, if in fact that is
4461 what was done.
4462 But to determine what was done, we must ask this question
4463 and have it answered, or you can be held in contempt. That
4464 is why the question and all the questions that relate to the
4465 subject of this inquiry are pertinent.
4466 The question, Mr. Banta, is: did you know about the
4467 lawsuit that was filed by Benjy Johnson, while it was under
4468 seal in the District Court in--or in the US Court in Lufkin?
4469 Mr. BANTA. I'll stand on my objection, Madam Chairman.
4470 Mrs. CUBIN. Again, I ask the witness to answer the
4471 question, and I remind you, sir, that you can be held in
4472 contempt if you do not.
4473 Mr. BANTA. I'll stand on my objection.
4474 Mrs. CUBIN. I warn the witness in the words of the
4475 Supreme Court, that, quote, ''An erroneous determination on

4476 his part that the question is not pertinent, even if made in
4477 the utmost good faith, does not exculpate him if the Court
4478 should later rule that the questions were pertinent to the
4479 question under the inquiry.'' That's Watkins v. the United
4480 States.
4481 This is your last chance, Mr. Banta. Would you please
4482 answer the question?
4483 Mr. BANTA. Thank you, Madam Chairman. I'll stand on my
4484 objection.
4485 Mrs. CUBIN. Do you have further questions, Mr. Gibbons?
4486 Mr. GIBBONS. Yes, Madam Chairman. I just want to go
4487 back for a moment with Mr. Banta, and sort of search for some
4488 other answers that might help me understand a little bit
4489 more.
4490 Mr. Banta, at some point throughout this process, did you
4491 ever become aware that Mr. Berman was concerned that POGO
4492 might not pay him as expected for his share of its lawsuit
4493 money, and that he was considering taking steps to assure
4494 POGO performed as he had expected?
4495 Mr. BANTA. No.
4496 Mr. GIBBONS. The agreement that we're talking about,
4497 January 5th, 1998--and I label it an agreement because, in
4498 the words of the drafter, ''This is to put into writing the
4499 standing oral agreement.'' So it is a writing of an oral
4500 agreement, relating therefore to being an agreement. Why was

4551 Mr. BANTA. Well, you keep characterizing it as an
4552 agreement.
4553 Mr. GIBBONS. I'm only going to say this one more time,
4554 Mr. Banta, because--
4555 Mr. BANTA. You know, I keep disagreeing with that.
4556 Mr. GIBBONS. --you're an attorney, you've studied law,
4557 you're an articulate individual, you've been in this business
4558 for a long time, and for you to say that this is a writing
4559 which summarizes and puts the standing oral agreement on
4560 paper, does not change it to be something other than an
4561 agreement.
4562 Mr. BANTA. I still reject your characterization.
4563 Mr. GIBBONS. This is the most remarkable testimony for
4564 somebody with your background, your education, your
4565 experience, your reputation, to take and say that such a
4566 document, which clearly on its face--that you have read, that
4567 you're aware of--is not an agreement. And I would say
4568 that--or ask if Mr. Speir or Mr. Berman had sued for failure
4569 to comply with this document, do you think they would have
4570 recovered their fee?
4571 Mr. BANTA. No.
4572 Mrs. CUBIN. The Majority time has expired.
4573 Mr. GIBBONS. Thank you.
4574 Mrs. CUBIN. Now, just for the purposes of clarification,
4575 the Chair would like to poll the members on whether or not

4576 they believe the question, quote, ''Did you know the lawsuit
4577 was sealed--did you know about the lawsuit in Lufkin while it
4578 was under seal?'' I'd like to poll the panel on whether or
4579 not they feel that the--on the pertinency of it. So vote aye
4580 if you believe the question is pertinent, and no if it isn't.
4581 And I will just call the roll.
4582 Mr. Gibbons?
4583 Mr. GIBBONS. Aye.
4584 Mrs. CUBIN. Mr. Schaffer?
4585 Mr. SCHAFFER. Aye.
4586 Mrs. CUBIN. Mr. Brady?
4587 Mr. BRADY. Aye.
4588 Mrs. CUBIN. And the Chair votes aye. There being no
4589 Democrat members.
4590 So, Mr. Banta, I'd like to give you one more chance to
4591 answer that question. Did you--
4592 Mr. BANTA. I'll stand on my objection. Thank you.
4593 Mrs. CUBIN. Thank you. The Chair recognizes Mr. Gibbons
4594 for--or Mr. Brady for a motion.
4595 Mr. BRADY. Madam Chairman, under Clause (2)(j)(2)(c) of
4596 Rule XI of the Rules of the House of Representatives, I move
4597 that Mr. Tom Casey, a Majority staff member and a Minority
4598 member staff member designated by the Ranking Member, each be
4599 allowed to question the witness, Mr. Banta, for--I
4600 reluctantly say 60 minutes, equally divided.

Exhibit M

APPENDIX M

Mr. Robert A. Berman

Robert A. Berman is an employee in the Office of the Secretary of the Interior. He is assigned to an office which conducts policy analysis. The Committee believes that Mr. Berman, Mr. Banta, and Robert A. Speir have been associates since the middle to late 1980's. In late 1993, at about the time POGO was introduced to the issue of oil royalty underpayments, Mr. Banta introduced Mr. Berman to Ms. Brian.

Mr. Berman appears to have played a critical role in POGO oil royalty campaign. Sworn civil litigation deposition testimony by Ms. Brian acknowledges that Mr. Berman refined Freedom of Information Act requests made by POGO to the Department of the Interior. Ms. Brian's deposition testimony also reveals that Mr. Berman provided her with an understanding of oil trading and valuation matters which underpinned POGO's now-dismissed False Claims Act *qui tam* suit alleging fraudulent underpayment of oil royalties.

Sometime before December 9, 1996, Mr. Berman agreed with POGO and Mr. Speir to equally share all oil royalty litigation proceeds earned by POGO and Ms. Brian. There is no evidence that Mr. Berman disclosed that arrangement to the Department of the Interior or that he disqualified himself from that agency's oil valuation and royalty deliberations after entering the agreement.

Subpena to Testify (Hearing)

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Robert A. Berman

You are hereby commanded to be and appear before the Sub Committee on Energy and Mineral Resources of the House of Representatives of the United States, of which the Hon. Barbara Cubin is chairman, in Room 1324 of the Longworth Building XXX, in the city of Washington, on July 11, 2000, at the hour of 11:00 a.m. EDT, then and there to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To United States Marshals Service or authorized Committee Staff to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 29th day of June, ~~19~~ 2000

Chairman.

Attest:

Clerk.

Subpena for Mr. Robert A. Berman

c/o Steven C. Tabackman, Esq.
Oblon, Spivak
Fourth Floor
1755 Jefferson Davis Highway
Arlington, VA 22202
(703) 413 - 3000

before the Committee on ~~the~~ Resources
of the United States House of
Representatives

Served to Mr. Steven C. Tabackman,
on July 5, 2000, at 4:15PM.
Served by: [signature]
Deputy US Marshal

House of Representatives

GPO: 1990 31-297 (m)

Exhibit N

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.

ATTORNEYS AT LAW

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1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VIRGINIA 22202 U.S.A.

(703) 413-3000

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PATENT, TRADEMARK AND COPYRIGHT LAW
AND RELATED FEDERAL AND PC LITIGATION

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GREGORY J. MAIER
ARTHUR I. NEUSTADT
RICHARD D. KELLY
JAMES D. HAMILTON
EDWARD H. KUESTERS
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WILLIAM E. BEAUMONT
JEAN-PAUL LAVALLEYE, PH.D.
JEFFREY H. KAUFMAN
BRIAN D. ANDERSON
ROBERTA S. BREN
STEVEN G. BAXTER, PH.D.
RICHARD L. TREANOR, PH.D.
STEVEN P. WEIHROUCH
JOHN T. GOOLKASIAN*
RICHARD L. CHINN, PH.D.
STEVEN E. LIPMAN
CARL E. SCHLIER
F. JAY NINES
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RICHARD A. MEIFELD, PH.D.
J. DEREK MASON, PH.D.
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HARRIS A. PITLICK*
RAYMOND F. CARDILLO, JR.
ROBERT W. HAHL, PH.D.
NEAL GOLDFARB

MASAYASU MORI*†

FRANK J. WEST*
KATHLEEN COONEY-PORTER*
ANDREW M. OLLIS
MARGO LIVESAY, PH.D.*
CORYN P. UMBACH, PH.D.
RON MYERS*
W. TODD BAKER*
DAVID D'ORILLIA
JOSEPH A. SCARETTA
CARLOS R. VILLAMAR
ROBERT C. MATTSON
MANDY M. PETROCELLI
EDWIN D. GARLEPP
ALEXANDER E. GASSER*
KETH DITTHAVONG
CHRISTOPHER D. WARD
THOMAS M. CUNNINGHAM, PH.D.
CLAYTON W. THOMPSON, II
MICHAEL J. LEONARD*
KENNETH T. CUCCINELLI, II
THOMAS J. FISHER
ROBERT C. NIBSEN*
GAY ANN SPANN*
ANSHRO YAMAZAKI*
AMBER A. TRAUN*
FREDERICK D. VASTINE, PH.D.*
JOHN K. PIKE, PH.D.*
JAMES J. KELLY, PH.D.*
DAVID A. BLUDEAU*
STAMATIOS MYLONAKIS, PH.D.*
PHILIPPE J.C. SIGNORE, PH.D.*
KEVIN A. NORDBERG*
THOMAS A. BUTKA, PH.D.*
DANIEL J. PEREIRA, PH.D.*
RONALD A. RUDDER, PH.D.*
JOHN F. T. CONROY, PH.D.*

* BAR MEMBERSHIP OTHER THAN VIRGINIA
† JAPANESE PATENT ATTORNEY
* REGISTERED PATENT AGENT

May 17, 2000

Barbara Cubin
Chairman, Subcomittee on
Energy & Mineral Resources
U.S. House of Representatives
Committee on Resources
Washington, DC 20515

RE: Robert A. Berman

Dear Madam Chairwoman:

Enclosed please find a description of Mr. Robert A. Berman's educational and work history and a copy of his current job description. The attachment to your letter references an "attached disclosure form" that "all witnesses must include." However, neither the faxed copy nor the mailed copy of your letter contained any document entitled "disclosure form" or anything that appeared to be a "disclosure form." Both versions of your letter had two copies of the instruction sheet that referred to the disclosure form, but no such form. Accordingly, no disclosure form is being submitted by Mr. Berman.

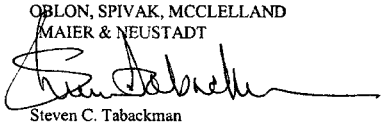
On a more substantive issue, Mr. Berman objects to the conduct of a public hearing as violative of the Rules for the Committee on Resources, which expressly incorporate by reference Rule XI of the House of Representatives. As chairperson of the Subcommittee on Energy & Mineral Resources, you must be aware that section (g)(1) of Rule XI requires that subcommittee meetings be held in executive session when "disclosure of matters to be considered . . . would tend to defame, degrade, or incriminate any person, . . ."

At the May 4, 2000 public hearing, Majority members, including yourself, repeatedly defamed Mr. Berman; most egregious was Rep. Kevin Brady's calling Mr. Berman a "common thief." In this jurisdiction (and in every jurisdiction that I am aware of) that allegation is *per se*

defamation.[1] We anticipate that Majority members will continue with their defamation. Accordingly, the meeting scheduled for May 18, 2000 should be in executive session

Very truly yours,

OBLON, SPIVAK, MCCLELLAND
MAIER & NEUSTADT



Steven C. Tabackman

SCT/jm
Enclosures

cc: Representative George Miller
Ranking Minority Member

---

[1]But for the Speech and Debate Clause, Mr. Berman would have already filed a lawsuit. I presume that Mr. Brady and the other Members who — in their total and complete (but hardly surprising) ignorance of the law — have accused Mr. Berman of illegalities, haven't the courage to waive immunity and stand behind their allegations in a court of law. They must know, as I do based upon a painstaking examination of all statutes and regulations that might conceivably apply to Mr. Berman's conduct, that their allegations are completely unsupportable.

Exhibit O

1 Miller Reporting Co., Inc.

2 EXECUTIVE SESSION

3 INVESTIGATIVE HEARING TO EXAMINE LAWS, PRACTICES, AND

4 OPERATIONS OF THE DEPARTMENT OF THE INTERIOR (DOI) AND

5 DEPARTMENT OF ENERGY (DOE) RELATED TO PAYMENTS TO THEIR

6 EMPLOYEES, INCLUDING FEDERAL PUBLIC LAND OIL ROYALTY AND

7 VALUATION POLICY ADVISORS, FROM OUTSIDE SOURCES, INCLUDING

8 THE PROJECT ON GOVERNMENT OVERSIGHT; AND TO EXAMINE (A) THE

9 SOURCE OF FUNDS FOR SUCH PAYMENTS, (B) THE RELATIONSHIP

10 BETWEEN THOSE MANAGING AND OVERSEEING THE ORGANIZATION THAT

11 MADE THE PAYMENTS AND THE INDIVIDUALS WHO RECEIVED THE

12 PAYMENTS, (C) THE EFFECT OF THE PAYMENTS ON PROGRAMS,

13 POLICIES, AND POSITIONS OF SUCH DEPARTMENTS

14 Tuesday, July 11, 2000

15 House of Representatives,

16 Subcommittee on Energy and Mineral Resources,

17 Committee on Resources,

18 Washington, D.C.

19 The subcommittee proceeded in Executive Session at 11:55

20 a.m., in Room 1324, Longworth House Office Building, Hon.

UNREVISED AND UNEDITED, NOT FOR QUOTATION
OR DUPLICATION IN ANY FORM
COMMITTEE ON RESOURCES

21 Barbara Cubin [chairman of the subcommittee] presiding.

97 Mr. Berman, I ask the clerk to hand you a copy of
98 committee rules and a copy of House Rule XI(2)(k). These
99 have already been provided to you. In case you did not bring
100 copies, you can refer to these if necessary.
101 Mr. Berman, I will ask the clerk to hand you a document.
102 Would you please read aloud the fax cover message?
103 Would the--
104 Mr. UNDERWOOD. Can we see that?
105 Mrs. CUBIN. That is what I was going to say. Would the
106 staff make sure that all of the members have a copy of that?
107 Mr. UNDERWOOD. Can we see that document?
108 The CLERK. It is in your packets.
109 Mrs. CUBIN. It is the cover letter of a fax from Robert
110 Berman. It looks like this. I think you all have it.
111 Mr. UNDERWOOD. Addressed to Pat Davis?
112 Mrs. CUBIN. That is correct. That is the one.

113 TESTIMONY OF ROBERT A. BERMAN

114 Mr. BERMAN. Madam Chairwoman, on May 18th I objected to
115 the subcommittee holding a public hearing on--
116 Mrs. CUBIN. Mr. Berman--
117 Mr. BERMAN. --the ground that the members of the
118 majority had defamed me--
119 Mrs. CUBIN. --could you put the microphone down so we
120 could hear? I can't hear you. Thank you. Is it on?
121 Mr. BERMAN. Madam Chairwoman, on May 18th, 2000, I
122 objected to the subcommittee holding a public hearing on the
123 grounds that the members of the majority had defamed me
124 during an earlier hearing held May 4th, 2000, and would
125 likely do so again. In a recent letter to me you stated that
126 converting your oversight hearing into an investigative
127 hearing constituted the subcommittee's best effort to
128 accommodate my concerns. I disagree.
129 While I was clearly correct, as the subcommittee now
130 concedes, in my objection to a public hearing, the fact is
131 that the damage was done by the subcommittee's failure to
132 follow the Rules of the House on May 4, 2000, when members of
133 the majority repeatedly defamed me in a public session,
134 including Mr. Brady going so far as to call me a ''common
135 thief.''
136 As I stated then, I will not answer this subcommittee's

137 questions until the members of the majority ignoring the
138 Rules of the House by publicly defaming me, waive their
139 immunity under the Speech and Debate Clause. Once that is
140 accomplished, I will waive my constitutional rights and
141 answer the subcommittee's questions. This not an act of
142 contempt. It is a request for simple fairness.
143 In addition, I question the legitimacy of this
144 subcommittee's inquiry of me. Neither this subcommittee nor
145 the committee as a whole has identified a legitimate
146 legislative purpose within the jurisdiction of this
147 subcommittee to which questions about my relationship with
148 POGO are pertinent.
149 You have stated that it is this subcommittee's purpose to
150 determine whether the seal on Mr. Johnson's qui tam lawsuit
151 was lawfully broken. That is not within this subcommittee's
152 jurisdiction. You have stated that your purpose is to
153 determine whether perjury was committed in Mr. Johnson's
154 lawsuit. That is not within this subcommittee's
155 jurisdiction. You have stated that POGO's award to me and
156 Mr. Speir influenced the final decision of the valuation
157 rule, but the Department of the Interior has already said
158 that I was not involved in that decision on that rule.
159 Finally, you have said that the purpose of this is to
160 determine whether laws were broken by my accepting an award
161 from POGO, but that is an executive branch, not a legislative

162 branch function. Moreover, virtually every member of the
163 majority has already stated that I broke the law, so that any
164 questions in that direction are pointless.
165 Accordingly, in light of the subcommittee's failure to
166 abide by the Rules of the House and its failure to identify a
167 legitimate legislative purpose to which these questions are
168 pertinent, I must respectfully decline to answer the
169 subcommittee's questions.
170 [The statement of Mr. Berman follows:]

171 ********** INSERT **********

172 Mrs. CUBIN. I want to note for the record that the chief
173 clerk of the Committee on Resources has entered the room.
174 Mr. Berman, I will ask again, I will ask you, do you
175 recognize the fax cover message?
176 Mr. BERMAN. Madam Chairwoman, I adopt the statement I
177 just read.
178 Mrs. CUBIN. Mr. Berman, in very few sentences, please
179 describe and summarize the preamble referenced in the fax
180 cover message.
181 Mr. BERMAN. Madam Chairwoman, I adopt the statement I
182 previously read.
183 Mrs. CUBIN. Mr. Berman, was a draft preamble for an oil
184 valuation--excuse me--was it, the memo that you have, a draft
185 preamble for an oil valuation or royalty regulation?
186 Mr. BERMAN. Madam Chairwoman, I adopt the statement I
187 previously read.
188 Mrs. CUBIN. Mr. Berman, would you provide the
189 subcommittee with a copy of that preamble, please?
190 Mr. BERMAN. Madam Chairwoman, I have no knowledge of the
191 document to which you refer.
192 Mrs. CUBIN. Thank you. Well, let me get that clear.
193 You have no knowledge of a preamble, or you have no knowledge
194 of the document that I--the fax cover letter? Do you want me
195 to repeat the question?
196 Mr. BERMAN. If I understand your question, you asked me

197 if I would provide you with a copy of the preamble.

198 Mrs. CUBIN. That is correct.

199 Mr. BERMAN. I have no copy of anything that hasn't

200 been--in my possession, I have no copy of a preamble that

201 hasn't been published.

202 Mrs. CUBIN. You have no copy of a preamble that hasn't

203 been published? Is that what you said?

204 Mr. BERMAN. Madam Chairwoman, I am genuinely confused.

205 Mrs. CUBIN. Well, why don't I just repeat the question?

206 Mr. BERMAN. The document that you handed me--

207 Mrs. CUBIN. Yes.

208 Mr. BERMAN. --does not in any way reference a preamble

209 to a regulation.

210 Mrs. CUBIN. The fax--

211 Mr. BERMAN. The cover sheet.

212 Mrs. CUBIN. Would you let me read the section? ''You

213 should have''--this is a fax from Robert Berman to Pat Davis.

214 ''You should have already received a fax of my recommended

215 preamble, as well as an e-mail containing document lists my

216 secretary located on her computer.''

217 Will you provide the subcommittee with a copy of that

218 preamble, please? Mr. Berman, will you provide this

219 subcommittee with a copy of that preamble?

220 Mr. BERMAN. Madam Chairwoman, I am unable to do so. My

221 office has been searched. I no longer have any such

222 document.

223 Mrs. CUBIN. Could you tell us what it is?

224 Mr. BERMAN. I adopt my prior statement.

225 Mrs. CUBIN. Pardon me?

226 Mr. BERMAN. I adopt my prior statement.

227 Mrs. CUBIN. Last question, then, Mr. Berman: The fax
228 cover message in front of you, the preamble and the document
229 list mentioned in the fax cover message were not produced by
230 you when subpoenaed by the committee. Can you explain why?

231 Mr. BERMAN. I produced everything I had to the
232 committee.

233 Mrs. CUBIN. I'm sorry. I could not hear what you said.

234 Mr. BERMAN. I produced everything I had to the
235 committee.

236 Mrs. CUBIN. You mention the preamble in your own fax
237 cover message, and that has not been submitted to the
238 committee.

239 Mr. BERMAN. I adopt my prior answer.

240 Mrs. CUBIN. The Chair recognizes Mr. Schaffer.

241 Mr. SCHAFFER. Thank you, Madam Chairman. I move that
242 the subcommittee sustain the ruling of the chairman that the
243 questions put to the--

244 Mrs. CUBIN. Wait, wait, wait. Sorry.

245 Mr. Underwood, did you have--

246 Mr. UNDERWOOD. I have no questions.

247 Mrs. CUBIN. Does anyone on the minority side have any
248 questions? Mr. Inslee?
249 Mr. INSLEE. This pertains to your basis, Mr. Berman, of
250 not answering questions, and I think it is appropriate for
251 you to make clear the basis of your refusal to answer
252 questions. As I understand, I have read and listened to your
253 comments or your statement, you have given us several reasons
254 you are not answering questions. But do I understand
255 correctly that one of the bases for your refusal to answer
256 questions is your current refusal to waive your rights
257 against self-incrimination? Is that accurate?
258 Mr. BERMAN. Mr. Inslee, I am not asserting that right at
259 this time, but I am not waiving it either.
260 Mr. INSLEE. Thank you.
261 Mrs. CUBIN. Mr. Berman--oh, Mr. Faleomavaega?
262 Mr. FALEOMAVAEGA. Thank you, Madam Chairman.
263 If I might ask Mr. Berman, are you currently represented
264 by counsel of the Oblon, Spivak, McClelland, Maier & Neustadt
265 law firm?
266 Mr. BERMAN. Yes.
267 Mr. FALEOMAVAEGA. And is the gentleman sitting next to
268 you a member of that law firm, advising you accordingly?
269 Mr. BERMAN. Yes, sir, he is.
270 Mr. FALEOMAVAEGA. And I wanted to follow up on Mr.
271 Inslee's question. Again, we just want to be certain for the

272 record that your refusal to respond to any of the questions
273 by the Madam Chairman and other members of the committee is
274 simply because you feel that your rights have been violated
275 because of the hearings that were held previous to today's
276 hearing.
277 Mr. BERMAN. That is correct.
278 Mr. FALEOMAVAEGA. And that because these rights have not
279 been corrected, at least for the record, for the purpose of
280 our hearing this afternoon, you will refuse, continue to
281 refuse to answer any questions unless some of the concerns
282 that you expressed earlier are corrected for the record.
283 Mr. BERMAN. That is correct, sir.
284 Mr. FALEOMAVAEGA. Thank you.
285 Madam Chairman, thank you.
286 Mr. BRADY. Madam Chairman?
287 Mrs. CUBIN. Mr. Brady?
288 Mr. BRADY. If I may, for the record, so that we
289 understand this, Mr. Berman's rights have been completely
290 preserved, and this committee has gone out of its way to make
291 sure that he can exercise all of them, to the point that he
292 has exercised his right against self-incrimination 200 times
293 to hide the truth about his actions in this case, but he
294 wants us to give up our rights to pursue the truth, to open
295 them up to the American public.
296 That is, those are the facts and the basis for this

297 refusal for him to simply tell the truth, to deny that he
298 provided information to POGO on this lawsuit, to deny that he
299 profited from his inside information, to clear his name about
300 the hundreds of thousands of dollars he has pocketed for this
301 information he has provided.
302 We have provided now two separate forums and encouraged
303 him to exercise all his rights, and we have been fair, but it
304 is terribly unfair on his part to ask that we limit or give
305 up our rights to find the truth, when he is exercising his to
306 hide it.
307 Thank you, Madam Chairman.
308 Mrs. CUBIN. Mr. Berman, you are here today under a
309 subpoena issued by the Committee on Resources dated June 29,
310 2000. In this hearing, as in an open oversight hearing, you
311 are required to answer pertinent questions unless you assert
312 a constitutional privilege against compelled
313 self-incrimination. You have not asserted such a privilege.
314 The questions put to you each relate directly to your
315 work as an oil valuation and royalty policy advisor at the
316 Department of the Interior. This investigation is known by
317 you to include an examination of whether your work on oil
318 valuation and royalty matters may have been influenced or
319 colored by your December 1996 agreement with POGO to share
320 its oil royalty litigation proceeds.
321 The Committee on Resources and this subcommittee have a

322 clear jurisdiction over these policies and programs
323 concerning oil produced under lease on public lands. The
324 committee and subcommittee also have clear jurisdiction
325 encompassing the oversight of those policies and programs,
326 including an obligation to safeguard the integrity of those
327 policies and programs.
328 The committee is equally empowered to ask these questions
329 to determine whether you produced all records required to be
330 produced under subpoenas issued by the committee. Without
331 that information, the committee is not able to rule on any
332 objection you might have to producing certain records, and is
333 unable to enforce its subpoenas. A good faith but mistaken
334 conclusion by you that these questions are not required to be
335 answered will not shield you if prosecuted for contempt of
336 Congress.
337 As chairman, I rule that each of these questions is
338 pertinent and must be answered unless you assert your Fifth
339 Amendment privilege. I will repeat each question.
340 Mr. Berman, do you recognize the fax cover message?
341 Mr. BERMAN. Madam Chairwoman, I adopt my original
342 statement.
343 Mrs. CUBIN. Do you recognize--excuse me--in very few
344 sentences, please describe and summarize the preamble
345 referenced in the fax cover message.
346 Mr. BERMAN. Madam Chairwoman, I adopt my original

347 statement.

348 Mrs. CUBIN. Was a draft preamble for an oil

349 valuation--was it a draft preamble for an oil valuation or

350 royalty regulation?

351 Mr. BERMAN. Madam Chairwoman, I adopt my original

352 statement.

353 Mrs. CUBIN. Will you provide the subcommittee with a

354 copy--you answered that.

355 Mr. Berman, the fax cover message in front of you, the

356 preamble and the document list mentioned in the fax cover

357 message were not produced by you when subpoenaed by the

358 committee. Can you explain why?

359 Mr. BERMAN. I produced everything I had to the

360 committee, according to the subpoena.

361 Mrs. CUBIN. The questions will not be repeated again,

362 Mr. Berman. I have ruled each to be pertinent and you have

363 refused to answer after hearing that ruling. Do you maintain

364 your refusal to answer the pertinent questions?

365 Mr. BERMAN. I adopt my original statement.

366 Mrs. CUBIN. The Chair now recognizes Mr. Schaffer.

367 Mr. SCHAFFER. Thank you, Madam Chairman.

368 I move that the subcommittee sustain the rulings of the

369 chairman that the questions put to the witness, Robert A.

370 Berman, are pertinent to the announced subject of this

371 hearing; secondly, that the subcommittee sustain the ruling

372 of the chairman ordering the witness to answer the questions;
373 and, thirdly, that the subcommittee directs the chairman to
374 report to the Committee on Resources that Robert A. Berman
375 has refused to answer pertinent questions while appearing
376 under subpoena, and that the Subcommittee on Energy and
377 Mineral Resources recommends that appropriate actions be
378 taken by the committee.
379 Mrs. CUBIN. I would just like to inform the committee
380 that the majority counsel says that she will call and hold
381 the vote long enough for us to get through this, so we will
382 take a recorded vote on that motion. Is there any
383 discussion? Mr. Underwood?
384 Mr. UNDERWOOD. Yes. I just want to point out that he
385 did in fact answer the last question you asked.
386 Mrs. CUBIN. Thank you.
387 Mr. UNDERWOOD. And also I would like to submit, for
388 inclusion in the record, letters from Mr. Tabackman on July
389 10th and June 20th to the committee.
390 Mrs. CUBIN. Without objection, so ordered.
391 [The information follows:]

392 ********** INSERT **********

393 Mrs. CUBIN. The clerk will now call the roll.

394 The CLERK. Mrs. Cubin?

395 Mrs. CUBIN. Aye.

396 The CLERK. Mrs. Cubin votes aye.

397 Mr. Tauzin?

398 [No response.]

399 The CLERK. Mr. Thornberry?

400 [No response.]

401 The CLERK. Mr. Cannon?

402 Mr. CANNON. Aye.

403 The CLERK. Mr. Cannon votes aye.

404 Mr. Brady?

405 [No response.]

406 The CLERK. Mr. Schaffer?

407 Mr. SCHAFFER. Aye.

408 The CLERK. Mr. Schaffer votes aye.

409 Mr. Gibbons?

410 Mr. GIBBONS. Aye.

411 The CLERK. Mr. Gibbons votes aye.

412 Mr. Walden?

413 [No response.]

414 The CLERK. Mr. Tancredo?

415 Mr. TANCREDO. Aye.

416 The CLERK. Mr. Tancredo votes aye.

417 Mr. Underwood?

418 Mr. UNDERWOOD. No.

419 The CLERK. Mr. Underwood votes no.

420 Mr. Rahall?

421 [No response.]

422 The CLERK. Mr. Faleomavaega?

423 Mr. FALEOMAVAEGA. The motion, I didn't follow the

424 gentleman's--

425 Mrs. CUBIN. Mr. Schaffer?

426 Mr. SCHAFFER. Madam Chairman, I moved that the

427 subcommittee sustain the ruling of the chairman that the

428 questions put to the witness, Robert A. Berman, are pertinent

429 to the announced subject of the hearing; that the

430 subcommittee sustain the ruling of the chairman ordering the

431 witness to answer the questions; and that the subcommittee

432 directs the chairman to report to the Committee on Resources

433 that Robert A. Berman has refused to answer pertinent

434 questions while appearing under subpoena; and that the

435 Subcommittee on Energy and Mineral Resources recommends that

436 appropriate action be taken by the committee.

437 Mr. FALEOMAVAEGA. On that motion, Madam Chairman, my

438 response is no.

439 The CLERK. Mr. Faleomavaega votes no.

440 Mr. Ortiz?

441 [No response.]

442 The CLERK. Mr. Dooley?

443 [No response.]

444 The CLERK. Mr. Kennedy?

445 [No response.]

446 The CLERK. Mr. John?

447 [No response.]

448 The CLERK. Mr. Inslee?

449 Mr. INSLEE. No.

450 The CLERK. Mr. Inslee votes no.

451 Mrs. CUBIN. The clerk will report the roll.

452 Mr. BRADY. How am I recorded?

453 The CLERK. Mr. Brady is not recorded.

454 Mr. BRADY. Please record me as aye.

455 The CLERK. Mr. Brady votes aye.

456 Mrs. CUBIN. The clerk will report the roll.

457 The CLERK. On this vote the ayes are 6, the nays are 3.

458 Mrs. CUBIN. The motion has been adopted.

459 Mr. Berman, the subcommittee has sustained my ruling that
460 these questions are pertinent and are ordered to be answered.
461 Do you still maintain your refusal to answer these
462 questions?

463 Mr. BERMAN. I adopt my previous statement.

464 Mrs. CUBIN. Mr. Berman, as directed, I will report to
465 the Committee on Resources that you have refused to answer
466 pertinent questions while appearing under subpoena, and that
467 the subcommittee recommends appropriate action be taken

468 against you.

469 Is there any further comment from the minority side?

470 Mr. INSLEE. I would have a comment, two comments.

471 First off, the reason I voted ''no'' on the last motion

472 is, again, I think it had a factual inaccuracy, in that the

473 witness actually did answer one of the questions, although it

474 surprised me, of the Chair, and I thought that we should have

475 that language in the motion. So I wanted to explain my vote

476 in that regard.

477 But I would also like to caution the witness. I am not

478 giving free legal advice here, because I am not paid for that

479 duty and don't represent the witness. But I do think the

480 witness should consider this issue, because I think there is

481 a serious question whether the witness's position that due to

482 procedural failures by this committee--and I think there have

483 been some, and in my last comments about going into Executive

484 Session, I stated my position.

485 But I think that that procedural failure has now been

486 remedied by going into Executive Session, and I have serious

487 questions whether the witness is therefore given some type of

488 immunity from future discussion, just because this committee

489 made procedural errors, which I believe this committee did

490 make serious procedural errors in referring to go into

491 Executive Session. But I just caution the witness that he

492 ought to be real sure that there is such a legal right to

Exhibit P

APPENDIX P

Mr. Keith Rutter

Keith Rutter is the Assistant Executive Director of POGO. Research by the Committee indicated that he is responsible for POGO's tax record-keeping; for consultation with tax accountants on reporting the payments to Mr. Berman and Mr. Speir; and for taking minutes at Board of Directors meetings. Mr. Rutter also appears to have responsibility for maintaining certain tax records which federal law requires to be made available for public inspection and photocopying.

Subpoena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Keith Rutter

You are hereby commanded to produce the things identified on the attached schedule before the XXX Committee on Resources of the House of Representatives of the United States, of which the Hon. Don Young XXX is chairman, by producing such things in Room 1334 of the Longworth Building XXX, in the city of Washington, on April 21, 2000, at the hour of 12:00 p.m. EDT

To United States Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 10 day of April, 19 2000

Chairman.

Attest:

Clerk.

RECEI
APR 12 10 4
U.S. MARS
DISTRICT OF C

Subpoena for Mr. Keith Rutter

Project on Government Oversight

1900 L Street, N.W.

Suite 314

Washington D.C. 20036-5027

before the Committee on the Resources

of the House of Representatives

Served Keith Rutter

ON THE 12TH DAY OF APRIL AT 12:15P.M.

TO THE ABOVED NAMED ADDRESS BY DEPUTY

U.S. MARSHAL GINA A. CHAMBLISS

Gina A. Chambliss

House of Representatives

GPO 1994 31-015 (rev.)

Schedule of Records
Keith Rutter
Project on Government Oversight

Pursuant to the attached subpoena, provide to the Subcommittee on Energy and Mineral Resources all records in your possession or control, or to which you have access that relate to or mention:

1. All IRS Form 1023s filed by POGO or a predecessor organization and any correspondence with the IRS relating to those filings, including but not limited to the favorable determination letter(s);

2. Any modifications or updates to POGO's current Form 1023, including but not limited to the statement of charitable or exempt purposes;

4. Correspondence with the Internal Revenue Service concerning any such modifications or updates;

5. The IRS Forms 990T, 990, and/or 990PF filed by POGO in each of the three most recent years;

6. Instruction, guidance, or advice provided to you by anyone associated with POGO concerning the solicitation of legal and accounting advice in relation to the November 2, 1998 payments to Robert A. Berman and Robert A. Speir;

7. Instruction, guidance, or advice provided to you by anyone associated with POGO, excluding any member of the firm Brand & Frulla acting in the capacity of an attorney for POGO, in answering subpoenas issued by the Committee on Resources and/or by defendants in *Johnson v. Shell* or defendants in the *qui tam* action filed by POGO on June 9, 1997, including but not limited to instruction, guidance, or advice concerning the production of Board of Directors meeting minutes;

8. Communications between you and any Justice Department employee or Executive Branch law enforcement office, agent or officer concerning POGO, Robert A. Berman, Robert A. Speir, Danielle Brian, Leonard W. Brock, or Henry M. Banta, including but not limited to notification that you are the target of a grand jury investigation;

9. The articles of incorporation and corporate by-laws in effect for POGO currently and, if different, in 1996, 1997, 1998, and 1999;

10. The attached deposition transcript excerpt, including but not limited to references to Board of Directors meeting minutes and the legal and accounting advice and opinions sought and given with respect to payments to Mr. Berman and Mr. Speir.

Definitions:
For purposes of this subpoena:

- The term "record" or "records" includes, but is not limited to, copies of any item, whether written, typed, printed, recorded, transcribed, filmed, graphically portrayed, video-taped or audio-taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all computer entries, accounting materials, memoranda, diaries, telephone logs, telephone message slips, electronic messages (e-mails), tapes, notes, talking points, letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, disks, briefing materials, notes, cover sheets or routing cover sheets or any other machine-readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation and shall also include redacted and un-redacted versions of the same record. The term includes records that are in your physical possession and records that were formally in your physical possession as well as records that are in storage.

- The terms "refer," "relate," and "concerning" mean anything that constitutes, contains, embodies, identifies, mentions, or deals with in any manner the matter under review.

- POGO refers to the Project on Government Oversight and its' employees, officers, and directors.

- *Johnson v. Shell* refers to *United States of America ex rel. J. Benjamin Johnson, Jr. v. Shell Oil Company, et al*, docket Number 9:96CV66 in the United States District Court for the Eastern District of Texas, Lufkin Division.

Administrative Requirements

- Please specify as to each record provided which bullet number the record is responsive to. If materials have already been provided to the Committee pursuant to a previous subpoena, please provide a descriptive log of such materials rather than duplicate copies.

- If you assert a constitutional privilege or an objection in regard to producing any particular record, specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld.

- Provide three copies of each record.

March 30, 2000

Keith Rutter
Project on Government Oversight
1900 L Street, N.W.
Suite 314
Washington, D.C. 20036-5027

Dear Mr. Rutter:

The Committee on Resources of the United States House of Representatives is conducting an inquiry into the general subject of laws, policies, practices, and operations of the Department of the Interior and the Department of Energy which pertain to payments by non-government organizations or by individuals to employees involved in federal oil royalty programs and policies; participation by employees in *qui tam* litigation affecting said programs and policies of those departments; and disclosure requirements for employees participating in or promised payment from such *qui tam* suits.

This inquiry is specifically reviewing: (1) payments made by the Project on Government Oversight (POGO) to Robert A. Berman, an Interior employee and to Robert A. Speir, a now-retired Energy employee, using funds derived principally from POGO's participation in the *Johnson v. Shell* litigation under the False Claims Act; and (2) allegations that POGO's participation in *Johnson v. Shell* and consequent payments to Mr. Berman and Mr. Speir were facilitated by allegedly improper actions by federal employees.

The Committee's inquiry is conducted pursuant to legislative, oversight, and investigative authority under Rule X and Rule XI of the Rules of the United States House of Representatives; Rule 6 of the Rules For the Committee on Resources, 106th Congress, under which the Committee on Resources has general oversight jurisdiction over the laws, policies, practices and operation of the Department of the Interior and elements of the Department of Energy; and Article I and Article II of the United States Constitution.

As part of this inquiry, the Subcommittee on Energy and Mineral Resources has been charged with conducting hearings. You will soon receive a subpoena to testify at a Subcommittee hearing on May 4, 2000, in Washington, D.C.. Because of your duties at POGO, you may possess information helpful to this inquiry. You will be required to bring with you any records which relate to the matters under review.

Do not discuss the substance of your testimony with anyone other than your attorney prior to your appearance before the Subcommittee. Should anyone attempt to influence your testimony in any way, immediately notify Committee counsel Thomas D. Casey at (202) 226-3927.

The matters under review are serious. Representative Don Young, Chairman of the Committee on Resources, and I are committed to conducting a fair, nonpartisan inquiry. Your cooperation and the information you may provide are important to this inquiry. If you have questions about your appearance or testimony, please call Mr. Casey.

Sincerely,

Barbara Cubin
Chairman
Subcommittee on Energy and Mineral Resources

Subpena to Testify (Hearing)

By Authority of the House of Representatives of the Congress of the United States of America

To Mr. Keith Rutter

You are hereby commanded to be and appear before the Sub- Committee on Energy and Mineral Resources of the House of Representatives of the United States, of which the Hon. Barbara Cubin is chairman, in Room 1334 of the Longworth Building XXX, in the city of Washington, on May 4, 2000, at the hour of 10:00 a.m. EDT, then and there to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To United States Marshals Service

to serve and make return.

RECEIVED
APR 12 10 44 AM '00
U.S. MARSHAL
DISTRICT OF COLUMBIA

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 10 day of April, ~~18~~ 2000

Chairman.

Attest:

Clerk.

Subpena for Mr. Keith Rutter

Project on Government Oversight

1900 L Street, N.W.

Suite 314

Washington, D.C. 20036-5027

before the Committee on the Resources

of the House of Representatives

Served x Keith Rutter

ON THE 12TH DAY OF APRIL AT 12:15P.M.

TO THE ABOVED NAMED ADDRESS BY DEPUTY

U.S. MARSHAL GINA M. CHAMBLISS

Gina Chambliss

House of Representatives

GPO: 1990 31-287 (m)

Exhibit Q

BRAND & FRULLA
A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

April 21, 2000

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515
Attn: Ms. Elizabeth Megginson, Chief Counsel

Re: Project on Government Oversight

Dear Chairman Young:

This responds to the latest round of subpoenas, which you have issued to members of the Project on Government Oversight's ("POGO") Board of Directors, its staff, and its attorney in the oil litigation. We will respond to each of these groups of subpoenas as follows:

Board of Directors

You have issued subpoenas *duces tecum* to several members of the POGO board of directors, including Henry Banta, Charles Hamel, Anne Zill, David Hunter, Morton Mintz, David Burnham, Dina Rasor, Marjorie Sims, and Mike Cavallo. Many of the categories of documents called for in these latest subpoenas overlap with or are duplicative of categories of documents requested or demanded by you in previous correspondence or subpoenas. (While all of the POGO Board member's subpoenas are substantially similar, I use the paragraph numbers used on POGO Board Member Anne Zill's subpoena.) *Compare* ¶¶ 1-11, Schedule of Records, POGO Board of Directors, Former POGO Directors, April 21, 2000 subpoena *with* ¶¶ 1-6, June 28, 1999 request for records from Danielle Brian, POGO executive director.

First, POGO has already produced, pursuant to these earlier requests and subpoenas all records relating to its decision and its deliberations concerning payments to Robert A. Berman or Robert A. Speir. ¶¶ 1-3 of April 21, 2000 subpoena. As we

have consistently stated from the beginning of your inquiry we object, on grounds of lack of statutory pertinency, to the demand for documents in paragraphs 4 through 11.

In the interest, however, of avoiding needless litigation and disputes over these records, POGO simply has no additional documents that are responsive to these paragraphs. The sum total of the "deliberations and discussions of the POGO Board of Directors" concerning the awards to Berman and Speir are contained in the portions of the POGO board meeting minutes which we have previously produced.

In this regard, I would point out to you that POGO is not a Fortune 500 corporation or an organization with a large support staff like other public charities and its board members serve without compensation. The absence of records in the categories you seek in your subpoenas reflects the trust and confidence which the board has placed in the staff to run the day to day affairs of the organization and the fact that it directs its effects to fulfill the central mission of the organization -- uncovering fraud and abuse in the government -- not to burdening the board with written materials.

As to this category of records, the individual members of the board have searched for any records that they have separately maintained and have no responsive documents.

Finally, your subpoena to POGO Board Member Dina Rasor makes two additional improper demands. First, paragraph 11 calls for communication between POGO and its attorneys. As we have noted previously, these documents are not pertinent to your investigation and are also protected by the attorney-client privilege. Additionally, paragraph 13 of the subpoena demands production of Ms. Rasor's publication "Courage Without Martyrdom: A Survival Guide for Whistleblowers." This document is not pertinent to your investigation for reasons we have outlined in detail in objections to previous demands from your committee and has not been produced.

POGO Staff

You have issued a subpoena to Keith Rutter, Assistant Director of POGO, for several categories of documents, including: 1) various IRS forms and correspondence related to its tax exempt status, 2) "instructions, guidance or advice" provided to POGO concerning its solicitation of legal and accounting advice about the awards to Mr. Berman and Mr. Speir, 3) communications with the Department of Justice, including any notification that "you are the target of a grand jury investigation," and 4) a document request, in the form of a written interrogatory, for records that relate to a deposition transcript.

You have also issued a subpoena to Danielle Brian, Executive Director of POGO addressing: 1) records relating to the testimony of Benjamin Johnson in the form of a written interrogatory, 2) communications with the Department of Justice, and 3) POGO's April 1995 report entitled "Department of the Interior Looks the Other Way: The Government's Slick Deal for the Oil Industry."

While we have produced a copy of POGO's report (which you have requested for the first time) as well as one document relating to POGO's receipt of its share of the Mobil oil settlement, we have repeatedly protested and objected to the utter lack of pertinency of any of these other documents to the subject matter of your investigation -- oversight and review of the laws, policies, practices and operation of the Department of Interior and their employees.

We have also consistently pointed out that several of the stated objectives of your Committee -- investigation of whether perjury or obstruction has been committed not before your committee but in a pending civil lawsuit and the consideration of "weighing" what you contend is conflicting testimony -- are not proper subjects of legislative investigative committees. *See Quinn v. United States*, 349 U.S. 155, 161 (1955); *United States v. Icardi*, 140 F. Supp. 383, 388 (D.D.C. 1956).

To those objections, we now add another and equally serious flaw in the newly stated purposes of your inquiry, that is, a lack of authority to inquire into POGO's tax status and its communications with the IRS. It is now clear beyond peradventure of doubt that you are attempting to intimidate POGO through threats to its tax status that no committee of Congress, much less the Committee on Resources, can lawfully make. The Supreme Court has held that the authority to conduct investigations into specific subjects must be clearly delegated by the House to the "questioning body," in this case, your committee.

> It is the investigative power of the House that is vindicated by § 192. The legislative history of § 192 makes plain that a clear chain of authority from the House to the questioning body is an essential element of the offense.

Gojack v. United States, 384 U.S. 702, 716 (1966).

In other words, "If the contempt occurs before a subcommittee, the line of authority from the House to the Committee and then to the Subcommittee must plainly and explicitly appear, and it must appear in terms of a delegation with respect to a particular, specific subject matter." *id.* (emphasis added) The rules of the House delegating subjects to the Committee on Resources, the "controlling charter of its powers [which] governs its right to exact testimony," *United States v. Rumely*, 345 U.S. 41, 44 (1953) makes no mention of any subject that would encompass POGO's tax

exempt status. H.R. Rule X, cl. 1 (l), Rules of the House of Representatives, reprinted in Constitution, Jefferson's Manual and Rules of the House of Representatives § 732, H.R. Doc. No. 105 – 358, 105th Cong. 2d, Session 436 – 438 (1999). Indeed, the House rules specifically delegate that subject to another committee. Rule H.R. Rule X, cl. 1 (s) (8), H.R. Doc. No. 105 – 358, supra § 741 (delegating to the Committee on Ways and Means jurisdiction over "tax exempt foundations and Charitable trusts").

In light of these objections your request in paragraph 9 of Mr. Rutter's subpoena for the "articles of incorporation and corporate by-laws in effect for POGO currently and, if different, in 1996, 1997, 1998, and 1999" is not pertinent to your investigation and has not been produced.

In addition, you also seek by subpoena, any "Communications between you and any Justice Department employee in Executive Branch law enforcement... including but not limited to notification that you are a target of a grand jury investigation." This request, like those related to your stated goal to investigate whether perjury has been committed in a civil lawsuit, not only lacks pertinence to the oversight of programs and policies of the Departments of Interior or Energy, but also is beyond the power of a congressional committee in that it can have no legitimate legislative purpose. *See Quinn v. United States*, 349 U.S. 155, 161 (1955) (Congress' "power to investigate must not be confused with any of the powers law enforcement; those powers are assigned under the Constitution to the Executive and the Judiciary" not the legislature); *see also United States v. Icardi*, 140 F. Supp. 383, 388 (D.D.C. 1956). Simply put, this request reveals an entirely inappropriate and illegal attempt to interfere in the internal processes of a coordinate branch and deprive POGO of its due process rights. An interested party before a federal agency has a right to both the actuality and the appearance of an impartial decision – in this case to a fair and unbiased determination by the Department of Justice. The subpoena's demand for communications, if any, between the Department of Justice and POGO, is a thinly veiled attempt to interfere in the Department's consideration of an ongoing investigation. *Pillsbury v. FTC*, 354 F.2d 952, 964 (5th Cir. 1966) (FTC divestiture order invalid based on congressional interrogation of FTC Chairman and staff); *SEC v. Wheeling Pittsburgh Steel Corp.*, 648 F.2d 118, 126 (3d Cir. 1981) (en banc) (court refused to enforce agency subpoena issued because of pressure from powerful congressional third party).

The demand for DOJ communications is an obvious prelude to pressure directed to the DOJ in the decisional processes of reviewing POGO's conduct in making awards to Mr. Berman and Mr. Speir. You have made known your views regarding the Department of Justice's reliance on longstanding precedent in both Republican and Democratic administrations to protect its decision-making processes in criminal cases from congressional interference. While you have stated that you "just don't buy that broad excuse," it is a principle well recognized in the law cited above.

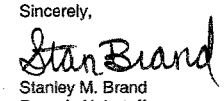
While Congress has, and can, review closed criminal cases to render a proper legislative judgment, including whether to amend specific statutes, determine the level of authorization, and set appropriations for law enforcement agencies, or to review the enforcement policies of the government, *McGrain v. Daugherty*, 273 U.S. 135, 17 –178 (1926), E.F. Hutton Mail and Wire Fraud, House Subcommittee on Crime of the Committee on the Judiciary, 99th Cong., 2d Session (Comm. Print 1986) (review of Departments handling of closed case against brokerage house), it cannot reach into open cases without depriving parties of due process, for when a congressional "investigation focuses directly and substantially upon the mental decisional processes of a [department] in a case which is pending before it, Congress is no longer intervening in the [department's] legislative function." *Pillsbury v. FTC*, 354 F.2d at 964 (emphasis added in original). It is at this point that courts "become concerned with the right of private litigants to a fair trial and equally important, which cannot be maintained unless those who exercise the judicial function are free from powerful external influence." *Id.*

Finally, your requests to Mr. Rutter (¶ 10) and Ms. Brian (¶ 1) for records relating to deposition testimony attached to the subpoenas exceed your authority. As you are authorized to issue subpoenas, not written interrogatories, no records relating to those paragraphs have been provided.

POGO's Attorney

You have also issued a subpoena to Dan Packard, POGO's counsel in the *Johnson v. Shell* litigation. Mr. Packard has searched his files and produced all records responsive to paragraphs 1-3. Although Mr. Packard possesses no records responsive to paragraph 4, that request is not pertinent to your investigation and any documents would also be subject to the attorney-client privilege. Similarly, your request in paragraph 5 for fee agreements is not pertinent and would also be protected by the attorney-client privilege.

Sincerely,



Stanley M. Brand
Ross A. Nabatoff
Andrew D. Herman

SMB/RAN/ADH:mob

Enclosures

Exhibit R

REDACTED BASED UPON LACK
OF PERTINENCY

Project on Government Oversight

Minutes of the
Project on Government Oversight
Board Meeting
December 9, 1996

The meeting was called to order at 5:10 p.m., at the offices of Lobell, Novins, & Lamont 1275 K Street, NW, Suite 770, Washington, D.C.

Board members present were: Hank Banta, Chuck Hamel, Anne Zill, Jack Mitchell, Michael Cavallo and David Hunter.

POGO Staff present were: Danielle Brian and Keith Rutter.

REDACTED BASED UPON LACK
OF PERTINENCY

Project On Government Oversight

Minutes of the Board Meeting
October 27, 1998

REDACTED BASED UPON LACK OF PERTINENCY

Ms. Brian then briefed the Board concerning the Mobil settlement. Mobil settled its case and POGO received just under $1.2 million. Ms. Brian noted that the Navaho Nation's share was $5 million. POGO will be awarding money to two whistleblowers who have worked on this issue for over ten years. The staff consulted with our accountants and a nonprofit/tax attorney recommended by Mr. Hunter to make sure we were following proper procedure. The staff also consulted with a Constitutional attorney. The lawyers and our accountant agreed that we send a letter stating that it was an award for public service and that we would send them the appropriate tax form at the end of the year.

Ms. Brian then asked if the Board thought she should put out a press release. The Board did not come to an agreement on this issue.

Mr. Rutter then briefed the Board on what POGO has done with the settlement money. On September 2, 1998, $1,143,359.60 from the Mobil Settlement was wired into POGO's Money Market Account. On September 11, 1998, POGO added money from our general operating funds to bring the amount up to $1,200,000. This money was put into a 30 day CD. On October 14, 1998, $1,205,630.00 was the value of the CD which included $5,630 in interest. This money was put back into POGO's Money Market

Account. On November 2, 1998, approximately $768,600 will be awarded to two whistleblowers. Therefore, in approximately the next week the staff will be giving each one a check for approximately $380,000.00.

Ms. Brian then described that POGO's status as a future relator was up in the air. Ms. Brian then updated the Board on the oil litigation. This Friday, October 30th there will be a very important hearing in Texas to decide finally on the issue of standing in the case. The Judge will probably take about two weeks to decide the fate of the relators. There is the multi-relator agreement, there is also the possibility that all the relators could be dismissed. On the other hand, apparently there are four companies that are currently in serious settlement discussions. Of course discussions could fall through or take several months.

The Board briefly discussed investing the money from the settlement. It was recommended that the staff contact Mr. Cavallo to see if he had any suggestions to invest the money. It was also suggested that the approximately $380,000 remaining with POGO be kept separate from POGO's operating money. The Board agreed that the staff can invest the money as they see fit. Mr. Rutter stated that besides contacting Mr. Cavallo, he would also keep Ms. Rasor up to date with the staff decisions.

Mr. Hunter recommended that the Board table the discussion of what to do with the settlement money until POGO hears more information about future settlements. However, Mr. Hunter made a motion that the $380,000 in settlement money be set aside as a contingency fund. He recommended talking to the accountants to remove this money from the organization's general operating funds. Mr. Burnham seconded the motion. The Board voted unanimously to agree.

REDACTED BASED UPON LACK OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

The Board then wanted to recognize that Ms. Brian turned over the $10,000 dollars to POGO that she received from Mobil. Ms. Brian stated that she, like the organization, did not get involved in the law suit against the oil companies for the money, but rather for the principle to benefit the public interest. The Board again thanked Ms. Brian and the staff for all their efforts on this project.

REDACTED BASED UPON LACK
OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

Exhibit S

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

June 26, 2000

Stanley M. Brand, Esq.
Brand & Frulla
923 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Brand:

The extended grace period allowing your clients, Henry M. Banta; Danielle Brian Stockton; Keith Rutter; and the Project on Government Oversight to supplement or complete production under subpoenas for existing records issued by the Committee on Resources has expired.

The Committee on Resources will be asked to consider the rulings set forth in this letter and in prior correspondence concerning compliance with subpoenas issued to Mr. Banta, Ms. Brian, Mr. Rutter, and POGO.

Included in this Committee business will be the rulings in my April 6, 2000 letter concerning the documents withheld from production under the February 17, 2000 subpoena issued to Mr. Banta. Repeated statements by you, on behalf of Mr. Banta, clearly cite a provision of Title 29 of the United States Code to justify withholding many records. Only after my overruling of this claim did Mr. Banta shift his argument to claim the same right but cite 30 USC 1733. I rule that the statutory provision now cited is not applicable to records in the possession or control of Mr. Banta, in his private or professional capacities or in his role as a Director of POGO, and are required to be produced.

Mr. Banta elected not to accept my April 6, 2000 offer to make an informed, item by item review of certain of the records withheld under claims of attorney-client and attorney work product privileges. Those claims are therefore overruled and the records ordered to be produced. It should be noted that even the spare descriptions offered in Mr. Banta's log indicate that many of the items withheld under these claims are not privileged communications.

The Committee will also be asked to consider all of the rulings, including those on pertinency and statutory claims, by the Chair set forth in this letter and in my April 6, 2000 letter, including:

1. The February 17, 2000 subpoenas issued to Ms. Brian and to POGO required production

of pertinent phone records concerning a phone call concerning a matter covered by the oversight review which is within the Committee's jurisdiction.

2. The February 17, 2000 subpoena issued to POGO required production of other pertinent records concerning matters covered by the oversight review which is within the Committee's jurisdiction.

3. The February 17, 2000 subpoena issued to Ms. Brian required production of records relating to oil royalty litigation proceeds received by Ms. Brian and POGO from January 1, 1999 until the present and that those records are relevant to the oversight review which is within the Committee's jurisdiction.

4. The April 10, 2000 subpoena issued to Mr. Rutter required production of corporate and tax records which are pertinent to the oversight inquiry which is within the Committee's jurisdiction and that the subpoena describes existing records, does not pose questions to Mr. Rutter and thus does not constitute a written interrogatory.

5. The April 10, 2000 subpoena to Ms. Brian required production of pertinent records relating to the oversight inquiry which is within the Committee's jurisdiction and that the subpoena describes existing records, does not pose questions to Ms. Brian and thus does not constitute a written interrogatory.

6. The May 9, 2000 subpoena issued to Mr. Banta, in his personal and professional capacities and in his role as a Director of POGO, required production of pertinent records relating to the oversight inquiry which is within the Committee's jurisdiction and that claims of attorney-client privilege or attorney work product privilege are not applicable to records numbered 1, 11, 12, 15, 16, 17, 19, 20, 21, 24, 25, and 51.

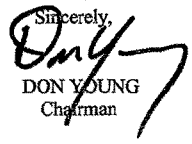
The Committee will also be asked to act on the failure of Mr. Banta, of Ms. Brian, of Mr. Rutter, and of POGO to fully comply with the requirements of these subpoenas by withholding records known to the Committee through other sources; by refusing to provide logs of withheld responsive records; and by refusing to provide unredacted versions of responsive records.

Some or all of these matters will be taken up by the Committee on Resources at 11:00 AM on Wednesday, June 28, 2000 in Room 1324 of the Longworth House Office Building. If the Committee sustains my rulings, as set forth above and in prior correspondence, full production under by all subpoenas issued to Mr. Banta, Ms. Brian, Mr. Rutter, and POGO will be due immediately. The documents must be delivered to the Committee on Resources, Room 1334 Longworth House Office Building no later than 6:00 PM EDT on the day the Committee acts.

If the deficiencies are not cured, Contempt of Congress proceedings will begin to consider the refusal by these persons to produce pertinent records required by Committee subpoenas.

The staff contact for this matter is Thomas D. Casey. Mr. Casey can be reached at (202) 226-3927.

Sincerely,



DON YOUNG
Chairman

CC: Honorable George Miller

Exhibit T

APPENDIX T

Ms. Danielle Brian Stockton

Danielle Brian Stockton, known professionally as **Danielle Brian**, is the Executive Director of POGO. Along with Henry M. Banta, she appears to be the manager of POGO's oil royalty campaign. She is the principal author of four reports issued by POGO on the subject. Ms. Brian along with Mr. Banta, agreed in December 1996 to share oil litigation proceeds with Mr. Berman and Mr. Speir. As a co-relator with POGO, Ms. Brian filed a *qui tam* suit alleging fraudulent underpayment of federal oil royalties. In January 1998, on behalf of POGO and herself, she signed a memorialization of the agreement to disburse to Mr. Berman and Mr. Speir 33 1/3% each of oil litigation proceeds received by POGO or herself.

Sworn hearing testimony and other information available to the Committee along with a great weight of circumstances, tend to confirm the allegation that Ms. Brian and POGO filed their oil royalty *qui tam* suit in Lufkin, Texas in June 1997 while in possession of improperly gained knowledge that another such suit was pending under seal in that federal court. Ms. Brian has refused to comply with subpoenas for records or testimony bearing on this question

UR-3

Subpena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Ms. Danielle Brian, Personally and as the Executive Director of the Project On Government Oversight

You are hereby commanded to produce the things identified on the attached schedule before the Committee on Resources of the House of Representatives of the United States, of which the Hon. Don Young is chairman, by producing such things in Room 1324 of the Longworth Building, in the city of Washington, on June 28, 1999, at the hour of 12 Noon

To U.S. Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 18th day of June, 19 99

Don Young

Chairman.

Attest:

Jeff Trandahl

Clerk.

Subpena for Ms. Danielle Brian

Project On Government Oversight

1900 L Street NW, Suite 314

Washington, D.C. 20036

before the Committee on ~~the~~ Resources

U.S. House of Representatives

Washington, D.C. 20515

Served Linda Harkin (Ms. Brian's Assistant) on June 23, 99 at 10:50 A.m.

Sabrina Jones, Deputy

House of Representatives

JUN.-23'99(WED) 12:08 P.005

JUN.-23'99(WED) 10:56 SPEC SERVICES TEL:202 273 0288 P.003

Schedule of Records (POGO)

(1) all records that relate in any way to any instance or instances when the Project on Government Oversight (POGO), or anyone acting on behalf of POGO, discussed, communicated regarding, made, or considered making payments of any kind or otherwise transferring funds or anything of value to any employee or former employee of the Department of the Interior or the Department of Energy.

(2) all records that relate to or concern a payment or payments or other transfer of funds or anything of value from POGO to Mr. Robert Berman or to any other person employed by or formerly employed by the Department of the Interior.

(3) all records regarding any contact between POGO, or anyone acting on behalf of POGO, and Mr. Robert Berman or Mr. Robert Speir related to any matter concerning oil valuation, oil valuation regulations, oil valuation proposals, alternative methods for collection of federal oil royalties (including legislative proposals), or any lawsuit in which POGO was a party, a relator, or claimed to be a relator, or had any interest.

(4) all records that relate to or concern any payment or payments or other transfer of funds or anything of value from POGO to Mr. Robert Speir or to any other person employed by or formerly employed by the Department of Energy.

(5) all records that mention, relate to, or refer to Mr. Robert Berman or Mr. Robert Speir.

(6) all records that relate to or concern POGO's notification of the government of its intention to share a False Claims Act settlement or proceeds with any government employees and all records that relate to any response from any government entity with respect to such notification.

Definition of Record. For purposes of this subpoena, the term "record" or "records" includes, but is not limited to, copies of any item written, typed, printed, recorded, transcribed, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all computer entries, accounting materials, memoranda, diaries, telephone logs, telephone message slips, electronic messages (e-mails), tapes, notes, talking points, letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, disks, briefing materials and notes, cover sheets or routing cover sheets or any other machine readable material of any sort without limitation and shall also include redacted and unredacted versions of the same record. The term includes records that are in the physical possession of POGO and records that were formally in the physical possession of the POGO as well as records that are in storage.

Furthermore, for purposes of this subpoena, the terms "refer", "relate", and "concerning", mean anything that constitutes, contains embodies, identifies, mentions, deals with, in any manner the in any manner any subject of items (1) through (6) listed above.

Subpoena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Ms. Danielle Brian Stockton

You are hereby commanded to produce the things identified on the attached schedule before the XXX Committee on Resources of the House of Representatives of the United States, of which the Hon. Don Young XXX is chairman, by producing such things in Room 1334 of the Longworth Building XXX, in the city of Washington, on February 28, 2000, at the hour of 4:00 p.m. EST

To United States Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 17 day of February, in 2000

Don Young
Chairman.

Attest:

Jeff Trandahl
Clerk.

Subpoena for Ms. Danielle Brian Stockton

Project on Government Oversight, Suite 314

1900 L Street, N.W.

Washington, D.C. 20036 / 40332 Mount Gilead Rd.
Leesburg, VA 20175

before the Committee on the Resources

of the House of Representatives

Served 1ST ENDEAVOR, 1900 L ST, NW, @ 1630 2/11/00

2ND ENDEAVOR, 2/22/00, @ 1030 hrs

Danielle Brian, on 2/23/00

at 0930 hrs by Michael C. Jones,

Deputy U.S. Marshal

House of Representatives

GPO 1995 51-015 (mo.)

Schedule of Records
Danielle Brian Stockton

Pursuant to the attached subpoena, please deliver to the Committee by the date specified any and all materials that meet the following descriptions. Please read this entire schedule, and note the definitions and administrative requirements listed below.

Descriptions:
Please provide to the Committee all:

1. Records showing all Project on Government Oversight telephone numbers assigned to or in use by you during the period from February 1, 1996 through June 30, 1997 ;

2. Records showing all telephone number(s) assigned to your home, home office, or private wireless/cellular service during the period from February 1, 1996 through June 30, 1997;

3. Records showing the name, address, office telephone number, and account representative for the long distance service provider(s) and wireless/cellular service provider(s) used by you from February 1, 1996 through June 30, 1997;

4. Home or home office local, long distance, and wireless/cellular telephone records including but not limited to bills, call logs, call sheets, message records, and answering machine and/or voice mail recordings from the period of February 1, 1996 through June 30, 1997;

5. Records concerning payments requested by; offered to; discussed, negotiated or received by you pursuant to the Multi-Relator/Counsel Agreement in *United States ex rel. J. Benjamin Johnson, Jr. v. Shell Oil Company et al* since January 1, 1999.

Definitions:
For purposes of this subpoena:

- The term "record" or "records" includes, but is not limited to, copies of any item, whether written, typed, printed, recorded, transcribed, filmed, graphically portrayed, video-taped or audio-taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all computer entries, accounting materials, memoranda, diaries, telephone logs, telephone message slips, electronic messages (e-mails), tapes, notes, talking points, letters, journal entries, reports, studies, drawings, calendars, manuals, press releases, opinions, documents, analyses, messages, summaries, bulletins, disks, briefing materials, notes, cover sheets or routing cover sheets or any other machine-readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation and shall also

include redacted and unredacted versions of the same record. The term includes records that are in your physical possession and records that were formally in your physical possession as well as records that are in storage;

- The terms "refer," "relate," and "concerning" mean anything that constitutes, contains, embodies, identifies, mentions, or deals with in any manner the matter under review.

Administrative Requirements

Together with your response to this subpoena:

- Specify as to each record provided which bullet number the record is responsive to.
- If materials have already been provided to the Committee pursuant to a previous subpoena, please provide a descriptive log of such materials rather than duplicate copies.
- Provide a log of each individual involved in deciding how to respond to this subpoena, in responding to this subpoena, or in searching for or gathering materials in response to this subpoena, with a brief description of what each individual did as part of the effort. The testimony of such individuals as to the completeness of searches and production may be sought later by the Committee.
- If you assert a privilege or objection in regard to producing any particular record, specify and characterize the record so withheld and specify the objection or privilege under which the record is withheld.

HR-91

Subpena to Testify (Hearing)

By Authority of the House of Representatives of the Congress of the United States of America

To Ms. Danielle Brian Stockton

You are hereby commanded to be and appear before the Sub- Committee on Energy and Mineral Resources of the House of Representatives of the United States, of which the Hon. Barbara Cubin is chairman, in Room 1324 of the Longworth Building XXX, in the city of Washington, on May 18, 2000, at the hour of 2:00 p.m. EDT, then and there to testify touching matters of inquiry committed to said Committee; and you are not to depart without leave of said Committee.

To United States Marshals Service to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 17 day of April, 2000

Chairman

RECEIVED
APR 18 11 20 AM '00
U.S. MARSHAL
DISTRICT OF COLUMBIA

Attest:

Jeff Trandahl
Clerk.
by Matthew C. Morris
Deputy Clerk

P.003

Subpena for Ms. Danielle Brian Stockton

Project on Government Oversight

1900 L Street, N.W.

Suite 314

Washington, D.C. 20036-5027

before the Committee on the XX Resources

of the House of Representatives

Served [signature]

BY MICHAEL JONES ON THE 18TH DAY OF

APRIL 2000, AT 3:00 P.M. TO THE ABOVED

NAMED ADDRESS.

[signature]

House of Representatives

GPO 1000 31-297 (m)

-18' 00 (TUE) 14:50

Exhibit U

STENOGRAPHIC MINUTES
Unrevised and Unedited
Not for Quotation or
Duplication

OVERSIGHT HEARING TO EXAMINE THE LAWS, POLICIES, PRACTICES, AND OPERATIONS OF THE DEPARTMENT OF THE INTERIOR, DEPARTMENT OF ENERGY, AND OTHER AGENCIES PERTAINING TO PAYMENTS TO THEIR EMPLOYEES, INCLUDING PAYMENTS RELATIVE TO MINERAL ROYALTY PROGRAMS AND POLICIES FROM PUBLIC LANDS AND INDIAN LANDS

Thursday, May 18, 2000

House of Representatives,

Subcommittee on Energy and Mineral Resources,

Committee on Resources,

Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES

UNREVISED AND UNEDITED, NOT FOR QUOTATION
OR DUPLICATION IN ANY FORM
COMMITTEE ON RESOURCES

OFFICE OF THE CLERK
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5360 and Benjy Johnson.

5361 Mr. SCHAFFER. And he--well, in April of last year, after
5362 learning of your initial payments to Berman and Speir, he
5363 asked for and was granted permission from the court, to
5364 resign his representation of POGO. Why was that?

5365 Ms. STOCKTON. I believe any communications between
5366 myself and Mr. Dark are attorney/client privileged.

5367 Mr. SCHAFFER. Fair enough. Two weeks ago the
5368 Subcommittee received credible evidence from Mr. Johnson, Mr.
5369 Martineck, and from their lawyers, which indicated that on
5370 September 23rd, 1996, you telephoned Mr. Johnson, and stated
5371 that you knew his case was still under seal, and asked that
5372 he call your lawyers to join forces. And under oath in
5373 September of last year, knowing that Mr. Johnson might
5374 provide damaging testimony against you in court, you claimed
5375 it was the other way around. You swore that you invited him
5376 to join your litigation, but when the Committee subpoenaed
5377 evidence that would prove your version of the call, you did
5378 not turn over a single scrap of paper about the call or the
5379 conversation. Do you still admit to calling Mr. Johnson on
5380 September 23rd, 1996?

5381 Ms. STOCKTON. I know this will frustrate you, but
5382 anything to do with the litigation is not pertinent to this
5383 inquiry. But I can tell you--which may satisfy one of the
5384 many conspiracy theories that you guys have been operating

5385 on--that neither Mr. Berman nor Mr. Speir, and our decision
5386 to share money with them, had anything whatsoever to do with
5387 any litigation under seal or not. We didn't learn any
5388 information about any lawsuits of any kind from Mr. Berman or
5389 Mr. Speir. So it's not pertinent because it has nothing to
5390 do with our decision to share the money.
5391 Mr. SCHAFFER. So you will not admit to calling Mr.
5392 Johnson on September 23rd, 1996?
5393 Ms. STOCKTON. I will not discuss anything that's not
5394 pertinent to this inquiry, and because I'm explaining to you
5395 it has nothing to do with Berman or Speir. That's why--
5396 Mr. SCHAFFER. I'd like to give you a chance to deny for
5397 the Committee at this point in time. Could you refute the
5398 claim--my claim that you called Mr. Johnson on September
5399 23rd, 1996?
5400 Ms. STOCKTON. And as I've said, that question is not
5401 pertinent to the inquiry because it has nothing to do--
5402 Mrs. CUBIN. The Chair understands that Witness Brian has
5403 entered an objection because she believes that the answer to
5404 the question is not pertinent to the subject under inquiry.
5405 The Chair will address the issue--please stop the clock. The
5406 Chair will address the issue and poll the members as to
5407 whether they believe the question is pertinent.
5408 The Chair announced in the opening statement that the
5409 purpose of this hearing--and has repeatedly reiterated why

5410 the Subcommittee has jurisdiction and authority. The Chair
5411 furthermore announced that we are examining one instance of
5412 where such payments were made to Mr. Berman and Mr. Speir by
5413 the Project on Government Oversight, and that is where the
5414 money came from.
5415 We are examining where the money for the payments came
5416 from--and it was from the lawsuit, so the question is
5417 pertinent--the agreements and transactions that resulted in
5418 the payments--so that is pertinent as well--the work of the
5419 government employees who took the payments and differing
5420 accounts of the payments.
5421 Our purposes for this oversight relates to the integrity
5422 of the Executive Branch and the regulatory decision-making
5423 concerning programs within the Department of Energy, the
5424 Department of Interior, and the Minerals Management Service
5425 about matters under the jurisdiction of the Committee on
5426 Resources.
5427 I want to make sure that our purpose is clearly
5428 understood, because the Chair rules that the question put to
5429 the witness can yield an answer that allows the Subcommittee
5430 to better understand the subject matter we are examining.
5431 Specifically, the answer to the question will reveal facts
5432 about the transactions and the true agreements related to the
5433 payments and their influence on the public domain oil royalty
5434 policy; facts about whether the operation of the departments

5435 and the Minerals Management Service was subject to influence
5436 by the 1996 agreement between POGO, Berman and Speir; facts
5437 about the operation of the departments and possible effect on
5438 royalty policy and rules recently promulgated; facts related
5439 to the formulation of agency responses to congressional
5440 proposals for new oil valuation systems such as the
5441 royalty-in-kind proposal considered by this Subcommittee;
5442 facts related to how the payments were able to be made and
5443 accepted by employees who worked in oil royalty policy areas,
5444 so that the Subcommittee can formulate legislation if need be
5445 to raise the standards to insure these type of payments and
5446 side agreements that bring windfalls to federal employees
5447 will never be allowed to happen again.
5448 The answer is necessary to understand the issues and
5449 subject matter of our hearing. The Chair therefore
5450 determines that the question relates to a constitutionally
5451 legitimate purpose. The Chair also determines that the
5452 question falls within the authority granted to Congress by
5453 the Constitution and by the House to the Committee and the
5454 Subcommittee. Our jurisdiction comes in part from Article
5455 IV, Section 3 of the US Constitution, which states that,
5456 quote: ''That Congress shall have power to dispose of and
5457 make all needful rules and regulations, respecting the
5458 territory or other property belonging to the United States.''
5459 Unquote.

5460 Article I of the Constitution, related to Legislative
5461 Branch power, also serves as a basis for our jurisdiction
5462 over the subject matter of this hearing. This jurisdiction
5463 has been delegated under House Rule X (1)(l)(11), (12), (17)
5464 and (19) to the Committee on Resources.
5465 Finally, our jurisdiction is additionally based on Rule X
5466 (2) of the House Rules, which confers general oversight
5467 authority and jurisdiction over the organization and
5468 operation of departments that administer programs under the
5469 jurisdiction of the Committee and Subcommittee. Clearly, oil
5470 royalties fall within the Subcommittee's jurisdiction, as do
5471 factors that influence oil royalty policy development and
5472 implementation within the department, which is clearly an
5473 aspect of the operation of the department.
5474 The question asked falls within the grant of my authority
5475 made by the Constitution to the Congress, then the Committee,
5476 and the Subcommittee by the House.
5477 The Chair informs the witness that the question meets the
5478 two requirements of pertinency. We have a constitutionally
5479 legitimate legislative purpose, and the question is within
5480 the grant of authority to the Subcommittee. Let me
5481 furthermore explain why the question is pertinent. Payments,
5482 let alone payments of the magnitude received to date by
5483 policy advisors in the departments, certainly can and likely
5484 will influence agency decisions. We heard testimony at our

5485 last hearing that the payments to Berman and Speir were
5486 agreed to in 1996 and that the operation of the department to
5487 develop the POGO/Brian lawsuit, which led to the payments to
5488 Mr. Berman and Mr. Speir. Rules and procedures must be in
5489 place to prevent the department and its resources from being
5490 used to help litigants learn how to frame competing lawsuits,
5491 develop their cases, and prosecute their claims, if that in
5492 fact is what was done.
5493 But to determine what was done, we must ask the question
5494 and have it answered, or you can be held in contempt. That
5495 is why this question and all the questions that relate to the
5496 subject of this inquiry are pertinent.
5497 Mr. Schaffer, would you please ask the question of the
5498 witness again.
5499 Mr. SCHAFFER. Thank you, Madam Chairman.
5500 Do you still admit to calling Mr. Johnson on September
5501 23rd, 1996?
5502 Ms. STOCKTON. Let me explain to you why my organization,
5503 in its entirety--
5504 Mr. SCHAFFER. Just a yes or no. Just a yes or no.
5505 Ms. STOCKTON. --if going to continue to assert our
5506 pertinence privilege, because, frankly, I would love to
5507 answer your questions--
5508 Mrs. CUBIN. Excuse me, Ms. Brian--
5509 Ms. STOCKTON. I would love to answer these questions

5510 because they--

5511 Mrs. CUBIN. The question put to you was whether or--

5512 Ms. STOCKTON. --deflect all of these silly conspiracies

5513 that you keep coming up with.

5514 Mrs. CUBIN. Again, I ask you to--

5515 Ms. STOCKTON. But let me tell you why I have to assert--

5516 Mrs. CUBIN. --you can be held in contempt if you do not.

5517 Ms. STOCKTON. You've asked me a question, Madam

5518 Chairwoman--

5519 Mrs. CUBIN. I warn the witness--

5520 Ms. STOCKTON. --and I'm answering why I'm not telling

5521 you--

5522 Mrs. CUBIN. --in the voice of the Supreme Court.

5523 Ms. STOCKTON. --the answer you want.

5524 Mrs. CUBIN. That an erroneous determination on her part

5525 that the question is not pertinent, even if made in the

5526 utmost good faith, does not exculpate her in the court if--

5527 Ms. STOCKTON. I can save you the time. I heard this

5528 before.

5529 Mrs. CUBIN. --if later ruled that the questions were

5530 pertinent to the question under inquiry. Would you please

5531 answer the question?

5532 Ms. STOCKTON. Let me explain why we are aggressively

5533 protecting--

5534 Mrs. CUBIN. Would you please restate the question, Mr.

5535 Schaffer?

5536 Mr. SCHAFFER. Thank you, Madam Chairman.

5537 Ms. STOCKTON. --our defense of pertinence, which is

5538 this--

5539 Mr. SCHAFFER. Ms. Brian, do--

5540 Ms. STOCKTON. --Subcommittee has asked us questions

5541 about our tax exempt status--

5542 Mr. SCHAFFER. --you still admit calling Mr. Johnson on

5543 September 23rd of 1996?

5544 Ms. STOCKTON. --and has asked for phone records for a

5545 year and a half period of my home and organization. It has

5546 asked for publications written by our board--

5547 Mrs. CUBIN. You're out of order, Ms. Brian.

5548 Mr. Schaffer, would you please ask the question?

5549 Mr. SCHAFFER. Ms. Brian, do you still admit to calling

5550 Mr. Johnson on September 23rd, 1996? Yes or no would be

5551 fine, would suffice.

5552 Ms. STOCKTON. If I could finish what I was trying to

5553 say. The reason we--

5554 Mrs. CUBIN. The witness will answer the question yes or

5555 no.

5556 Ms. STOCKTON. I will not answer the question because of

5557 my pertinence--

5558 Mrs. CUBIN. Again I ask the witness to answer the

5559 question, and again I warn the witness that you can be held

5560 in contempt if you do not. This is your last chance. Please
5561 answer the question.
5562 Ms. STOCKTON. I am going to have to assert our
5563 pertinence defense because this Subcommittee has abused its
5564 authority and jurisdiction dramatically, and we realize if we
5565 open any doors, they'll never end.
5566 Mrs. CUBIN. We don't need a reason. The Chair rules
5567 that the question is pertinent, and now I will poll the
5568 members. An aye vote determines whether the Committee agrees
5569 that the question is pertinent. Mr. Schaffer?
5570 Mr. SCHAFFER. I vote aye.
5571 Mrs. CUBIN. Mr. Brady?
5572 Mr. BRADY. Aye.
5573 Mrs. CUBIN. And the Chairman votes aye. No other
5574 members are present, so the vote is unanimous. The question
5575 is pertinent, and this is the last time I will ask the
5576 question, Ms. Brian. Would you restate the question one more
5577 time?
5578 Mr. SCHAFFER. Thank you, Madam Chairman.
5579 Ms. Brian, do you still admit to calling Mr. Johnson on
5580 September 23rd, 1996?
5581 Ms. STOCKTON. My objection remains.
5582 Mrs. CUBIN. Would you proceed, Mr. Schaffer?
5583 Mr. SCHAFFER. Your claim that you invited him to join
5584 your lawsuit is one that you have made before. Do you still

5585 maintain that you invited him to join your lawsuit?

5586 Ms. STOCKTON. Yet again, because this has nothing to do

5587 with our decision to share the proceeds from the Mobil

5588 settlement with Mr. Berman or Mr. Speir, I'm not going to

5589 answer any questions that have nothing to do with--

5590 Mr. SCHAFFER. Is there any evidence you can provide this

5591 Committee to corroborate your version of the story as you

5592 have previously testified under oath?

5593 Ms. STOCKTON. Which story?

5594 Mr. SCHAFFER. Your previous statement under oath that

5595 you called Mr. Johnson on September 23rd, 1996, and that you

5596 claimed that you had invited him to join your lawsuit?

5597 Ms. STOCKTON. As I've said, since that has nothing to do

5598 with Mr. Berman or Mr. Speir, I'm not answering it.

5599 Mrs. CUBIN. The Chair again rules that the question is

5600 pertinent for the same reasons that I've just outlined. I

5601 don't need to go through the script again. But do you

5602 understand why the--do you understand the ruling of the Chair

5603 or would you like me to go through this again?

5604 Ms. STOCKTON. No, I certainly understand.

5605 Mrs. CUBIN. So I must ask you to answer the question

5606 again, and Mr. Schaffer, will you please restate the

5607 question?

5608 Mr. SCHAFFER. Can you offer any evidence to the

5609 Subcommittee to corroborate your version of this phone call

5610 on September 23rd, and the claim that you made at that point
5611 in time that--or during your previously sworn testimony, that
5612 you invited Mr. Johnson to join your suit?
5613 Ms. STOCKTON. As I've said, and in fact, you have the
5614 transcripts of 14 hours of testimony that I have given. I am
5615 not afraid of answering these questions. It's simply that in
5616 this particular forum it's not relevant and not pertinent.
5617 Mr. SCHAFFER. Is it fair to say that you will not
5618 provide evidence to this Committee to corroborate your
5619 testimony?
5620 Ms. STOCKTON. Not to this Subcommittee I won't.
5621 Mrs. CUBIN. Again I ask the witness to answer the
5622 question, and warn the witness that you can be held in
5623 contempt if you do not.
5624 Ms. STOCKTON. My objection remains.
5625 Mrs. CUBIN. Once again I will poll the members as to
5626 whether or not the Committee determines that the question is
5627 pertinent. Mr. Schaffer?
5628 Mr. SCHAFFER. Aye, the information is pertinent.
5629 Mrs. CUBIN. Mr. Brady?
5630 Mr. BRADY. Aye.
5631 Mrs. CUBIN. And the Chair votes aye. The question is
5632 pertinent. I warn the witness in the words of the Supreme
5633 Court, that an erroneous determination on her part that the
5634 question is not pertinent, even if made in the utmost good

5635 faith, does not exculpate her, and if the court should later
5636 rule that the questions were pertinent to the question under
5637 inquiry. This is your last chance to answer the question,
5638 Ms. Brian.
5639 Ms. STOCKTON. I'm not answering it to the Subcommittee.
5640 Mrs. CUBIN. Mr. Schaffer, would you like to continue?
5641 Mr. SCHAFFER. Thank you, Madam Chairman.
5642 Ms. Brian, can you offer any evidence to this
5643 Subcommittee to corroborate your version of this phone call
5644 and the nature of it as you provided in your sworn testimony
5645 in September of last year?
5646 Ms. STOCKTON. Are we back to the Benjy Johnson phone
5647 call?
5648 Mr. SCHAFFER. Yes.
5649 Ms. STOCKTON. Well, I mean, you're wasting everyone's
5650 time, because I'm not going to talk about it.
5651 Mr. SCHAFFER. So the answer is no, you cannot provide
5652 evidence to the Committee?
5653 Ms. STOCKTON. The answer is I'm not talking about
5654 something that's not pertinent to your inquiry. You can skip
5655 down to the next set of questions. I'm just not going to do
5656 it.
5657 Mr. SCHAFFER. You're not going to do it? Very good,
5658 thank you.
5659 Last November, Henry Banta gave a deposition under oath

Exhibit V

STENOGRAPHIC MINUTES
Unrevised and Unedited
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OVERSIGHT HEARING TO EXAMINE THE LAWS, POLICIES, PRACTICES, AND OPERATIONS OF THE DEPARTMENT OF THE INTERIOR, DEPARTMENT OF ENERGY, AND OTHER AGENCIES PERTAINING TO PAYMENTS TO THEIR EMPLOYEES, INCLUDING PAYMENTS RELATIVE TO MINERAL ROYALTY PROGRAMS AND POLICIES FROM PUBLIC LANDS AND INDIAN LANDS

Thursday, May 18, 2000

House of Representatives,

Subcommittee on Energy and Mineral Resources,

Committee on Resources,

Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES

UNREVISED AND UNEDITED, NOT FOR QUOTATION
OR DUPLICATION IN ANY FORM
COMMITTEE ON RESOURCES

OFFICE OF THE CLERK
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6110 pertinent for us to ask questions about that agreement and
6111 how you arrived at it?
6112 Ms. STOCKTON. No, it is absolutely pertinent, obviously,
6113 about this agreement.
6114 Mr. BRADY. Good, good. Then let's do that.
6115 Ms. STOCKTON. About the agreement.
6116 Mr. BRADY. Let's do that.
6117 Ms. STOCKTON. Or any sharing with Berman and Speir.
6118 Mr. BRADY. The agreement dealt with the lawsuit that you
6119 filed. The question is: how did you develop the information
6120 for the lawsuit for the agreement which you now agree is
6121 pertinent.
6122 Ms. STOCKTON. The agreement is pertinent.
6123 Mr. BRADY. The question to you: did you have personal
6124 knowledge of the Johnson v. Shell qui tam lawsuit while it
6125 was under seal?
6126 Ms. STOCKTON. I can say that neither Mr. Berman nor Mr.
6127 Speir gave me any information about any lawsuit or to help me
6128 file any lawsuit.
6129 Mr. BRADY. Okay. The question is: did you have
6130 personal knowledge of the Johnson v. Shell qui tam lawsuit
6131 while it was under seal?
6132 Ms. STOCKTON. Well, to get my answer, which is under
6133 oath, you can refer to the testimony I've already given on
6134 the subject, but in this forum I cannot--

6135 Mr. BRADY. But for openness and honesty, is it--

6136 Ms. STOCKTON. No, I can't, because this Subcommittee--I
6137 have to protect my organization from this Subcommittee's
6138 insatiable desire to go into every corner of our--

6139 Mr. BRADY. Excuse me. I'm not asking for the whole
6140 organization. I'm asking you. Now that you have said it is
6141 pertinent about how you reached this agreement, let's start
6142 at the beginning. Did you have personal knowledge of the
6143 Johnson v. Shell qui tam lawsuit while it was under seal?
6144 Yes or no.

6145 Ms. STOCKTON. And my answer is, it is pertinent.

6146 Mr. BRADY. Thank you. So yes or no.

6147 Ms. STOCKTON. No. My answer is it is pertinent with
6148 regards to Mr. Berman and Mr. Speir, and neither of those
6149 gentlemen had anything to do with that lawsuit.

6150 Mr. BRADY. Actually, the question isn't about Mr. Berman
6151 and Mr. Speir; it is only about your personal knowledge.

6152 Ms. STOCKTON. But that's my point, because that is the
6153 only part that's pertinent, is with regards to our sharing
6154 money with Mr. Berman and Mr. Speir.

6155 Mr. BRADY. You said--you just testified you came up with
6156 one-third, one-third, one-third split on how to divvy up this
6157 lawsuit. So let's go back and ask you, since it was your
6158 idea and you initiated it. So, as the initiator, did you
6159 have personal knowledge of the Johnson v. Shell lawsuit

6160 under--while it was under seal? Simple yes or no.

6161 Ms. STOCKTON. The simple answer is you can find the

6162 answer to that in my transcript.

6163 Mr. BRADY. Is it yes or no?

6164 Ms. STOCKTON. And I'm not answering it in this forum.

6165 I've already answered it.

6166 Mr. BRADY. It is in your transcript.

6167 Ms. STOCKTON. Right.

6168 Mr. BRADY. So we must dig through it, but for the sake

6169 of--

6170 Ms. STOCKTON. Well, I'm sure Mr. Casey has the answers

6171 there already.

6172 Mr. BRADY. --timeliness, is the answer yes or no?

6173 Ms. STOCKTON. I have to protect our interest and

6174 preserve our defenses against this Subcommittee.

6175 Mrs. CUBIN. Ms. Brian, it is--it has already been ruled

6176 as pertinent. Pertinency is decided by the Committee, not

6177 the witness. That is the authority of the Committee to do

6178 that, and the Committee has determined that the question is

6179 pertinent. So--

6180 Ms. STOCKTON. But if you want the answer, you've already

6181 got it. You've got the answer in your--

6182 Mr. BRADY. For the sake of brevity, what is the answer?

6183 Mrs. CUBIN. Now, this--I mean this really is silly. You

6184 do realize that you can be held in contempt for not answering

6185 this question, and--

6186 Ms. STOCKTON. I'm not doing this lightly, Madam
6187 Chairman--I'm sorry--Madam Chairwoman, but the reality is,
6188 this Subcommittee has been so abusive in its treatment of us
6189 that we have to be very aggressive in protecting our rights.

6190 Mrs. CUBIN. Ms. Brian, that is irrelevant to the
6191 purposes of this hearing.

6192 Ms. STOCKTON. No, it's really not irrelevant.

6193 Mrs. CUBIN. So I will go through the script. We have to
6194 do this properly so that when contempt charges are--yes,
6195 please restore some time back on the clock for all this--so
6196 that when contempt charges are pursued, then we will have
6197 done it correctly. So forgive me--I guess you don't need to
6198 forgive me; you are requiring this.

6199 The Chair understands that the Witness Brian has entered
6200 an objection because she believes the answer to the question
6201 is not pertinent to the subject under inquiry. The Chair
6202 will address the issue and poll the members as to whether
6203 they believe the question is pertinent.

6204 The Chair announced in the opening statement that the
6205 purpose of this hearing--the Chair announced the purpose of
6206 this hearing, and has repeatedly reiterated why this
6207 Subcommittee has jurisdiction and authority. The Chair
6208 furthermore announced that we are examining one instance of
6209 where such payments were made to Mr. Berman and Mr. Speir by

6210 the Project on Government Oversight.

6211 We are examining where the money for the payments came
6212 from; the agreements and transactions that resulted in the
6213 payments; the work of the government employees who took the
6214 payments and differing accounts of the payments.

6215 Our purposes for this oversight relates to the integrity
6216 of the Executive Branch and the regulatory decision-making
6217 concerns within the Department of Energy, the Department of
6218 Interior, and the Minerals Management Service about matters
6219 under the jurisdiction of the Committee.

6220 I want to make sure that the purpose is clearly
6221 understood, because the Chair rules that the question put to
6222 the witness can yield an answer that allows the Subcommittee
6223 to better understand the subject matter we are examining.

6224 The answer is necessary to understand the issues and
6225 subject matter of our hearing. The Chair therefore
6226 determines that the question relates to a constitutionally
6227 legitimate purpose. The Chair also determines that the
6228 question falls within the authority granted to Congress by
6229 the Constitution and by the House to the Committee and
6230 Subcommittee. Our jurisdiction comes in part from Article
6231 IV, Section 3 of the US Constitution, which states, quote:
6232 ''That Congress shall have power to dispose of and make all
6233 needful rules and regulations, respecting the territory or
6234 other property belonging to the United States.'' Unquote.

6235 Article I of the Constitution, related to Legislative
6236 Branch power, also serves as a basis for our jurisdiction
6237 over the subject matter of this hearing. This jurisdiction
6238 has also been delegated under House Rule X (1)(1)(11), (12),
6239 (17) and (19) to the Committee on Resources.
6240 Finally, our jurisdiction is additionally based on Rule X
6241 (2) of the House Rules, which confers general oversight
6242 authority and jurisdiction over the organization and
6243 operation of the departments that administer programs under
6244 the jurisdiction of the Committee and Subcommittee. Clearly,
6245 oil royalties fall within the Subcommittee's jurisdiction, as
6246 do factors that influence oil royalty policy development and
6247 implementation within the department, which is clearly an
6248 aspect of the operation of the department.
6249 The question asked falls within the grant of authority
6250 made by the Constitution to the Congress, then the Committee,
6251 and the Subcommittee by the House.
6252 The Chair informs the witness that the question meets the
6253 two requirements of pertinency. We have the constitutionally
6254 legitimate legislative purpose, and the question is within
6255 the grant of authority to the Subcommittee. Let me further
6256 explain why the question is pertinent. Payments, let alone
6257 payments of the magnitude received to date by the policy
6258 advisors in the departments, certainly can and likely will
6259 influence agency decisions. We heard testimony in the last

6260 hearing that the payments to Berman and Speir were agreed to
6261 in 1996 and that the operation of the department was used to
6262 develop the POGO/Brian lawsuit, which led to the payments to
6263 Mr. Berman and Mr. Speir. It is pertinent because the funds
6264 that made the payments came from the Johnson v. Shell case,
6265 and the subject matter of the suit is in our jurisdiction.
6266 Rules and procedures must be in place to prevent the
6267 department and its resources from being used to help
6268 litigants learn how to frame competing lawsuits, develop
6269 their cases, and prosecute their claims, if fact that's what
6270 was done.
6271 But to determine what was done, we must ask the question
6272 and have it answered, or you can be held in contempt. This
6273 is why the question and all questions that relate to the
6274 subject of this inquiry are pertinent.
6275 Mr. Brady, would you please restate the question?
6276 Mr. BRADY. Yes. Do you have--Ms. Stockton, do you have
6277 any knowledge, personal knowledge or otherwise, of the
6278 Johnson v. Shell qui tam lawsuit while it was under seal?
6279 Ms. STOCKTON. My objection stands.
6280 Mrs. CUBIN. I again ask the witness to the--I again ask
6281 the witness to answer the question, and remind the witness
6282 that you can be held in contempt if you do not.
6283 Mr. Brady, would you state the question one more time?
6284 Mr. BRADY. Ms. Stockton, do you have any knowledge,

6285 personal knowledge or otherwise, of the Johnson v. Shell qui
6286 tam lawsuit--I have trouble pronouncing--while under--while
6287 it was under seal?
6288 Ms. STOCKTON. My objection stands.
6289 Mrs. CUBIN. I warn the witness in the words of the
6290 Supreme Court, that, quote, ''An erroneous determination on
6291 her part that the question is not pertinent, even if made in
6292 the utmost good faith, does not exculpate her if the court
6293 should later rule that the questions were pertinent to the
6294 question under the inquiry.'' Cite, Watkins v. United
6295 States. This is your last chance, Ms. Brian. Would you
6296 please answer the question?
6297 Ms. STOCKTON. My objection stands.
6298 Mrs. CUBIN. Would you proceed, Mr. Brady?
6299 Mr. BRADY. Yes. I will note that the witness did agree
6300 to answer this question by referring to other documents, and
6301 so it seems very hypocritical that she would not simply
6302 answer this question.
6303 Ms. STOCKTON. Can I ask what document you're referring
6304 to?
6305 Mr. BRADY. You referred to it. You said that you had
6306 provided the answer to the Committee in earlier testimony.
6307 Ms. STOCKTON. So?
6308 Mr. BRADY. Surely your memory is not that short.
6309 Ms. STOCKTON. I said I've never answered to the

Exhibit W

APPENDIX W

THE PROJECT ON GOVERNMENT OVERSIGHT

The Project on Government Oversight (POGO) is a private corporation organized as a nonprofit corporation in the District of Columbia and qualifying as an exempt organization under section 501(c)(3) of the Internal Revenue Code.

Evidence suggests that, between December 1993 and June 1994, the Project on Government Oversight developed and launched a campaign to (1.) draw public attention to problems in federal oil royalty programs; (2.) encourage the Department of the Interior to revise its approach to the valuation of oil for federal royalty purposes; and (3.) develop and file litigation designed to promote and complement these objectives and enrich the corporation and others.

In late November or early December 1996, POGO, acting through Board of Directors Chairman Henry M. Banta and Executive Director Danielle Brian, reached an agreement with Mr. Berman and Mr. Speir to divide and share POGO's expected oil litigation proceeds in equal thirds. This agreement and a decision to file such litigation was reported to the POGO Board of Directors on December 9, 1996. The initial payment under this pact was made by checks dated November 2, 1998.

The current membership of the corporate Board of Directors is not known because of POGO's refusal to comply with a subpoena for that information. The Chairman is believed to be David Hunter, Esq. of Takoma Park, Maryland. The Executive Director is believed to be Danielle Brian Stockton of Leesburg, Virginia. The corporate headquarters is located at 1900 L Street, N.W., Suite 314, Washington, D.C. 20036.

Subpoena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To Executive Director/ Custodian of Records, Project on Government Oversight

You are hereby commanded to produce the things identified on the attached schedule before the XXX Committee on Resources

of the House of Representatives of the United States, of which the Hon. Don Young XXX is chairman, by producing such things in Room 1334 of the Longworth Building XXX, in the city of Washington, on February 28, 2000, at the hour of 4:00 p.m. EST

To United States Marshals Service

to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 17 day of February, in 2000

Don Young
Chairman.

Attest:

Jeff Trandahl
Clerk.

Subpoena for Executive Director/Custodian of Records, Project on Government Oversight

1900 L Street N.W., Suite 314
Washington, D.C. 20036

before the Committee on the Resources

of the House of Representatives

Served 1ST ENDEAVOR, 1900 L ST, NW, @ 1630
2ND ENDEAVOR, 2/22/00, @ 1030 hrs

Danielle Brian, on 2/23/00, at 0930 hrs, by Michael C Jones, Deputy U.S. Marshal

House of Representatives

GPO: 1993 51-[illegible] (mac)

other machine-readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation and shall also include redacted and unredacted versions of the same record. The term includes records that are in your physical possession and records that were formally in your physical possession as well as records that are in storage;

- The terms "refer," "relate," and "concerning" mean anything that constitutes, contains, embodies, identifies, mentions, or deals with in any manner the matter under review.

Administrative Requirements

Together with your response to this subpoena:

- Specify as to each record provided which bullet number the record is responsive to.
- If materials have already been provided to the Committee pursuant to a previous subpoena, please provide a descriptive log of such materials rather than duplicate copies.
- Provide a log of each individual involved in deciding how to respond to this subpoena, in responding to this subpoena, or in searching for or gathering materials in response to this subpoena, with a brief description of what each individual did as part of the effort. The testimony of such individuals as to the completeness of searches and production may be sought later by the Committee.

Exhibit X

Project On Government Oversight Board
Meeting Minutes
September 9, 1999

The meeting was called to order at 4:00 PM.

Present were Board Members David Hunter, Anne Zill, Morton Mintz, Henry Banta, Jack Mitchell, Lisa Baumgartner; and Staff Danielle Brian, Keith Rutter, Beth Daley, Nicole Harkin, Danielle Downing, and Marcus Corbin.

REDACTED BASED UPON LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

Mr. Hunter made a motion that the Board reconfirm its earlier conference call sense of the Board that no more cash awards for anybody outside of POGO would be considered until the Department of Justice's concerns had been fully addressed. Mr. Mitchell seconded the motion, and it passed unanimously except for Mr. Banta, who was recused.

REDACTED BASED UPON LACK OF PERTINENCY

Exhibit Y

DON YOUNG, CHAIRMAN

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

June 13, 2000

BY FACSIMILE

Stanley M. Brand, Esq.
Brand & Frulla
923 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Brand:

On Monday, May 22, 2000, you produced excerpts from minutes taken at POGO Board of Directors meetings on January 5, 1995; February 17, 1998; April 26, 1998; and September 9, 1999. A number of questions are raised by this late production.

These records should have been produced under Committee subpoenas addressed to various persons represented by your firm on several dates. Your letter of May 22, 2000 does not indicate which of your clients is producing the excerpts or the subpoena(s) to which they respond. Please indicate to the Committee which of your clients is providing these records and which subpoena they are intended to satisfy.

Your May 22 letter also fails to explain to the Committee how records directly relating to POGO's oil royalty litigation and payments to two federal employees were omitted from prior production and from Mr. Banta's log of withheld documents. This is disturbing. As I decide what action to recommend to the Committee on Resources, I will consider whatever explanation you can offer.

Redacting records required to be produced under Committee subpoenas is contrary to the requirements of those subpoenas. The redactions made to the January 5, 1995 excerpt is especially disturbing. That excerpt begins with this sentence: "Mr. Banta stated that in the past the Lobel firm handled a case concerning this issue and that it is about to begin work in a related matter." (Emphasis added.) But the Committee is left to guess the identity of "this issue." Indeed, the excerpt produced has no verifiable meaning. Please correct this error.

Please correct these errors and oversights before 4:00 PM on Tuesday, June 20, 2000.

A more troubling question is raised by the late production of these Board meeting minutes excerpts. You have repeatedly assured this Committee that all records answering subpoenas, except for the February 17, 2000 subpoena, have been produced. You provided an explicit assurance that all relevant Board meeting minutes have been produced. Now, without explanation, four more minutes excerpts are produced.

Your client, Danielle Brian, has testified under oath about telephone calls she placed to J. Benjamin Johnson, Jr. which related to Robert A. Berman and to the litigation from which Mr. Berman and Mr. Speir were paid. On May 18, Ms. Brian did not deny that the telephone conversation described by Mr. Johnson's May 4, 2000 testimony took place as described by Mr. Johnson. Yet, you continue to refuse production of records related to that call.

Your clients have volunteered information about or provided sworn answers to questions from the Subcommittee on Energy and Mineral Resources about:

> the rationale for, preparation of, and conduct of POGO's oil royalty litigation efforts;
>
> on the purpose of and mechanics of POGO's effort to recruit Mr. Berman and Mr. Speir to join that litigation;
>
> on the purpose of and mechanics of POGO's agreement to share litigation proceeds with those two federal workers;
>
> on the steps taken to discuss with or notify the United States Department of Justice, Charlers Tiefer, Esq., Gail Harmon, Esq., Raffa Associates, and Lon Packard, Esq. in a non-privileged context about these payments;
>
> the recusal of certain POGO Board members from some or all discussions, deliberations, or actions on the above matters;
>
> and POGO Board of Directors knowledge of, discussions, deliberations, and actions on the above matters.

At this late date, there can be no doubt that the Committee on Resources considers those subjects to be relevant and necessary to the oversight review at hand. Your clients have the

benefit of many clear statements of the areas under review, of rulings made by Chairman Cubin, and of votes by the Subcommittee to establish "pertinency." The information provided by employees and Directors of POGO and its' partners in the litigation, Mr. Brock, Mr. Berman, and Mr. Speir concede the legitimacy of including these subjects in this oversight review.

Thus, I will allow your clients until 4:00 PM EDT on Tuesday, June 20, 2000 to supplement or complete production of records under each subpoena duces tecum issued by this Committee to them, including those issued to members of the Board of Directors, and to produce records required by the February 17, 2000 subpoena under the accommodations offered by me and rejected by your clients, Danielle Brian and POGO.

If your clients choose not to use this grace period to produce full and complete copies of all records required by Committee subpoenas and to produce a complete and accurate log of withheld records and claimed privileges, the Committee will take steps to compel production.

Sincerely,

DON YOUNG
Chairman

CC: Honorable George Miller

BRAND & FRULLA
A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

June 20, 2000

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Project on Government Oversight Subpoena

Dear Mr. Chairman:

This correspondence responds to your letter of June 13, 2000 in which you posed a number of questions concerning POGO's May 22, 2000 document production. As we explained in our May 22 letter, the POGO Board of Director Minutes were produced by the witnesses simply to augment answers provided to certain questions posed by Sub-Committee members at the hearing.

In regards to the January 5, 1995 Board of Directors Minutes, we have redacted the portions of the minutes not pertinent to your investigation. We can, however, inform you that "this issue" refers to oil royalties.

Finally, your counsel, Thomas Casey, informed Andrew Herman that he would allow us an additional twenty-four hours with which to provide any additional pertinent materials to the Committee. We are, however, in the midst of completing an additional

BRAND & FRULLA

The Honorable Don Young
June 20, 2000
Page 2

search of materials and will submit those to you tomorrow.

Sincerely,

Stan Brand

Stanley M. Brand
Ross. A. Nabatoff
Andrew D. Herman

Counsel to Project on Government Oversight

SMB:mob

cc: Elizabeth Megginson, Esq.
Chief Counsel

Duane Gibson, Esq.
General Counsel

Jeffrey Petrich, Esq.

Exhibit Z

1 Miller Reporting Co., Inc.

2 EXECUTIVE SESSION

3 INVESTIGATIVE HEARING TO EXAMINE LAWS, PRACTICES, AND

4 OPERATIONS OF THE DEPARTMENT OF THE INTERIOR (DOI) AND

5 DEPARTMENT OF ENERGY (DOE) RELATED TO PAYMENTS TO THEIR

6 EMPLOYEES, INCLUDING FEDERAL PUBLIC LAND OIL ROYALTY AND

7 VALUATION POLICY ADVISORS, FROM OUTSIDE SOURCES, INCLUDING

8 THE PROJECT ON GOVERNMENT OVERSIGHT; AND TO EXAMINE (A) THE

9 SOURCE OF FUNDS FOR SUCH PAYMENTS, (B) THE RELATIONSHIP

10 BETWEEN THOSE MANAGING AND OVERSEEING THE ORGANIZATION THAT

11 MADE THE PAYMENTS AND THE INDIVIDUALS WHO RECEIVED THE

12 PAYMENTS, (C) THE EFFECT OF THE PAYMENTS ON PROGRAMS,

13 POLICIES, AND POSITIONS OF SUCH DEPARTMENTS

14 Tuesday, July 11, 2000

15 House of Representatives,

16 Subcommittee on Energy and Mineral Resources,

17 Committee on Resources,

18 Washington, D.C.

19 The subcommittee proceeded in Executive Session at 11:55

20 a.m., in Room 1324, Longworth House Office Building, Hon.

UNREVISED AND UNEDITED, NOT FOR QUOTATION
OR DUPLICATION IN ANY FORM
COMMITTEE ON RESOURCES

21 Barbara Cubin [chairman of the subcommittee] presiding.

247 Mrs. CUBIN. Does anyone on the minority side have any
248 questions? Mr. Inslee?
249 Mr. INSLEE. This pertains to your basis, Mr. Berman, of
250 not answering questions, and I think it is appropriate for
251 you to make clear the basis of your refusal to answer
252 questions. As I understand, I have read and listened to your
253 comments or your statement, you have given us several reasons
254 you are not answering questions. But do I understand
255 correctly that one of the bases for your refusal to answer
256 questions is your current refusal to waive your rights
257 against self-incrimination? Is that accurate?
258 Mr. BERMAN. Mr. Inslee, I am not asserting that right at
259 this time, but I am not waiving it either.
260 Mr. INSLEE. Thank you.
261 Mrs. CUBIN. Mr. Berman--oh, Mr. Faleomavaega?
262 Mr. FALEOMAVAEGA. Thank you, Madam Chairman.
263 If I might ask Mr. Berman, are you currently represented
264 by counsel of the Oblon, Spivak, McClelland, Maier & Neustadt
265 law firm?
266 Mr. BERMAN. Yes.
267 Mr. FALEOMAVAEGA. And is the gentleman sitting next to
268 you a member of that law firm, advising you accordingly?
269 Mr. BERMAN. Yes, sir, he is.
270 Mr. FALEOMAVAEGA. And I wanted to follow up on Mr.
271 Inslee's question. Again, we just want to be certain for the

272 record that your refusal to respond to any of the questions
273 by the Madam Chairman and other members of the committee is
274 simply because you feel that your rights have been violated
275 because of the hearings that were held previous to today's
276 hearing.
277 Mr. BERMAN. That is correct.
278 Mr. FALEOMAVAEGA. And that because these rights have not
279 been corrected, at least for the record, for the purpose of
280 our hearing this afternoon, you will refuse, continue to
281 refuse to answer any questions unless some of the concerns
282 that you expressed earlier are corrected for the record.
283 Mr. BERMAN. That is correct, sir.
284 Mr. FALEOMAVAEGA. Thank you.
285 Madam Chairman, thank you.
286 Mr. BRADY. Madam Chairman?
287 Mrs. CUBIN. Mr. Brady?
288 Mr. BRADY. If I may, for the record, so that we
289 understand this, Mr. Berman's rights have been completely
290 preserved, and this committee has gone out of its way to make
291 sure that he can exercise all of them, to the point that he
292 has exercised his right against self-incrimination 200 times
293 to hide the truth about his actions in this case, but he
294 wants us to give up our rights to pursue the truth, to open
295 them up to the American public.
296 That is, those are the facts and the basis for this

Exhibit AA

Project On Government Oversight

Minutes of the Board Meeting
October 27, 1998

REDACTED BASED UPON
ATTORNEY CLIENT PRIVILEGE

Ms. Brian then briefed the Board concerning the Mobil settlement. Mobil settled its case and POGO received just under $1.2 million. Ms. Brian noted that the Navaho Nation's share was $5 million. POGO will be awarding money to two whistleblowers who have worked on this issue for over ten years. The staff consulted with our accountants and a nonprofit/tax attorney recommended by Mr. Hunter to make sure we were following proper procedure. The staff also consulted with a Constitutional attorney. The lawyers and our accountant agreed that we send a letter stating that it was an award for public service and that we would send them the appropriate tax form at the end of the year.

Ms. Brian then asked if the Board thought she should put out a press release. The Board did not come to an agreement on this issue.

Mr. Rutter then briefed the Board on what POGO has done with the settlement money. On September 2, 1998, $1,143,359.60 from the Mobil Settlement was wired into POGO's Money Market Account. On September 11, 1998, POGO added money from our general operating funds to bring the amount up to $1,200,000. This money was put into a 30 day CD. On October 14, 1998, $1,205,630.00 was the value of the CD which included $5,630 in interest. This money was put back into POGO's Money Market

Account. On November 2, 1998, approximately $768,600 will be awarded to two whistleblowers. Therefore, in approximately the next week the staff will be giving each one a check for approximately $380,000.00.

Ms. Brian then described that POGO's status as a future relator was up in the air. Ms. Brian then updated the Board on the oil litigation. This Friday, October 30th there will be a very important hearing in Texas to decide finally on the issue of standing in the case. The Judge will probably take about two weeks to decide the fate of the relators. There is the multi-relator agreement, there is also the possibility that all the relators could be dismissed. On the other hand, apparently there are four companies that are currently in serious settlement discussions. Of course discussions could fall through or take several months.

The Board briefly discussed investing the money from the settlement. It was recommended that the staff contact Mr. Cavallo to see if he had any suggestions to invest the money. It was also suggested that the approximately $380,000 remaining with POGO be kept separate from POGO's operating money. The Board agreed that the staff can invest the money as they see fit. Mr. Rutter stated that besides contacting Mr. Cavallo, he would also keep Ms. Rasor up to date with the staff decisions.

Mr. Hunter recommended that the Board table the discussion of what to do with the settlement money until POGO hears more information about future settlements. However, Mr. Hunter made a motion that the $380,000 in settlement money be set aside as a contingency fund. He recommended talking to the accountants to remove this money from the organization's general operating funds. Mr. Burnham seconded the motion. The Board voted unanimously to agree.

REDACTED BASED UPON ATTORNEY CLIENT PRIVILEGE

REDACTED BASED UPON
LACK OF PERTINENCY

**REDACTED BASED UPON
LACK OF PERTINENCY**

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

Exhibit BB

Project On Government Oversight

Minutes of the Board Meeting
October 27, 1998

REDACTED BASED UPON LACK OF PERTINENCY

Ms. Brian then briefed the Board concerning the Mobil settlement. Mobil settled its case and POGO received just under $1.2 million. Ms. Brian noted that the Navaho Nation's share was $5 million. POGO will be awarding money to two whistleblowers who have worked on this issue for over ten years. The staff consulted with our accountants and a nonprofit/tax attorney recommended by Mr. Hunter to make sure we were following proper procedure. The staff also consulted with a Constitutional attorney. The lawyers and our accountant agreed that we send a letter stating that it was an award for public service and that we would send them the appropriate tax form at the end of the year.

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The Board briefly discussed investing the money from the settlement. It was recommended that the staff contact Mr. Cavallo to see if he had any suggestions to invest the money. It was also suggested that the approximately $380,000 remaining with POGO be kept separate from POGO's operating money. The Board agreed that the staff can invest the money as they see fit. Mr. Rutter stated that besides contacting Mr. Cavallo, he would also keep Ms. Rasor up to date with the staff decisions.

Mr. Hunter recommended that the Board table the discussion of what to do with the settlement money until POGO hears more information about future settlements. However, Mr. Hunter made a motion that the $380,000 in settlement money be set aside as a contingency fund. He recommended talking to the accountants to remove this money from the organization's general operating funds. Mr. Burnham seconded the motion. The Board voted unanimously to agree.

REDACTED BASED UPON LACK OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

The Board then wanted to recognize that Ms. Brian turned over the $10,000 dollars to POGO that she received from Mobil. Ms. Brian stated that she, like the organization, did not get involved in the law suit against the oil companies for the money, but rather for the principle to benefit the public interest. The Board again thanked Ms. Brian and the staff for all their efforts on this project.

REDACTED BASED UPON LACK
OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

REDACTED BASED UPON LACK
OF PERTINENCY

Exhibit CC

BRAND & FRULLA
A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

March 9, 2000

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: **Project on Government Oversight Subpoena**

Dear Mr. Chairman:

Enclosed please find the privilege log detailing documents withheld from production under the Committee's subpoena because of pertinency, attorney-client privilege, attorney work product, or the confidentiality provision of 29 U.S.C. § 1733. We are also producing two additional letters relating to the federal court litigation that we discovered in the course of compiling the privilege log.

Finally, please note that we have already produced all pertinent, responsive POGO Board minutes in redacted form and, thus, have not provided any additional minutes.

Sincerely,

Stan Brand

Stanley M. Brand
Ross. A. Nabatoff
Andrew D. Herman

Counsel to Project on Government Oversight

SMB:mob
Enclosure

cc: Elizabeth Megginson, Esq.
Chief Counsel

Duane Gibson, Esq.
General Counsel

Jeffrey Petrich, Esq.

LOG OF WITHHELD DOCUMENTS

Legend

Attorney-Client Privilege - ACP
Attorney-Work Product - AWP

	Description	Date	Reason for Withholding
1.	Hank Banta's notes re: Johnson v. Shell Oil litigation (two copies)	Undated	AWP
	Memo from Lee Helfrich, Esq. to Jim Trout re: oil teleconference	7/19/95	ACP
	Memo from Lee Helfrich, Esq. to Rick Chivaro re: Mobil settlement	4/10/98	ACP
	Draft letter from Lee Helfrich, Esq. to client re: potential conflict of interest	Undated	ACP
	Memo from L. Helfrich, Esq. to Rick Chivaro re: settlement	4/30/98	ACP
	Memo from L. Helfrich, Esq. to Rick Chivaro re: intervention in False Claims Act litigation	5/21/98	ACP
	Memo from L. Helfrich, Esq. to Rick Chivaro re: Mobil settlement, legislation	6/1/98	ACP
	Memo from L. Helfrich, Esq. to Rick Chivaro re: Mobil settlement	8/20/98	ACP, 29 U.S.C. § 1733
	Memo from L. Helfrich, Esq. to Rick Chivaro re: meeting with MMS	Undated	ACP, AWP
	Draft letter from Stanley M. Brand, Esq. to the Honorable Don Young sent via facsimile from Danielle Brian to Hank Banta, Esq.	5/28/99	ACP, AWP
11.	Letter from Hank Banta, Esq. to Robert Spier re: representation	11/21/97	ACP, Pertinency
12.	Contingent fee agreement between Robert Spier and Lobel, Novins & Lamont	12/10/97	ACP, Pertinency

	Description	Date	Reason for Withholding
	Draft complaint (two copies)	Undated	ACP, AWP, Pertinency
	Draft complaint	Undated	ACP, AWP, Pertinency
15.	Letter from Kenneth R. Vogel, Chief, Office of Enforcement, Department of the Interior to Lee Helfrich, Esq. re: Mobil settlement	3/3/93	29 U.S.C. § 1733
16.	Memorandum re: Mobil settlement	Undated	ACP, 29 U.S.C. § 1733
17.	Facsimile from Lee Helfrich, Esq. to Kenneth R. Vogel re: Mobil settlement	3/17/98	ACP, 29 U.S.C. § 1733
	Memorandum from Lee Helfrich, Esq. and Hank Banta, Esq. to Rich Chivaro re: Mobil settlement	3/24/98	ACP, AWP
19.	Memorandum from Lee Helfrich, Esq. to Kenneth Vogel re: Mobil settlement	3/20/98	ACP, AWP
20.	Draft letter from Lee Helfrich, Esq. to Kenneth Vogel re: Mobil settlement	3/27/98	ACP, AWP
21.	Memorandum re: Mobil settlement	3/26/98	ACP, AWP
22.	Draft memorandum re: Texaco settlement	Undated	29 U.S.C. § 1733
23.	Facsimile cover sheet with comments from Kenneth Vogel to Bob Fees re: Mobil settlement	7/7/98	29 U.S.C. § 1733

	Description	Date	Reason for Withholding
24.	Memorandum re: Mobil settlement	Undated	29 U.S.C. § 1733
25.	Letter from Kenneth Vogel to Lee Helfrich, Esq. re: Mobil settlement	4/6/98	29 U.S.C. § 1733
26.	Letter from Danielle Brian to Hank Banta, Esq. re: POGO interests	12/16/96	Pertinency
27.	POGO Board memorandum	2/14/96	Pertinency
28.	Letter from Danielle Brian to Hank Banta, Esq. re: oil royalty report	8/7/96	Pertinency
29.	Letter from Danielle Brian to POGO Board members re: finances	11/18/96	Pertinency
30.	Letter from Danielle Brian to POGO Board members re: finances	10/21/96	Pertinency
31.	Letter from Danielle Brian to POGO Board members re: finances	11/1/96	Pertinency
32.	POGO Board memorandum re: change of banks (2 copies)	9/28/93	Pertinency
33.	Letter from Danielle Brian to POGO Board re: issues for Board meeting	11/30/94	Pertinency
34.	Report Announcement re: accounts	5/94	Pertinency
35.	POGO Board memorandum from Danielle Brian to POGO Board re: various issues	4/22/97	Pertinency
36.	Danielle Brian to POGO Board re: various issues	12/19/95	Pertinency
37.	Draft memorandum from Danielle Brian to POGO Board re: change of banks	9/28/93	Pertinency
38.	Memorandum from Danielle Brian to POGO Board re: 1995 audit	4/2/96	Pertinency
39.	Letter from Jonathan Turley to Danielle Brian re: Groom Lake	1/24/94	Pertinency

	Description	Date	Reason for Withholding
40.	Letter from Danielle Brian to Hank Banta, Esq. re: oil royalty	4/15/94	Pertinency
41.	Danielle Brian to POGO Board memorandum re: Board meeting	3/4/94	Pertinency
42.	Letter from Danielle Brian to POGO Board re: fundraiser	5/30/95	Pertinency
43.	Letter from Danielle Brian to POGO Board re: line of credit	10/21/96	Pertinency
44.	Memorandum from Danielle Brian to POGO Board re: Board meeting	3/30/00	Pertinency
45.	POGO memorandum re: strategic review	4/15/97	Pertinency
46.	Memorandum from Robert Speir to D. Hubbard re: California crude oil valuation	7/13/94	Pertinency
47.	Draft letter from Lee Helfrich, Esq. to Lucy Oueques re: Clevron settlement	Undated	Pertinency
48.	Draft memorandum from Lee Helfrich, Esq. to Jim Trout re: DOI and task force meeting on July 12	Undated	Pertinency
49.	Draft memorandum from Lee Helfrich, Esq. to Jim Trout re: DOI and task force meeting on July 12th	7/13/95	Pertinency
50.	Hank Banta, Esq. to Jim Trout re: California valuation	6/22/95	Pertinency
51.	Hank Banta, Esq. memorandum re: qui tam litigation	undated	AWP
	Memorandum from B. McMahon re: Mobil Oil settlement (2 copies)	6/2/98	ACP
	Hank Banta, Esq. deposition	9/16/99	Sealed by Court Order
	POGO's objections to G. Harmon's subpoena duces tecum (4 copies)	11/12/99	Sealed by Court Order

Description	Date	Reason for Withholding
Reply of Benji Johnson to POGO opposition to motion for order voiding MRCA (2 copies)	11/10/99	Sealed by Court Order
POGO's objections to subpoena duces tecum for Hank Banta, Esq. and D. Hunter (3 copies)	11/11/99	Sealed by Court Order
Memorandum to J. Wagstaffe from D. Packard re: document	11/15/99	Sealed by Court Order
Draft response of POGO re: motion of deposition of Hank Banta, Esq. and subpoena for production of document	11/10/99	ACP, AWP
Motion for order voiding MRCA	10/6/99	Sealed by Court Order
Opposition to Motion for order voiding MRCA	10/20/99	Sealed by Court Order

Exhibit DD

BRAND & FRULLA
A PROFESSIONAL CORPORATION
923 FIFTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

TELEPHONE: (202) 662-9700
TELECOPIER: (202) 737-7565

February 28, 2000

HAND DELIVERED

The Honorable Don Young
Chairman
U.S. House of Representatives
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Project on Government Oversight—February 17, 2000 Subpoena

Dear Mr. Chairman:

We are writing on behalf of our client the Project on Government Oversight ("POGO"), as well as Ms. Danielle Brian and Mr. Henry Banta in connection with the subpoenas issued by the Committee on Resources on February 17, 2000. While we have furnished a number of documents in response, we must also apprise you of the legal obstacles that prevent our clients from furnishing a portion of the documents covered by the subpoenas.

As an initial matter, the breadth of the subpoenas indicates that the range of your investigation is not -- as you have previously stated -- confined to POGO's interaction with Mr. Berman and Mr. Speir, but is instead, directed toward POGO's activities in general. For example, Mr. Banta is required to provide all records that "were created by, were directed to, relate to or mention any communication between you and . . . Danielle Brian Stockton." It is hard to imagine how all such documents (Mr. Banta has served as a POGO board member since 1991 and Ms. Brian has been Executive Director since 1993) could be relevant to your investigation. Even more troubling is that POGO and Ms. Brian are directed to provide all "[l]ocal and long distance telephone records including but not limited to bills, call logs, call sheets, message records, and answering machine and/or voice mail recordings from the period of February 1, 1996 through June 30, 1997." Again, such a broad and undifferentiated request reveals that

the scope of these subpoenas far exceeds the subject matter of the Committee's investigation.

Moreover, the nature of disparaging public comments about POGO made by both you and Barbara Cubin, a Republican member of the Committee, render POGO's First Amendment claims against retaliation and harassment by the government for its activities especially persuasive. In testimony before the House Rules Committee Subcommittee on Rules and Organization in July of last year, you described POGO as a "so-called watchdog group" and stated that, "I had never heard of such a thing before – an outside group with an agenda paid government employees a third of a million dollars each because they worked to further their agenda." Echoing your comments, Congresswoman Cubin displayed a similar bias against POGO in an October 4, 1999 letter: "A so called 'government watchdog' group . . . has been caught red-handed paying two high-level federal government employees . . . for their assistance in helping this group sue several oil companies under the Federal False Claims Act." Your obvious hostility and animus toward POGO directly implicates the First Amendment's protection for unpopular or disfavored speech by groups not aligned with the government or critical of its activities.

In response to these new subpoenas, POGO and Ms. Brian have not provided any documents. As we noted in our November 3, 1999 letter to you, POGO and Ms. Brian have already complied in a timely manner with the June 18, 1999 subpoenas for documents from your Committee. On August 2, 1999, POGO responded to the 14 requests in that subpoena by producing -- among other records -- memoranda, minutes of board meetings, and POGO's 1996, 1997, and 1998 tax returns. As the pertinent requests in the new subpoenas essentially duplicate your earlier requests, all pertinent documents have been produced. Accordingly, POGO and Ms. Brian can provide the Committee with no new pertinent documents.

Despite the unduly broad language of Mr. Banta's subpoena, Mr. Banta has provided, for the most part, the documents that you have requested.

In regards to all three subpoenas, however, some documents have been withheld. We have done so because:

(1) certain requested documents are not pertinent to the Committee's investigation;
(2) compelling production of certain documents would violate POGO's right to association under the First Amendment;
(3) certain requested documents are confidential under 29 U.S.C. § 1733(a); or,
(4) certain requested documents are protected by the attorney-client privilege.

I. Pertinency

As you know, a witness before a congressional committee is entitled to a showing that the documents and testimony sought is "pertinent" to the subject under inquiry. *See* 2 U.S.C. § 192. The Committee has the burden of demonstrating such pertinency with the degree "of explicitness and clarity that the Due Process Clause requires." *Watkins v. United States*, 354 U.S. 178, 209 (1957).

Moreover, as you are also undoubtedly aware, in reviewing the powers of Congress to issue and enforce subpoenas, the courts have applied "the exacting standards of criminal jurisprudence . . . in order to assure that the congressional investigative power . . . [is] not . . . abused." *Gojack v. United States*, 384 U.S. 702, 707 (1966). In addition, Congress has "no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress." *Watkins*, 354 U.S. at 187.

The subpoenas issued by your Committee seek information that is not pertinent to your investigation. The "obvious first step in determining whether these questions asked were pertinent . . . is to ascertain what the subject was." *Russell v. United States*, 369 U.S. 749, 758-59 (1962). As the Supreme Court observed, "[t]o be meaningful, the [committee] . . . must describe . . . the connective reasoning whereby the precise" demands made of a witness relate to the areas under investigation. *Watkins*, 354 U.S. at 215.

In your June 11, 1999 letter to me, you stated that, "the review involves an evaluation of the policies and practices of the Department of the Interior and the Department of Energy concerning payments to employees or former employees from sources outside of their department." The Supreme Court has held that:

> There are several sources that can outline the "question under inquiry" in such a way that the rules against vagueness are satisfied. The authorizing resolution, **the remarks of the chairman** or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic clear.

See Watkins, 354 U.S. at 209 (emphasis added). As this statement constitutes the **only** explication of the subject and scope of the Committee's investigation, we are entitled to rely upon your explanation for guidance. Thus, by your own words, any request for documents unrelated to POGO's interaction with Mr. Berman and Mr. Speir must be deemed not pertinent to your investigation.

A number of the requests contained in your subpoenas do not survive a reasoned pertinency analysis. We do not understand, for example, how a request from POGO for all "[l]ocal and long distance telephone records including but not limited to bills, call logs, call sheets, message records, and answering machine and/or voice mail recordings from the period of February 1, 1996 through June 30, 1997" is pertinent. Similarly, your subpoena to Mr. Banta requests all records that "were created by, were directed to, relate to or mention any communications between you and . . . Danielle Brian Stockton . . . ." Again, such an unfocused and wide-ranging request exceeds the pertinency bounds set forth in *Watkins.*

Accordingly, to the extent that POGO possesses documents requested under numbers 1, 2, 3, and 5 of its subpoena, it withholds them because they are not pertinent to the Committee's investigation. Similarly, Ms. Brian also withholds documents requested under numbers 1, 2, 3, and 4 of her subpoena. Finally, Mr. Banta has withheld some documents requested under number 1 of his subpoena. In the next few days, we will provide you with a log listing the documents that have been withheld because they are not pertinent to the Committee's investigation.

2. Right of Association

Moreover, to the extent that the subpoenas request information that would force POGO, Ms. Brian, or Mr. Banta to disclose the identity of individuals who have provided the organization with "whistleblower" information or who provide support to the organization, the subpoenas violate POGO's First Amendment right of association.

Founder in 1981, POGO is a 501(c) organization dedicated to investigating, exposing, and remedying government waste and fraud. It has a record of having uncovered, or having assisted in uncovering, fraud in government procurement programs, including defense systems, consumer protection, and nuclear waste. At times, these activities have brought POGO into sharp dispute with government agencies over government procurement and management policies.

In general, Congress may not compel those engaged in associational activity protected by the First Amendment to produce their records, or provide any other information, about that activity. Instead, the Supreme Court has held that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64 (1976). Thus, in a legislative inquiry, "before proceeding in such a manner as will substantially intrude upon and severely curtail or inhibit constitutionally protected activities or seriously interfere with similarly protected associational rights," the Committee must establish a "foundation" based on "fact and reason" that demonstrates the necessity of disclosure

for a "compelling" public interest. *Gibson v. Florida Legis. Invest. Comm'n*, 372 U.S. 539, 557 & n.7 (1963).

The Supreme Court has emphasized that, "It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as . . . freedom of political association." *Sweezy v. New Hampshire*, 354 U.S. 234, 245 (1957).

Thus, it is "beyond debate" that the First Amendment protects lawful associational activity as well as individual activity. *NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958). "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," *Buckley*, 424 U.S. at 15 (*quoting NAACP*, 357 U.S. at 460), and the First Amendment protects the amplified voice of the association, *Buckley*, 424 U.S. at 22. For the purpose of associational rights, "it is immaterial whether the beliefs sought to be advanced by [the] association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the **closest scrutiny**." *NAACP*, 357 U.S. at 460-61 (emphasis added).

Courts applying this high degree of scrutiny have consistently held that "absent a compelling government interest, an organization [can] not constitutionally be compelled to identify the names of its members, agents, contributors, or recipients of contributions if it could be demonstrated that such disclosure would subject those identified to harassment or retaliation by virtue of their association." *United States v. Garde*, 673 F. Supp. 604, 606 (D.D.C. 1987) (*citing NAACP v. Alabama*, 357 U.S. 449 (1958) & *NAACP v. Button*, 371 U.S. 415 (1963)). In *Garde*, the court rejected the government's petition to enforce a Nuclear Regulatory Commission subpoena seeking to compel disclosure of a nonprofit organization's "whistleblower" information. *Id.* The court concluded that, "[t]he First Amendment bars this infringement on constitutionally protected rights unless the government can show a compelling interest that cannot be served by alternative means." *Id.* at 607.

POGO's government watchdog role makes it particularly vulnerable to governmental perusal of its sources of information, subscribers, and inner workings. Accordingly, the First Amendment safeguards POGO from such intrusion. This vital protection "reflects our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Buckley*, 424 U.S. at 14 (*quoting New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). That shield encompasses all aspects and stages of the "debate," from the "'abstract discussion' . . . of political policy generally [to] advocacy of the passage or defeat of legislation," to "the right to engage in 'vigorous advocacy.'" *Buckley*, 424 U.S. at 48 (*quoting New York Times Co.*, 376 U.S. at 269. In short, all political activities, especially the type of role --

often disfavored by the government -- assumed by POGO, "lie at the very core of the First Amendment." *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 97 (1982).

Here, the public statements by Committee members evincing hostility to POGO and animus toward its activities make this government intrusion *via* subpoena extremely troublesome. Absent a compelling and clearly articulated governmental justification, the protection afforded to POGO by the First Amendment bars precisely this type of intrusion into unpopular activities. Clearly, the Committee has proffered no such rationale in this matter.

In sum, the subpoenas issued to POGO, Ms. Brian, and Mr. Banta by your Committee implicate First Amendment protection without demonstrating any compelling interest. By requesting a wide range of telephone records and related information, the subpoenas would force POGO to reveal protected information relating to individuals who have provided POGO with information or other assistance. Considering the narrow range of the investigation that you have previously outlined, we do not believe that the Committee has demonstrated any "compelling interest" in such ancillary information.

Pursuant to rights under the First Amendment, POGO, Ms. Brian, and Mr. Banta withhold all records requested by the subpoena that relate to its associational activities.

3. 29 U.S.C. § 1733(a)

Mr. Banta has also withheld documents that are confidential pursuant to 29 U.S.C. § 1733(a). We will provide the Committee with a log of these documents later this week.

4. Attorney-Client Privilege

Finally, Mr. Banta has withheld documents pursuant to the attorney-client

BRAND & FRULLA

privilege. We will also provide the Committee with a log of these documents later this week.

Sincerely,

Stanley Brand

Stanley M. Brand
Ross. A. Nabatoff
Andrew D. Herman

SMB:mob

cc: Ms. Elizabeth Megginson
Chief Counsel

Mr. Duane Gibson
General Counsel

Exhibit EE

Project on Government Oversight

Minutes of the
Project on Government Oversight
Board Meeting
January 5, 1995

The meeting was called to order at 5:10 p.m., at the offices of Lobell, Novins, & Lamont.
1275 K St., NW, Suite 770, Washington, D.C.

Those board members present were:
Hank Banta
Jack Mitchell
David Hunter
Michael Cavallo

Project Staff present were: Danielle Brian and Keith Rutter.

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON LACK OF PERTINENCY

Mr. Banta stated that in the past the Lobel firm handled a case concerning this issue and that it is about to begin work again in a related matter. Mr. Hamel mentioned that he has an ongoing law suit with Exxon, B.P. and Arco. This is a personal law suit. Ms. Brian stated that the organization has another board member, Robert James, that was a previous Vice President of Mobil and as recently as four years ago was hired by that company to testify in court as an oil expert on the oil companies' behalf.

Mr. Cavallo made a motion to ask Mr. Hamel and Mr. Banta to recuse themselves during board votes on the oil royalties project. Mr. Hunter seconded the motion and the vote was unanimous. Mr. Banta and Mr. Hamel left the room. The remaining board members stated that the work on this topic was important and should continue. Mr. Hunter made a motion that the organization continue working on the oil royalties project. Mr. Cavallo seconded and the vote was unanimous. Ms. Brian raised the issue that in the past she has occasionally consulted Mr. Banta on matters concerning this subject and that she will need to do so in the future. She wanted to make sure that this would not be a problem. Mr. Cavallo stated that as long Mr. Banta, Mr. Hamel, and Mr. James are not involved in the decision-making process they can help with background research.

REDACTED BASED UPON LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

Project On Government Oversight

Minutes of the
Board Meeting
February 17, 1998

The meeting was called to order at 5:05 p.m., at the Center for International Environmental Law 1367 Connecticut Avenue, NW, Suite 300, Washington, D.C.

Board members present were: Hank Banta, Jack Mitchell, David Hunter, David Burnham, Marjorie Simms and Morton Mintz and Dina Rasor (via speaker phone). POGO Staff present were: Danielle Brian, Keith Rutter, Scott Amey and Marcus Corbin.

REDACTED BASED UPON
LACK OF PERTINENCY

Ms. Brian then addressed the Board concerning Mr. Banta stepping down as Chair of the Board. Ms. Brian stated that Mr. Banta made his decision based on the progress of POGO's oil royalty work. He did not want even the appearance of a potential conflict of interest because of his current clients. Ms. Brian said that Mr. Banta has been the only Chair POGO has ever had and that he has done an incredible job. She presented him with a plaque commending his outstanding service to the organization.

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

Project On Government Oversight

Minutes of the Board Meeting
April 26, 1999

The meeting was called to order at 5:10 p.m., at the Center for International Environmental Law, 1367 Connecticut Avenue, NW, Suite 300, Washington, D.C.

Board members present were: David Hunter, Chuck Hamel, David Burnham, Hank Banta and Mike Cavallo. POGO Staff present were: Danielle Brian, Keith Rutter, Marcus Corbin, Beth Daley and Nicole Harkin.

Mr. Hunter informed the Board about a Department of Justice investigation of POGO's sharing of award money from POGO's oil royalties lawsuit with Robert Berman and Robert Speir. Mr. Hamel moved to approve POGO hiring outside counsel to deal with the issue. Mr. Burnham seconded the motion, and it passed unanimously except for Mr. Banta who recuses himself in all matters pertaining to POGO's oil work.

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

REDACTED BASED UPON
LACK OF PERTINENCY

Exhibit FF

EXHIBIT FF

On July 12, 2000, the Committee on Resources, on a roll call vote of 26 ayes and 11 nays, sustained Chairman Young's rulings regarding subpoenas duces tecum issued to Mr. Henry M. Banta, Mr. Keith Rutter, Ms. Danielle Brian Stockton, and the Project on Government Oversight. These rulings are set forth in letters to Stanley M. Brand, Esq. dated April 6, 2000 and June 26, 2000. (Exhibits K and S) A motion to reconsider that vote was offered by Congressman Jay Inslee. A motion to table Mr. Inslee's motion to reconsider was passed on a roll call vote of 26 ayes to 12 nays.

On July 19, 2000, the Committee on Resources considered this report and resolution. An amendment was offered by Congressman Jay Inslee. Mr. Inslee's amendment was defeated on a roll call vote of 16 ayes to 26 nays. This report and resolution was passed on a roll call vote of 27 ayes to 16 nays.

Committee on Resources
U.S. House of Representatives
106th Congress

Full Committee

Date 7-12-00

Roll No. 1

Bill No. _____ Short Title _____

Amendment or matter voted on: Motion to sustain rulings by Chairman Don Young regarding POGO Inquiry.

Member	Yea	Nay	Pres	Member	Yea	Nay	Pres
Mr. Young (Chairman)	X			*Mr. Miller*		X	
Mr. Tauzin	X			*Mr. Rahall*			
Mr. Hansen	X			*Mr. Vento*			
Mr. Saxton				*Mr. Kildee*		X	
Mr. Gallegly	X			*Mr. DeFazio*		X	
Mr. Duncan	X			*Mr. Faleomavaega*			
Mr. Hefley	X			*Mr. Abercrombie*		X	
Mr. Doolittle	X			*Mr. Ortiz*			
Mr. Gilchrest	X			*Mr. Pickett*			
Mr. Calvert	X			*Mr. Pallone*			
Mr. Pombo	X			*Mr. Dooley*			
Mrs. Cubin	X			*Mr. Romero-Barcelo*			
Mrs. Chenoweth-Hage				*Mr. Underwood*		X	
Mr. Radanovich	X			*Mr. Kennedy*			
Mr. Jones	X			*Mr. Smith*			
Mr. Thornberry	X			*Mr. John*			
Mr. Cannon	X			*Mrs. Christensen*			
Mr. Brady	X			*Mr. Kind*		X	
Mr. Peterson	X			*Mr. Inslee*	X		
Mr. Hill	X			*Mrs. Napolitano*		X	
Mr. Schaffer	X			*Mr. Tom Udall*		X	
Mr. Gibbons	X			*Mr. Mark Udall*		X	
Mr. Souder	X			*Mr. Crowley*		X	
Mr. Walden	X			*Mr. Holt*		X	
Mr. Sherwood							
Mr. Hayes	X						
Mr. Simpson	X						
Mr. Tancredo	X			**TOTAL**	26	11	

Full Committee

Committee on Resources
U.S. House of Representatives
106th Congress

Date 7-12-00

Roll No. 2

Bill No. _____ Short Title _____

Amendment or matter voted on: Motion to Table the Motion to reconsider offered by Mr. Inslee.

Member	Aye	Nay	Pass	Member	Aye	Nay	Pass
Mr. Young (Chairman)	X			*Mr. Miller*		X	
Mr. Tauzin	X			*Mr. Rahall*			
Mr. Hansen	X			*Mr. Vento*			
Mr. Saxton				*Mr. Kildee*		X	
Mr. Gallegly	X			*Mr. DeFazio*		X	
Mr. Duncan	X			*Mr. Faleomavaega*			
Mr. Hefley	X			*Mr. Abercrombie*		X	
Mr. Doolittle	X			*Mr. Ortiz*			
Mr. Gilchrest	X			*Mr. Pickett*			
Mr. Calvert	X			*Mr. Pallone*			
Mr. Pombo	X			*Mr. Dooley*			
Mrs. Cubin	X			*Mr. Romero-Barcelo*			
Mrs. Chenoweth-Hage				*Mr. Underwood*		X	
Mr. Radanovich	X			*Mr. Kennedy*			
Mr. Jones	X			*Mr. Smith*			
Mr. Thornberry	X			*Mr. John*			
Mr. Cannon	X			*Mrs. Christensen*			
Mr. Brady	X			*Mr. Kind*		X	
Mr. Peterson	X			*Mr. Inslee*		X	
Mr. Hill	X			*Mrs. Napolitano*		X	
Mr. Schaffer	X			*Mr. Tom Udall*		X	
Mr. Gibbons	X			*Mr. Mark Udall*		X	
Mr. Souder	X			*Mr. Crowley*		X	
Mr. Walden	X			*Mr. Holt*		X	
Mr. Sherwood	X						
Mr. Hayes	X						
Mr. Simpson	X						
Mr. Tancredo	X			**TOTAL**	26	12	

Committee on Resources
U.S. House of Representatives
106th Congress

Full Committee

Date 7-19-00

Roll No. 1

Bill No. _____ Short Title Resolution & Report regarding Contempt of Congress.

Amendment or matter voted on: Amendment offered by Mr. Inslee

Member	Yea	Nay	Pass	Member	Yea	Nay	Pass
Mr. Young (Chairman)		X		*Mr. Miller*	X		
Mr. Tauzin		X		*Mr. Rahall*	X		
Mr. Hansen		X		*Mr. Vento*			
Mr. Saxton		X		*Mr. Kildee*	X		
Mr. Gallegly		X		*Mr. DeFazio*			
Mr. Duncan		X		*Mr. Faleomavaega*	X		
Mr. Hefley		X		*Mr. Abercrombie*	X		
Mr. Doolittle		X		*Mr. Ortiz*			
Mr. Gilchrest		X		*Mr. Pickett*			
Mr. Calvert		X		*Mr. Pallone*			
Mr. Pombo		X		*Mr. Dooley*	X		
Mrs. Cubin		X		*Mr. Romero-Barcelo*	X		
Mrs. Chenoweth-Hage		X		*Mr. Underwood*	X		
Mr. Radanovich				*Mr. Kennedy*			
Mr. Jones		X		*Mr. Smith*			
Mr. Thornberry		X		*Mr. John*			
Mr. Cannon				*Mrs. Christensen*	X		
Mr. Brady		X		*Mr. Kind*	X		
Mr. Peterson		X		*Mr. Inslee*	X		
Mr. Hill		X		*Mrs. Napolitano*	X		
Mr. Schaffer		X		*Mr. Tom Udall*	X		
Mr. Gibbons		X		*Mr. Mark Udall*	X		
Mr. Souder		X		*Mr. Crowley*	X		
Mr. Walden		X		*Mr. Holt*	X		
Mr. Sherwood		X					
Mr. Hayes		X					
Mr. Simpson		X					
Mr. Tancredo		X		**TOTAL**	16	26	

Inslee Amendment to the Resolution

At the end thereof, insert the following:

Provided, however, that failure to disclose any private communication between, any witness, and their religion advisor, their physician in the course of treatment or their attorney in communications seeking legal advice if such claims meet the requirements established by the courts for assertion of such privileges shall not constitute contempt of Congress.

Committee on Resources
U.S. House of Representatives
106th Congress

Full Committee

Date 7-19-00

Roll No. 2

Bill No. _____ Short Title Resolution & Report regarding Contempt of Congress.

Amendment or matter voted on: Final Passage

Members	Yes	No	Pass	Members	Yes	No	Pass
Mr. Young (Chairman)	X			*Mr. Miller*		X	
Mr. Tauzin	X			*Mr. Rahall*		X	
Mr. Hansen	X			*Mr. Vento*			
Mr. Saxton	X			*Mr. Kildee*		X	
Mr. Gallegly	X			*Mr. DeFazio*		X	
Mr. Duncan	X			*Mr. Faleomavaega*		X	
Mr. Hefley	X			*Mr. Abercrombie*	X		
Mr. Doolittle	X			*Mr. Ortiz*			
Mr. Gilchrest	X			*Mr. Pickett*			
Mr. Calvert	X			*Mr. Pallone*			
Mr. Pombo	X			*Mr. Dooley*		X	
Mrs. Cubin	X			*Mr. Romero-Barcelo*		X	
Mrs. Chenoweth-Hage	X			*Mr. Underwood*		X	
Mr. Radanovich				*Mr. Kennedy*			
Mr. Jones	X			*Mr. Smith*			
Mr. Thornberry	X			*Mr. John*			
Mr. Cannon				*Mrs. Christensen*		X	
Mr. Brady	X			*Mr. Kind*		X	
Mr. Peterson	X			*Mr. Inslee*		X	
Mr. Hill	X			*Mrs. Napolitano*		X	
Mr. Schaffer	X			*Mr. Tom Udall*		X	
Mr. Gibbons	X			*Mr. Mark Udall*		X	
Mr. Souder	X			*Mr. Crowley*		X	
Mr. Walden	X			*Mr. Holt*		X	
Mr. Sherwood	X						
Mr. Hayes	X						
Mr. Simpson	X						
Mr. Tancredo	X			**TOTAL**	27	16	

Exhibit GG

EXHIBIT GG

On June 29, 2000, the Subcommittee on Energy and Mineral Resources, on a roll call vote of 9 ayes to 0 nays, adopted a motion to sustain rulings by the chair regarding objections to questions raised by Mr. Henry M. Banta, Mr. Keith Rutter, and Ms. Danielle Brian Stockton and ordering that questions be answered. The Subcommittee also directed the Chairman to report to the Committee on Resources that Mr. Henry M. Banta, Mr. Keith Rutter, and Ms. Danielle Brian Stockton refused to answer questions while testifying under subpoena.

On July 11, 2000, on a roll call vote of 9 ayes to 0 nays, the Subcommittee adopted a motion to hear testimony from Robert A. Berman in executive session under House Rule XI .2(k). During the course of Mr. Berman's testimony, the Subcommittee adopted a motion, on a roll call vote of 6 ayes to 3 nays, to sustain rulings by the chair regarding objections raised by Mr. Berman and ordering that questions be answered. That motion also directed the Chairman to report to the Committee on Resources that Mr. Robert A. Berman refused to answer questions while testifying under subpoena. The Subcommittee, on a vote of 7 ayes to 3 nays, authorized the Chairman to release the record of the executive session. That was done by a memo dated July 11,2000.

Committee on Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
106th Congress

Date: June 29, 2000

Resolution offered by: Mr. Brady (R-TX)

Be it resolved, that the Subcommittee on Energy and Mineral Resources finds that Mr. Keith Rutter refused to answer a pertinent question while testifying before the Subcommittee on May 4, 2000, and the facts of this refusal shall be reported by the Chairman of the Subcommittee to the Committee on Resources for such action as the Committee deems appropriate.

Further resolved, that the Subcommittee on Energy and Mineral Resources finds that Mr. Henry Banta and Ms. Danielle Brian Stockton refused to answer pertinent questions while testifying before the Subcommittee on May 18, 2000, and the facts of these refusals shall be reported by the Chairman of the Subcommittee to the Committee on Resources for such action as the Committee deems appropriate.

Member	Yea	Nay	Present
Mrs. Cubin (Chairman)	X		
Mr. Tauzin	X		
Mr. Thornberry	X		
Mr. Cannon	X		
Mr. Brady	X		
Mr. Schaffer	X		
Mr. Gibbons	X		
Mr. Walden	X		
Mr. Tancredo	X		
Mr. Underwood (Ranking)			
Mr. Rahall			
Mr. Faleomavaega			
Mr. Ortiz			
Mr. Dooley			
Mr. Kennedy			
Mr. John			
Mr. Inslee			
TOTAL	9	0	

Offered by Mr. Brady (TX)
Passed 9-0

Resolution
Subcommittee on Energy and Mineral Resources

Be it resolved, that the Subcommittee on Energy and Mineral Resources finds that Mr. Keith Rutter refused to answer a pertinent question while testifying before the Subcommittee on May 4, 2000, and the facts of this refusal shall be reported by the Chairman of the Subcommittee to the Committee on Resources for such action as the Committee deems appropriate.

Further resolved, that the Subcommittee on Energy and Mineral Resources finds that Mr. Henry Banta and Ms. Danielle Brian Stockton refused to answer pertinent questions while testifying before the Subcommittee on May 18, 2000, and the facts of these refusals shall be reported by the Chairman of the Subcommittee to the Committee on Resources for such action as the Committee deems appropriate.

Committee on Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
106th Congress

Date: July 11, 2000

Motion offered by: Mr. Cannon (R-UT)

I move that the Subcommittee on Energy and Mineral Resources proceed to hear testimony from Robert A. Berman and Lon D. Packard in an investigative hearing under House of Representatives Rule XI (2) (k), and that this testimony be taken in Executive Session under the provisions of Rule XI (2) (k).

Member	Yea	Nay	Present
Mrs. Cubin (Chairman)	X		
Mr. Tauzin			
Mr. Thornberry			
Mr. Cannon	X		
Mr. Brady	X		
Mr. Schaffer	X		
Mr. Gibbons	X		
Mr. Walden			
Mr. Tancredo	X		
Mr. Underwood (Ranking)	X		
Mr. Rahall			
Mr. Faleomavaega	X		
Mr. Ortiz			
Mr. Dooley			
Mr. Kennedy			
Mr. John			
Mr. Inslee	X		
TOTAL	9	0	

Committee on Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
106th Congress

Date: July 11, 2000

Motion offered by: Mr. Schaffer (R-CO)

I move that the subcommittee sustain the rulings of the chairman that the questions put to the witness, Robert A. Berman, are pertinent to the announced subject of this hearing; secondly, that the subcommittee sustain the ruling of the chairman ordering the witness to answer the questions; and thirdly, that the subcommittee directs the chairman to report to the Committee on Resources that Robert A. Berman has refused to answer pertinent questions while appearing under subpoena, and that the Subcommittee on Energy and Mineral Resources recommends that appropriate actions be taken by the committee.

Member	Yea	Nay	Present
Mrs. Cubin (Chairman)	X		
Mr. Tauzin			
Mr. Thornberry			
Mr. Cannon	X		
Mr. Brady	X		
Mr. Schaffer	X		
Mr. Gibbons	X		
Mr. Walden			
Mr. Tancredo	X		
Mr. Underwood (Ranking)		X	
Mr. Rahall			
Mr. Faleomavaega		X	
Mr. Ortiz			
Mr. Dooley			
Mr. Kennedy			
Mr. John			
Mr. Inslee		X	
TOTAL	6	3	

Committee on Resources
Subcommittee on Energy and Mineral Resources
U.S. House of Representatives
106th Congress

Date: July 11, 2000

Motion offered by: Mr. Brady (R-TX)

I move that the record of testimony taken from Robert A. Berman in Executive Session today be released for use in public sessions at the discretion of the chairman.

Member	Yea	Nay	Present
Mrs. Cubin (Chairman)	X		
Mr. Tauzin			
Mr. Thornberry	X		
Mr. Cannon	X		
Mr. Brady	X		
Mr. Schaffer	X		
Mr. Gibbons	X		
Mr. Walden			
Mr. Tancredo	X		
Mr. Underwood (Ranking)		X	
Mr. Rahall			
Mr. Faleomavaega		X	
Mr. Ortiz			
Mr. Dooley			
Mr. Kennedy			
Mr. John			
Mr. Inslee		X	
TOTAL	7	3	

ONE HUNDRED SIXTH CONGRESS
DON YOUNG, ALASKA, CHAIRMAN
W.J. (BILLY) TAUZIN, LOUISIANA
JAMES V. HANSEN, UTAH
JIM SAXTON, NEW JERSEY
ELTON GALLEGLY, CALIFORNIA
JOHN J. DUNCAN, JR., TENNESSEE
JOEL HEFLEY, COLORADO
JOHN T. DOOLITTLE, CALIFORNIA
WAYNE T. GILCHREST, MARYLAND
KEN CALVERT, CALIFORNIA
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U.S. House of Representatives
Committee on Resources
Washington, DC 20515

July 11, 2000

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LLOYD A. JONES
CHIEF OF STAFF

ELIZABETH MEGGINSON
CHIEF COUNSEL

JOHN LAWRENCE
DEMOCRATIC STAFF DIRECTOR

To: Members, Subcommittee on Energy and Mineral Resources

From: Barbara Cubin, Chairman *Barbara Cubin*

Re: Executive session proceedings

During the Executive Session portion of the investigative hearing conducted by the Subcommittee today, I was given the authority by the Subcommittee to release, at my discretion, the entire record of the proceeding.

The motion by Mr. Brady, that carried with a quorum present, was as follows:

I move that the entire record of the Subcommittee's executive session proceeding today, including but not limited to the testimony taken from Robert A. Berman, be released publicly at the discretion of the Subcommittee Chairman.

Upon reflection and consideration of what was said behind closed doors today, I have determined that there is no important Subcommittee purpose served by maintaining a seal on the entire record of the Executive Session proceeding of July 11, 2000. This Memorandum is to inform Members that I hereby authorize release of this information.

cc: Chairman Don Young

Exhibit HH

STENOGRAPHIC MINUTES
Unrevised and Unedited
Not for Quotation or
Duplication

OVERSIGHT HEARING TO EXAMINE THE LAWS,

POLICIES, PRACTICES, AND OPERATIONS OF THE

DEPARTMENT OF THE INTERIOR, DEPARTMENT OF

ENERGY, AND OTHER AGENCIES PERTAINING TO

PAYMENTS TO THEIR EMPLOYEES, INCLUDING

PAYMENTS RELATIVE TO MINERAL ROYALTY

PROGRAMS AND POLICIES FROM PUBLIC LANDS AND

INDIAN LANDS

Thursday, May 4, 2000

House of Representatives,

Subcommittee on Energy and Mineral Resources,

Committee on Resources,

UNREVISED AND UNEDITED, NOT FOR QUOTATION
OR DUPLICATION IN ANY FORM
COMMITTEE ON RESOURCES

Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES

OFFICE OF THE CLERK
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2 OVERSIGHT HEARING TO EXAMINE THE LAWS,
3 POLICIES, PRACTICES, AND OPERATIONS OF THE
4 DEPARTMENT OF THE INTERIOR, DEPARTMENT OF
5 ENERGY, AND OTHER AGENCIES PERTAINING TO
6 PAYMENTS TO THEIR EMPLOYEES, INCLUDING
7 PAYMENTS RELATIVE TO MINERAL ROYALTY
8 PROGRAMS AND POLICIES FROM PUBLIC LANDS AND
9 INDIAN LANDS
10 Thursday, May 4, 2000
11 House of Representatives,
12 Subcommittee on Energy and Mineral Resources,
13 Committee on Resources,
14 Washington, D.C.

15 The subcommittee met, pursuant to notice, at 10:04 a.m.,
16 in Room 1334, Longworth House Office Building, Hon. Barbara
17 Cubin, chairman of the subcommittee, presiding.

4540 TESTIMONY OF KEITH RUTTER

4541 Mr. RUTTER. Since 1989.

4542 Mrs. CUBIN. And what are your responsibilities?

4543 Mr. RUTTER. I have a variety of duties throughout the

4544 organization.

4545 Mrs. CUBIN. Excuse me? I couldn't hear what you said.

4546 Is your microphone on?

4547 Mr. RUTTER. My responsibilities include a variety of

4548 things throughout the organization.

4549 Mrs. CUBIN. So do they include handling tax matters and

4550 record keeping, such as board minutes?

4551 Mr. RUTTER. Yes, they do.

4552 Mrs. CUBIN. Are you generally familiar with the

4553 requirements for making IRS Form 990 and IRS Form 1023

4554 available to the public?

4555 Mr. RUTTER. I'm sorry. Could you--

4556 Mrs. CUBIN. Yes. I just wonder if you are generally

4557 familiar with the requirements for making those two Internal

4558 Revenue Service forms available to the public.

4559 Mr. RUTTER. I'm sorry. When you say ''generally

4560 familiar--''

4561 Mrs. CUBIN. You are aware that there is a requirement to

4562 make those forms public.

4563 Mr. RUTTER. Yes. We comply with the IRS regulations.

4564 Mrs. CUBIN. Can anyone just walk in off the street and
4565 review a copy of those records in your office?
4566 Mr. RUTTER. Yes. Anyone can walk off the street and
4567 review those records.
4568 Mrs. CUBIN. Well, then can you tell me why POGO won't
4569 furnish those documents to this committee.
4570 [Witness conferring with counsel.]
4571 Mr. RUTTER. Madam Chair, I am advised by my counsel that
4572 the committee may require me to answer all questions
4573 pertinent to the subject under inquiry. My attorney advises
4574 me that this question is not pertinent to a proper subject
4575 before the committee.
4576 Mrs. CUBIN. Mr. Rutter, I would advise you that the
4577 forms that I referred to were subpoenaed by this committee,
4578 and therefore they are pertinent to this hearing.
4579 [Witness conferring with counsel.]
4580 [redacted] The chairman, according to the rules of the
4581 House and of this committee, the chairman is solely
4582 authorized to determine what is pertinent for a hearing and
4583 what is not. Additionally, the proceeds from those lawsuits,
4584 Mr. Rutter, are reported on those forms. And since the
4585 payments to Mr. Berman and Mr. Speir came out of the proceeds
4586 of that lawsuit, which is reported on that form, I again ask
4587 you, since these are public documents and since someone can
4588 walk in off of the street and see them, what is the reason

4589 that POGO refused to honor the subpoena and supply those to
4590 this committee?
4591 Mr. RUTTER. With respect, and I understand the chair's
4592 position, and upon advice of counsel, I will stand by my
4593 objection.
4594 Mrs. CUBIN. Upon advice of counsel, excuse me? I didn't
4595 hear the last.
4596 Mr. RUTTER. I said that upon advice of counsel, I am
4597 going to stand by my objection.
4598 Mrs. CUBIN. Moving right along. Were you asked to
4599 consult an accountant and lawyers about POGO's payments to
4600 Mr. Berman and Mr. Speir? I want to point out I am not
4601 asking what advice those experts gave, but according to some
4602 of the minutes that I saw, I will repeat the question. Were
4603 you asked to consult an accountant and lawyers about the
4604 payments to Mr. Speir and Mr. Berman?
4605 Mr. RUTTER. I'm sorry. When you say ''was I asked to
4606 consult an accountant and an attorney--''
4607 Mrs. CUBIN. Yes, or did you just do that of your own
4608 accord? According to the minutes, an accountant and lawyers
4609 were contacted about POGO's payments to Mr. Berman and Mr.
4610 Speir.
4611 Mr. RUTTER. Correct.
4612 Mrs. CUBIN. And who contacted those accountants and
4613 lawyers?

5039 a vote of approving the conference report for the Africa
5040 Trade Bill. I will defer to the chairwoman of the Committee,
5041 but I would think that if we recessed for a short break to go
5042 vote and come back, that would be appropriate, rather than
5043 delaying any further comments.
5044 We will recess for approximately 20 minutes.
5045 [Recess.]
5046 Mr. BRADY. Madam Chairman?
5047 Mrs. CUBIN. Mr. Brady.
5048 Mr. BRADY. Under Clause 2(j)(2)(c) Rule 11 of the Rules
5049 of House of Representatives, I move that Tom Casey of the
5050 Majority staff, and a staff member designated by the Minority
5051 each be allowed to question the witness, Keith Rutter, for
5052 equal periods of time not to exceed 30 minutes.
5053 Mrs. CUBIN. Without objection, so ordered.
5054 Mr. Tancredo, who has been here for most of the hearing,
5055 does desire to question this witness. He's tied up for a few
5056 minutes. So I think I would like to make one point, and then
5057 hopefully Mr. Tancredo will be here, and if not then--oh,
5058 here he is right now--then I'll recognize Mr. Thornberry.
5059 Mr. Rutter, I'm referring back to your not answering the
5060 question that I asked regarding the Internal Revenue Service
5061 forms because you declare that answering is not pertinent.
5062 Pertinency is important. It is one of the four elements that
5063 must be proven to convict someone in a criminal contempt of

5064 Congress.

5065 Here is how pertinency fits in. First of all, the
5066 Subcommittee must have jurisdiction over the subject of the
5067 hearing. It does fall under the House Rules. Then the
5068 Subcommittee must have the authority to conduct oversight.
5069 Our authority comes from Article I of the Constitution, under
5070 which Congress has the authority to collect information so
5071 that it can legislate. That authority was delegated by the
5072 House Rules to the Committee, and then by the Committee Rules
5073 to the Subcommittee. Third, the Subcommittee must have a
5074 legislative purpose. It is clear, based on the
5075 Subcommittee's past work on oil policy. Finally, the
5076 testimony or records subpoenaed must be pertinent to the
5077 inquiry.

5078 Because these elements exist, the Committee's oversight
5079 project is valid. Its subpoenas for documents and testimony
5080 can be properly enforced. So I ask you again, do you wish to
5081 answer the question about the Internal Revenue Service forms
5082 that I referred to?

5083 Mr. RUTTER. I'm sorry. Those questions specifically
5084 were?

5085 Mrs. CUBIN. The questions were--the question was: why
5086 did you refuse to produce the documents according to the
5087 subpoena? Why did you refuse to answer the questions about
5088 the documents here in front of the Committee today, the

5089 Internal Revenue documents that in fact had the award from
5090 the settlement included in those documents, and other years?
5091 [Witness conferring with counsel.]
5092 Mr. RUTTER. Madam Chair, in addition to my pertinency
5093 objection, I have also been advised by my counsel that the
5094 jurisdiction of this Committee is limited to matters
5095 delegated to the Committee under House Rules 10, Clause 1(L),
5096 Mineral Resources of Public Lands; and under House Rule 10,
5097 Clause 2(A), Oversight and Administration of the Department
5098 of Interior. I have also been advised that POGO's tax status
5099 and its compliance with applicable tax laws do not come
5100 within that delegation of authority, and therefore, I decline
5101 to respond.
5102 Mrs. CUBIN. Mr. Rutter, I would like to remind you
5103 that--and to warn you--that failure to answer the question or
5104 to provide the documents that were subpoenaed by the
5105 Committee--the Committee determines that the material is
5106 pertinent and the Chairman determines that the material is
5107 pertinent--can cause you to be held in contempt of Congress.
5108 Are you aware of that?
5109 Mr. RUTTER. Yes, I am aware of that.
5110 Mrs. CUBIN. Mr. Rutter, will you turn those documents
5111 over to the Subcommittee at this time?
5112 [Witness conferring with counsel.]
5113 Mr. RUTTER. With respect--and understand the Chair's

5114 position, and upon advice of counsel, I will stand on my
5115 objection.
5116 Mrs. CUBIN. Do you wish at this time to answer the
5117 question about the Form 990?
5118 Mr. RUTTER. I'm sorry. And the question being?
5119 Mrs. CUBIN. To produce it and tell the Committee why you
5120 would not explain the form, and why you would not give it to
5121 the Committee?
5122 [Witness conferring with counsel.]
5123 Mr. RUTTER. You know, I'm going to stand on the advice
5124 of my counsel, and also stand on my objection.
5125 Mrs. CUBIN. Mr. Rutter, it's easy for the former counsel
5126 to the House to instruct you that way, because he's not on
5127 the line here. He's not the one who can be charged with
5128 contempt of Congress, and sir, his advice to you is bad,
5129 because I want you to know that I will pursue in every way
5130 that I can contempt of Congress charges against you, not as
5131 thinking that it is the material that is the most important
5132 factor. It is the contempt that you are showing for the
5133 process and for Congress.
5134 So with that, I will now recognize Mr. Tancredo for 5
5135 minutes questioning.
5136 Mr. TANCREDO. Thank you, Madam Chairman.
5137 Mr. Rutter, understanding that you will not produce the
5138 documents in question or not tell us why, perhaps you would

CONTEMPT OF CONGRESS RESOLUTION AND REPORT
DISSENTING VIEWS

We strongly oppose the Resolution and Report to cite four individuals and the Project on Government Oversight (POGO) for Contempt of Congress, a federal statutory crime punishable by up to one year in jail. From the outset, the Republican Majority's unilateral conduct of the investigation into this matter has been biased, procedurally flawed and abusive of the rights of witnesses and Members. It is a weak case to present to the House, which last sought to invoke statutory contempt powers in 1983. And even if adopted by the House over our objections, any attempt at prosecution based on this Resolution will not survive balanced judicial review.

The Majority's wrath is primarily directed at POGO, a nonprofit government "watchdog" group that --- among many efforts to curb waste, fraud and abuse --- has been active since 1993 in pursuing oil and gas companies that have underpaid by hundreds of millions of dollars royalties owed to the U.S. Treasury for operating on public lands.[1] In November 1998, after receiving $1.2 million of a $45 million settlement by Mobil Oil in False Claims Act litigation for royalty underpayments, POGO shared two-thirds ($383,600 each) with two individuals: a Department of the Interior employee, Robert Berman, and a former Department of Energy employee, Robert Speir[2]

POGO and the Department of Justice dispute whether an Assistant U.S. Attorney involved in the Mobil litigation approved POGO's payments to Berman and Speir. In December 1998, the Civil Division of

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[1]See, e.g., Project on Government Oversight reports: Department of Interior Looks the Other Way: The Government's Slick Deal for the Oil Industry (April 1995); With a Wink and a Nod: How the Oil Industry and the Department of the Interior Are Cheating the American Public and California School Children (March 1996); Wait! There's More to Collect...Unpaid Oil Royalties Across the Nation (August 1996); Drilling for the Truth: More Information Surfaces on Unpaid Oil Royalties (May 1997). POGO has frequently testified before Congress on oil royalties and a wide variety of other issues.

[2]The civil litigation against Mobil for underpaying royalties was brought under the False Claims Act (31 U.S.C. 3729-33) which allows a private individual with knowledge of past or present fraud on the federal government to sue to recover damages and penalties. POGO was part of a "multi-relator" agreement in that case before the United States District Court for the Eastern District of Texas, Lufkin Division, which contributed to the recovery of damages by the United States.

the Department of Justice referred the POGO matter to the Public Integrity Section of the Criminal Division for a review, in cooperation with the Inspector General for the Department of the Interior, which is ongoing. These are the proper authorities and the appropriate forum for fairly investigating whether any misconduct or illegalities occurred in making or receiving the payments and we supported the motion adopted by the Committee on Resources to release to them relevant committee records. By contrast, all but one of the Democrats present voted against the Majority's Contempt of Congress Resolution, which was adopted by a 27 to 16 vote on July 19. 2000.

We oppose this Resolution because in the course of this lengthy investigation, the Majority has stepped beyond the bounds of legitimate inquiry. In an abusive manner, the Majority has used the powers of subpoena and the sanction of contempt to pursue subjects tangential to the Committee on Resources' jurisdiction. The Majority has conducted this investigation in a manner that serves the interests of lawyers for oil and gas companies involved in pending royalty underpayment litigation as well as those who are currently challenging in federal court royalty valuation regulations recently issued by the Department of the Interior to curb royalty payment abuses.

It is noteworthy that the Majority has spent well over a year investigating those who helped expose royalty cheating and whose efforts contributed to the recovery to date by the United States of $300 million from litigation settlements. But they have done nothing to investigate whether companies extracting oil and gas from federal lands are systematically underpaying royalties, a subject clearly within the jurisdiction of the Committee on Resources and with significant fiscal implications to taxpayers.

The Majority unilaterally drafted the lengthy Resolution and Report and first made it available to Democratic Members of the Committee less than 24 hours prior to the Committee on Resources' markup on July 19th. This rush to judgment on Contempt of Congress, a federal crime, is typical of the strictly partisan investigation, which has been prejudiced from the beginning with assumptions of guilt and illegalities. Indicting all with a broad brush, the Resolution deems each individual cited as equally guilty no matter how trivial the alleged transgression. Moreover, by citing the "Project on Government Oversight," with contempt, the Resolution cavalierly casts a cloud of criminal jeopardy on the officers and the entire board of directors, even though one such individual testified that he had been recused from any involvement in the royalty underpayment matters and another did not join the board until 1999.

At the July 19th Committee markup of this Resolution, the Majority failed to provide Members with the language of the contempt statutes.[3] 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 or provide specific documents precisely as sought by the Majority. And they neglected to explain to Members that witnesses had appeared at hearings and produced thousands of pages of documents in compliance with multiple subpoenas (Attachment A)

LEGAL STANDARDS FOR CONTEMPT OF CONGRESS: ALL ELEMENTS OF THE OFFENSE SHOULD BE PROVEN BEYOND A REASONABLE DOUBT

The refusal to answer a question or provide a document demanded by a committee does not *per se* constitute contempt of Congress under the statutes. William Holmes Brown, who served as House Parliamentarian for twenty years, provides guidance for Members regarding contempt powers and procedure in House Practice: A Guide to the Rules, Precedents and Procedures of the House (1996):

> "The statute which penalizes the refusal to answer in response to a congressional subpoena provides that the question must be 'pertinent to the question under inquiry.' 2 U.S.C. 192. That is, the answers requested must (1) relate to a legislative purpose which Congress may constitutionally entertain, and (2) fall within the grant of authority actually made by Congress to the Committee. Deshler, Ch 15 Sec. 6. In a prosecution for contempt of Congress, it must be

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[3]As set forth in 2 U.S.C. 192: "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refused to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months." 2 U.S.C. 194 establishes the process for the Speaker of the House to certify a finding of contempt by the House to "to the appropriate U.S. Attorney, whose duty it shall be to bring the matter before the grand jury for its action."

established that the committee or subcommittee was duly authorized and that its investigation was within the scope of delegated authority. *U.S. v. Seeger*, C.A.N.Y. 303 F2d 478 (1962). A clear chain of authority from the House to its committee is an essential element of the offense. *Gojack v. U.S.*, 384 U.S. 702 (1966)." House Practice at pages 427-428.

Brown further observes that the requirement that a committee question be pertinent is an essential factor in prosecuting the witness for contempt, that the committee has the burden of establishing that a question is "pertinent," and that the committee's determination is ultimately subject to a strict standard of judicial review:

> "In contempt proceedings brought under the statute, constitutional claims and other objections to House investigatory procedures may be raised as a defense. *U.S. v. House of Representatives*, 556 F Supp. 150 (1983). The courts must accord the defendant every right 'guaranteed to defendants in all other criminal cases.' *Watkins v. United States*, 354 US 178 (1957). **All elements of the offense, including willfulness, must be proven beyond a reasonable doubt**. *Flaxer v. United States*, 358 US 147 (1958)." House Practice at page 428. [Emphasis added]

Accordingly, because a contempt charge must meet strict judicial review standards, it is our recommendation that Members of the House consider themselves as if jurors in a criminal trial and apply the "beyond a reasonable doubt" standard in evaluating the conduct of those charged with contempt under 2 U.S.C. 192. The definition of "beyond a reasonable doubt" is as follows:

> "**The doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that a defendant is not guilty.** 'Beyond a reasonable doubt' is the standard used by a jury to determine whether a criminal defendant is guilty. In deciding whether guilt has been proved beyond a reasonable doubt, the jury **must begin with the presumption that the defendant is innocent."** Black's Law Dictionary (Seventh Edition, 1999) at page 1272. [Emphasis added]

THE MAJORITY HAS FAILED TO MEET ITS BURDEN OF PROVING THE STATUTORY ELEMENTS NECESSARY FOR CONTEMPT PROSECUTION

In construing the contempt statute, the Supreme Court has closely scrutinized a committee's stated purpose of the investigation to determine whether a demand is pertinent to the question under

inquiry. If the committee's own descriptions are inconsistent with its actions or have changed over time, such confusion "might well have inspired doubts as to the legal validity of the committee's purposes." *Gojack v. United States*, 384 U.S. 702, 709 (1966).

On June 9, 1999, the Committee on Resources on a party line vote approved a Resolution to authorize Chairman Don Young to issue subpoenas in connection with: "(1) policies and practices of the Department of the Interior and Department of Energy regarding payment of employees and former employees from sources outside of these Departments that may be related to the employee's past or present work within the Department, and (2) payments from the Project on Government Oversight, POGO, to Mr. Robert Berman, and employee of the Department of the Interior, and Mr. Robert Speir, a former employee of the Department of Energy . . . ".

During the debate on the June 9, 1999 resolution, Energy Subcommittee Chairman Barbara Cubin responded to Delegate Carlos Romero-Barcelo's concerns about the Committee acting to intervene in a pending Department of Justice criminal investigation by explaining that the focus would be on oil royalty valuation legislation and regulation:

> "It isn't the intent of the committee to intervene in this procedure at all, but we do need to know what is going on and what has gone on because we have things in front of us as far as oil valuation is concerned that are directly the purview of this committee. We have legislation in front of us that tries to determine a valuation method for oil. Right now, the administration and the Minerals Management Service has some regulation or proposed regulation that should not go into effect about the valuation of oil because we don't know whether this action and this payment of money has anything to do with those new regulations. We just need to know whether the two people involved had any influence on the MMS."

Notwithstanding this rationale for the investigation, at the time the Committee approved the contempt Resolution on July 19, 2000 the Majority had sought no testimony related to oil valuation regulations, policies, or legislation. No witness had been called to establish a foundation for the relevant "policies and practices" of the Departments of Interior and Energy. By stark contrast, Democratic Members were admonished by the Majority at the May 4, 2000, Subcommittee hearing that the purpose of the investigation did <u>not</u> include inquires on oil royalty valuation policies or fraudulent oil company practices.

Simply stated, the Majority has not articulated a purpose for obtaining the information sought by the contempt Resolution that is within the scope of the Resources 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 the 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 "to begin weighing the merits of those conflicting statements" made in civil litigation.[4]

The purpose and scope of the Majority's inquiries are still not clear to Democratic Members. An investigation of oil royalty matters in furtherance of a legislative purpose could properly be crafted within the Committee on Resources' jurisdiction, but the Majority has failed to do so. The Majority established no "connective reasoning" or foundation based on the committee's jurisdiction for the pertinence of the questions asked and the documents demanded of the witnesses **at the time they were asked and demanded.** Additional hearings or *ex post facto* rationale cannot reestablish a foundation for pertinency that did not exist at time that a witness was at peril of being charged with contempt.

The Supreme Court has held the conduct of Congress to strict scrutiny when applying the contempt statutes: "It is obvious that a person compelled to make this choice [of whether to answer] is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the due process clause requires in the expression of any element of a criminal offense. The 'vice of vagueness' must be avoided here as in all other crimes." Watkins v. United States, 354 U.S. 178 (1957).

In summary, the Majority has not met the substantial burden of proving the elements of statutory contempt beyond a reasonable doubt. The House cannot responsibly send to the U.S. Attorney – who already has plenty of work to do combating serious crimes – a contempt Resolution that is so flawed that prosecution will be futile.

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[4] Stanley M. Brand, who formerly served as Counsel to the House of Representatives, represents POGO and three of the individuals cited for contempt. Robert Berman, the Department of the Interior employee, has separate counsel.

THE MAJORITY'S INVESTIGATION IS PROCEDURALLY FLAWED AND FAILED TO COMPLY WITH COMMITTEE AND HOUSE RULES

In applying the contempt statute, the courts have required that a committee strictly follow its own rules and those of the House. *Yellin v. United States*, 374 U.S. 109 (1962). The conduct of the investigation related to this Contempt of Congress Resolution is so egregious that any attempt at prosecution will not survive judicial review. Among the procedural deficiencies are the following:

(1) **Failure to follow House Rule XI, Clause 2(k) applicable to investigative hearing procedures.** On June 9, 1999, by a party line vote, the Committee on Resources authorized Chairman Young to issue subpoenas related to an "oversight review" of the "policies and practices of the Department of Interior and Energy" and "payments from the Project on Government Oversight" to Robert Berman, an employee of the Department of the Interior, and Robert Speir, a former employee of the Department of Energy. It was not until June 27, 2000, however, 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 "investigation" and "oversight" 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 on Energy and Mineral Resources hearings held May 4 and May 18, 2000. These flaws range from the failure to provide witnesses with the Committee on Resources and House Rules prior to their testimony, to the failure to go into executive session.

(2) **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).

(3) **Failure to have a proper quorum under Committee on Resources 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."

(4) **Failure to allow witnesses to make an opening statement under Committee on Resources 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 consultation 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. Democrats objected that this was prejudicial to subpoenaed witnesses in what amounted to adversarial proceedings but were overruled by the Subcommittee Chair.

(5) **Failure to hold a hearing on the contempt of Congress issues**. It is fundamentally unfair not to allow the parties charged with contempt an opportunity to fully and fairly detail their legal arguments for declining to answer questions or supply specific documents in contention. The Chair repeated 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.

THE MAJORITY'S INVESTIGATION IMPROPERLY ATTEMPTS TO USE THE POWER OF CONGRESS TO PROVIDE DISCOVERY FOR OIL AND GAS COMPANIES IN ROYALTY LITIGATION AGAINST THE UNITED STATES

We strongly protest the Majority's transparent attempt to use the powers of the Committee on Resources – and of the House -- to assist favored parties in pending litigation with hundreds of millions of dollars of royalty payments at stake.[5] The Majority's difficulties in describing a legitimate purpose for their investigation are compounded because they appear to be seeking information which would damage interests of the United States both in royalty underpayment litigation and in industry challenges to recently revised oil and gas royalty regulations. Their interest in the pending litigation matters has been made clear, for example, by a March 6, 2000, letter from Don Young to POGO's attorney which states in part:

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[5]Over the past year, the Majority has issued 14 press releases on Committee on Resources letterhead regarding the POGO investigation. While these efforts to politicize the issue have largely been ignored by the media, it is additional evidence that the Majority's exclusive focus is on the $383,600 payments by POGO to two federal employees. No attention is given, nor any outrage expressed, concerning the facts that major oil and gas companies have, by settling litigation, effectively admitted to cheating taxpayers out of hundreds of millions of dollars in royalties owed. Ironically, no witness testimony in the POGO hearing record refutes the charges of underpayments. The former ARCO employees -- who have turned whistleblowers in the False Claims Act litigation -- described in detail schemes to avoid royalties in response to Rep George Miller's questions during their May 4, 2000 testimony before the Subcommittee on Energy and Mineral Resources.

"On November 29, 1999, an adversary of your clients' interests in the proceedings of *Johnson v. Shell* litigation provided sworn testimony in a federal court hearing which appears to directly contradict sworn statements made by your client, Danielle Brian. To begin weighing the merits of those conflicting statements, Committee counsel telephoned you and explained that I intended to subpoena records of telephone calls between POGO or Danielle Brian and that witness."

Given the Majority's keen interest in this pending civil lawsuit, it is not accidental that lawyers for the companies involved in those proceedings have been closely monitoring the Committee on Resources' investigation. Because the Chair has ruled that the investigation is not restricted by attorney-client or other privileges, the Majority has freely sought to obtain documents and probe on matters which would otherwise be off-limits in court.

On July 10, 2000, the law firm of Fulbright and Jaworski filed a motion in the U.S. District Court for the Eastern District of Texas in "Opposition of Defendant Shell Oil Company to Project on Government Oversight and Henry M. Banta's Motion for Protective Order" (Attachment B). In that motion, Shell Oil's lawyers argued that new evidence developed by the Subcommittee on Energy and Mineral Resources required that the court reexamine the relevance of the payments to Berman and Speir, asserting that "subsequent testimony by Mr. Banta and Ms. Brian in recent Congressional oversight hearings demonstrate that POGO did not accurately advise the court in its pleadings . . . ". As evidence, the Shell lawyers cite various statements and documents used at the Subcommittee on Energy & Mineral Resources' hearings on May 4 and May 18, 2000.

POGO had previously argued to the court that this subject matter was irrelevant to the issues of royalty underpayments: "it is the law of case that the Berman/Speir matter is unrelated to the merits of the case." On July 14, 2000, the federal judge agreed and ruled the Shell's lawyers were not allowed to ask any questions of Henry M. Banta regarding POGO's sharing of settlement proceeds with Robert Berman and Robert Speir. (Attachment C)

In effect, the federal judge's July 14, 2000, ruling affirms his prior decision that how POGO distributed its portion of the Mobil settlement is irrelevant to the central question in the pending *Johnson v. Shell* litigation: did Shell underpay royalties owed to the federal government for oil and gas obtained from public lands?

The oil and gas industry's attempt to distract attention away from this core issue has failed thus far in the courts and it should meet a similar fate in the Congress. Seeking to obtain and disclose information to assist participants in litigation is not a legitimate purpose of a committee investigation. Having provided no adequate jurisdictional foundation for the relevance of the Majority's questions and document demands at issue in this Resolution, there is accordingly no basis for the House to hold in contempt the individuals cited or POGO.

ANALYSIS OF EACH CITATION FOR CONTEMPT IN THE RESOLUTION

A. Mr. Henry M. Banta

February 17, 2000, Subpoena Duces Tecum

(1) Redacting Records: Mr. Banta is cited for providing a record of the February 5, 1998, POGO Board Meeting minutes "redacted so severely as to have no meaning." In response to the Chairman's June 26, 2000, letter, Mr. Banta's attorney supplied a less redacted copy of the same record. Thus, the charge is without merit.

Moreover, Mr. Banta, as a private attorney and in his role as Chairman and Member of the Board of Directors of POGO, was not the individual responsible for maintaining POGO's Board Meeting minutes. POGO's attorney supplied the Board Meeting minutes, including subsequent revisions to accommodate the requirements of the subpoenas issued to POGO. Thus, Mr. Banta should not be held in contempt for not producing such documents.

(2) Refusing to Comply with Orders to Produce: The Resolution cites Mr. Banta with contempt of Congress for not providing certain documents. Mr. Banta, on advice of counsel, has not produced such records that relate to his work as counsel to the State of California, citing 30 U.S.C.1733 which restricts the disclosure by states of confidential business information provided by the Department of the Interior in the administration of oil royalty programs. Mr. Banta, in the course of his representation of the State of California's Auditor, is required to keep certain information confidential. It is not within Mr. Banta's authority to release or produce these records for the Committee on Resources. Mr. Banta should not be held in contempt for not producing that which he is not authorized to release.

April 10, 2000, Subpoena Duces Tecum

(1) Failure to Comply: The Resolution charges Mr. Banta with contempt for not producing a log of responsive records withheld under a claim of privilege. However, Mr. Banta, through his attorneys, did produce a record of responsive records withheld under a claim of privilege and identified the privilege. A log is not specifically required under the subpoena. The subpoena required Mr. Banta to "specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld." Consequently, when Mr. Banta's attorneys provided additional correspondence in response to the Chairman's rejection of the previously supplied log, and explained the constitutional privilege under which a document was being withheld; they complied with the terms of the subpoena. Mr. Banta should not be held in contempt for not producing a log that (a) he was not specifically required to produce and that (b) he provided in material fact in correspondence.

(2) Refusal to Produce: The Resolution cites Mr. Banta with contempt because he "possesses but did not produce an unredacted agenda for the February 17, 1998, POGO Board Meeting and unredacted minutes of the October 27, 1998 POGO Board Meeting." To the contrary, Mr. Banta does not possess these documents, nor was he responsible for maintaining such documents. POGO, through its attorney, has supplied redacted versions of these documents, including revisions, in response to the subpoenas issued to the corporate entity. The House should not find Mr. Banta in contempt on these facts.

Subpoena to Appear on May 18, 2000

Refusal to Answer: On this count, the Resolution cites Mr. Banta with contempt of Congress because during the May 18 hearing, when asked if he knew about the *Johnson v. Shell* lawsuit while it was under seal, Mr. Banta, on advice of counsel, refused to answer the question on the grounds that it was not pertinent to the investigation. The Majority failed to provide a proper foundation or "connective reasoning" for the question to be pertinent to the jurisdiction of the Committee on Resources. Moreover, as discussed above, seeking to obtain and disclose information to assist parties in pending litigation is not a legitimate purpose for a congressional investigation. Moreover, at the time the Chair ruled the question "pertinent" and polled the Members on the question, the Subcommittee did not have a quorum for conducting business as required under the Committee on Resources' rules.

B. Mr. Robert A. Berman

Subpoenas to Appear on May 18 and July 11, 2000

Refusal to Answer: On May 18, 2000, when Mr. Berman appeared under subpoena before the Subcommittee, he objected to testifying at a public hearing on the grounds that Members of the Majority had defamed him during the hearing held May 4, 2000. For example, Rep. Kevin Brady of Texas had called him a "common thief" during the prior hearing. On advice of counsel, he declined to answer questions unless Members waived their immunities from lawsuits. Mr. Berman also demanded that the Subcommittee convene in executive session as required under House Rule XI, Clause 2(k). Despite objections by Democratic Members, the Chair refused to apply the House Rules on investigative hearing procedures.

After confirming that they had in fact failed to follow the House Rules governing investigative hearings, the Majority attempted to cure the error by subpoenaing Mr. Berman to reappear at a second hearing on July 11, 2000. Mr. Berman, on the advice of counsel, refused to answer certain questions in executive session. Only after voting on a factually incorrect motion to report Mr. Berman's responses to the Committee did the Majority allow Mr. Berman to make a statement to the Subcommittee on Energy and Mineral Resources. The Majority's failure to follow the Committee and House Rules that protect the rights of witnesses, their failure to establish a clear purpose within the Committee on Resources' jurisdiction for the investigation, and their failure to provide a proper foundation or connective reasoning for their questions, collectively add up to a failure to prove the elements of criminal contempt beyond a reasonable doubt. Under these circumstances, Mr. Berman's conduct does not justify a citation for contempt by the House.

C. Mr. Keith Rutter

April 10, 2000 Subpoena Duces Tecum

(1) Withholding Records: The Resolution cites Mr. Rutter with contempt for withholding certain tax documents. Under the subpoena, Mr. Rutter, the POGO employee in charge of general administrative matters, was directed to produce copies of POGO's annual IRS Form 990 and Form 1023 (relating to tax-exempt status). The subpoena also demanded production of POGO's original application for tax-exempt status and subsequent correspondence with the Internal Revenue Service. In June 1999, POGO provided the requested documents for tax year 1998, which included revenue

from the oil royalty litigation, as well as reporting the public service awards to Berman and Speir. On July 11, 2000, POGO, through its attorneys, provided the Committee with an amended tax return for 1998. In a letter dated April 21, 2000, POGO's attorney notified the Committee that they would not produce the additional tax documents on the grounds that the Chair's demand for the other tax documents unrelated to the payments to Berman and Speir were not pertinent to the stated purpose of the Committee's investigation and, additionally, further inquiry into POGO's tax status was outside the Committee's jurisdiction. Ironically, POGO's tax returns, including those subpoenaed by the Majority, are publicly available. The House should not find Mr. Rutter in contempt for not producing material which is not pertinent and which the Majority could have accessed through widely available means.

(2) Failure to Produce: The Resolution cites Mr. Rutter with contempt for failure to produce a log of the responsive records withheld by him under a claim of privilege. A log is not specifically required under the subpoena. The subpoena required Mr. Rutter to "specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld." As is evidenced by the Majority's own exhibit, this requirement has been met. Therefore, the House should not find Mr. Rutter in contempt on these grounds.

D. Ms. Danielle Brian Stockton

June 18, 1999 Subpoena Duces Tecum

(1) Redacting Records: The Resolution cites Ms. Brian with contempt for withholding minutes of two POGO Board Meetings. Ms. Brian has asserted that she does not hold or possess these or any other documents not previously supplied to the Committee under her subpoena. She was not responsible for maintaining these documents. In addition, POGO, through its attorney, has supplied redacted versions of these documents, including revisions, in response to the subpoena issued to the corporate entity. The House should not find Ms. Brian in contempt for not producing records that which she does not possess.

(2) Withholding Records: Under this citation, the Resolution charges Ms. Brian with contempt for not producing agendas and minutes from POGO Board Meetings that occurred on January 5, 1995; December 9,1996; April 26, 1999; and September 9, 1999. POGO produced these records, through its attorney as required by the subpoena issued to POGO. Ms. Brian has asserted that she does not possess these documents and was not responsible for maintaining the documents. As Ms. Brian does not have such records within her possession, she could not produce them. Instead, the documents

were provided to the Committee by POGO's attorney in response to the subpoena of POGO. The House should not hold Ms. Brian in contempt for not producing documents that she does not have in her possession and which have been provided to the Committee under the proper subpoena.

February 17, 2000 Subpoena Duces Tecum

(1) Failure to Comply: The Resolution cites Danielle Brian with contempt for not producing unredacted telephone records from her office and personal residence for a period covering eighteen months. Ms. Brian offered to provide a redacted version of the phone records under this subpoena. However, the Majority insisted that they be allowed to review all phone records---personal and professional----from the 18-month period and then decide which ones to copy for their files. POGO is an organization that works extensively with whistleblowers from a wide array of areas, including defense contractor and health care fraud and they have asserted a First Amendment privilege against allowing unfettered access to these. Since Ms. Brian was willing to provide redacted versions of these records, and the Majority refused to negotiate a reasonable alternative, the House should not find Ms. Brian in contempt on this charge.

Subpoena to Appear on May 18, 2000

Failure to Reply: The Resolution charges Ms. Brian with contempt for her refusal to answer a question relating to the extent, if any, of her knowledge of *Johnson v. Shell* litigation while it was under seal. As discussed above, Ms. Brian should not be held in contempt for declining to answer a question related to the *Johnson v. Shell* litigation. The Majority has failed to provide either the connective reasoning or build a foundation to justify this question as pertinent to the investigation. *Gojack v. United States*, 384 U.S. 702 (1966). As stated above, it is not a legitimate purpose for a congressional investigation to seek to obtain and disclose information to assist parities in pending. Moreover, at the time the Subcommittee Chair ruled the question "pertinent" during the hearing and polled the Members on the question, there was no quorum present as required under the Committee on Resources' rules. Accordingly, the House should not cite Ms. Brian for contempt in this instance.

E. Project on Government Oversight

February 17, 2000 Subpoena Duces Tecum

(1) Refusal to Produce Records: The Resolution cites POGO, a nonprofit corporate entity,

with contempt for not producing records showing the names and office addresses of POGO Directors responsible for POGO's oil royalty effort from its inception in 1993 through the present. In correspondence dated February 28, 2000, POGO's attorneys stated that POGO had not withheld records with current Board Members' names and addresses. They gave these records to the Committee in 1999 when POGO provided its 1998 nonprofit 501(c) corporate tax forms, which included that information. On pertinency grounds, POGO has declined to provide the names and addresses of those Board Members (if any) that were on the Board in 1994 and have left since that time. They have provided the name and address of one Board Member who joined in 1999.

Secondly, the Resolution cites POGO for contempt for not producing records concerning payments to Messrs. Berman and Speir discussed by POGO since January 1, 1999. To the contrary, POGO, through its attorneys, has provided the documents to the Committee. Accordingly, the House should not find POGO in contempt on these grounds. Moreover, even if the House was to find POGO in contempt, it is unclear who the U.S. Attorney would be compelled to prosecute as the Majority has not specified which of the officers of board of directors would be the responsible parties. At least one of the board members, Chuck Hamel, testified that he had been recused from all matters dealing with the royalty underpayment litigation.

(2) Refusing to Comply: The Resolution cites POGO for refusing to provide a log of responsive records withheld from production under this subpoena. POGO, through its attorneys, has asserted that they have produced all responsive records. In those instances where they have declined to provide a document, they have, as required under the subpoena, provided a written explanation. A log is not specifically required under the subpoena. The subpoena required POGO to "specify and characterize the record so withheld and specify the objection or constitutional privilege under which the record is withheld." This requirement has been met. Therefore, the House should not find POGO in contempt. Again, even if the House were to find this nonprofit corporate entity in contempt, it is unclear who the U.S. Attorney would be compelled to prosecute, as the Resolution does not specify which of the officers or board of directors are to be prosecuted.

Dissenting Views
Contempt of Congress Resolution & Report

GEORGE MILLER

ROBERT UNDERWOOD

PETER DEFAZIO

ENI FALEOMAVAEGA

FRANK PALLONE

RON KIND

JOSEPH CROWLEY

ATTACHMENT A

Project on Government Oversight
Documents for
House of Representatives

Documents Produced to House

1) "Statement of Danielle Brian Regarding Proceeds POGO Received from False Claims Act Settlement with Mobil" (4/30/99)(Marked DB 00010417)

2) Copies of Check Stub to Robert Speir (Dated 11/2/98 in the amount of $383,600- Marked DB 00010418)

3) Copies of Check Stub ton Robert Berman (Dated 11/2/98 in the amount of $383,600- Marked DB 00010419)

4) 1998 POGO IRS Form 1096 (Marked DB 00010420)

5) Letter from Danielle Brian to Robert Speir (11/2/98)(accompanying check- Marked DB 00010422)

6) Copy of Check (Front) to Robert Speir (11/2/98)(for $383,600- Marked DB 00010423)

7) Letter from Danielle Brian to Robert Berman (11/2/98)(accompanying check- Marked DB 00010424)

8) Copy of Check (Front) to Robert Berman (11/2/98)(for $383,600- Marked DB 00010425)

9) Letter from Lon D. Packard to Robert Berman (1/5/99)(stating that Lon Packard does not represent Berman on payment issue- Marked DB 00010426)

10) Contract between Berman, Brian, and Speir (1/5/98)(33 1/3% False Claims Act litigation proceeds distribution contract- Marked DB 00010427)

11) Letter from Brian to Berman (10/8/98)(unsigned, confirming 33 1/3% contract- Marked DB 00010428)

12) Minutes of the POGO Board Meeting of 10/27/98 (Marked DB 00010429)

13) Minutes of the POGO Board Meeting of 12/9/96 (Discussing qui tam suit and payments- Marked DB 00010430)

14) 1998 POGO IRS Form 990

15) 1998 POGO Form 990- Schedule A

16) 1998 POGO IRS Form 1099-Misc (showing payments to Speir and Berman- Marked DB 00010421)

17) Minutes of the POGO Board Meeting of 12/9/96 (redacted and including blank pages, discussing qui tam and settlement distribution)

18) "Reply of Johnson/ Martineck Group to the POGO/Brock Group's Opposition to Motion for Order Voiding Multi-Relator Counsel Agreement and Return of Certain Mobil Settlement Monies"

19) "Opposition of Leonard Brock; Danielle Brian; Project on Government Oversight; Parker & Parks, L.L.P.; Reaud, Morgan & Quinn, Inc.; Packard, Packard, & Johnson, P.C.; and Packard & Packard, to Motion of J. Benjamin Johnson, Jr., and John Martineck for Order Voiding Multi-Relator Counsel Agreement and the Return of Certain Mobil Settlement Monies"

20) "Motion for Order Voiding Multi-Relator Counsel Agreement and Requiring the Return of Certain Mobil Settlement Monies"

21) Oral Deposition of Henry Banta, 11/16/99

22) Memorandum from Dan Packard to Jim Wagstaffe (11/15/99)(listing 31 documents relating to qui tam litigation)

23) Letter from Walter Umphrey to Carl Parker, Wayne Reaud, and Harold Nix (3/9/99)(talking about the division of the spoils)

24) Letter from Clayton Dark to Judge John Hannah, Jr. (4/29/99)(explaining the payments to the judge in light of his previous recusal)

25) Deposition of Danielle Brian (8/6/98)

26) Letter from Dan Packard to Robert McAuliffe, DOJ (7/27/99)(enclosing copy of 6/8/99 letter from Lon D. Packard to Don Young)

27) Letter from Lon D. Packard to Don Young (6/8/99)(discussing Young's previous inquiry into Johnson)

28) Letter from Dan Packard to Doge Wells, Civil Division, DOJ (1/6/00)(enclosing deposition as explanation of POGO's position of giving out future payments)

29) Deposition of David Hunter (11/16/99)

30) Letter from Dodge Wells, Civil Division, DOJ, to Dan Packard (1/7/00)(stating that since there would be no future payments by POGO, the DOJ would take no action)

31) Letter from Michael Harvard to Lon and Von Packard (8/27/98)(informing the Packards he is wiring them $2,658,288 according to settlement allocation)

32) Minutes of the POGO Board Meeting of 1/5/95 (Board asks Banta and Hamel to recuse themselves from qui tam litigation due to conflicts of interest)

33) Minutes of the POGO Board Meeting of 2/17/98 (the Board gives Banta a plaque after he steps down)

34) Minutes of the POGO Board Meeting of 4/26/99 (Hunter tells Board they are target of DOJ investigation, the Board approves outside counsel)

35) Minutes of the POGO Board Meeting of 9/9/99 (Board votes not to give away any more money until DOJ concerns are addressed)

36) POGO General Ledger for Period of 11/1/98 to 11/30/98 (2 pp., listing 11/2/98 payments to Speir and Berman- redacted)

37) POGO General Ledger Report from the Period of 9/1/98 to 9/30/98 (7 pp., redacted, showing Mobil Settlement of $1,143,359.60 on 9/2/98)

38) POGO 9 Month Income Statement ending 9/30/98 (showing year to date net income of $1,236,597.49)

39) POGO Balance Sheet (9/30/98)(showing total capital as $1,304,578.60 and total liabilities as $1,967.10 with "Total Assets" exactly equal to "Total Liabilities and Capital")

40) POGO Account Reconciliation of 9/30/98 (showing cash receipts of $1,212,526.61 and ending balance of $70,801.85)

41) POGO "Statement of Activities" for Year Ending 12/31/99 (showing 1998 "Public service awards" in amount of $767,200)

42) POGO "Statement of Activities" for Year Ending 12/31/98 (showing 1998 "Public service awards" in amount of $767,200)

43) POGO "Notes to Financial Statements" (Undated)(2 pp., #'s 5-13, #10 mentions payments and investigations)

44) AmEx IDS Cash Management Fund Confirmation of Draft Redemption # 01100 11/5/98 in amount of $383,600)

45) AmEx IDS Cash Management Fund Confirmation of Draft Redemption #01099 (11/4/98 in amount of $383,600)

46) AmEx Statement of Accounts for 6/15/98 through 9/14/98 (4 pp.)

47) AmEx Statement of Accounts for 9/15/98 to 12/14/98 (11 pp.)

48) AmEx IDS Cash Management Fund Confirmation (shows draft redemption # 01095 for $4000 and redemption to IDS for $1,200,000)

49) AmEx IDS Cash Management Fund Confirmation of "Additional Purchase" (9/2/98 in the amount of $1,143,359)

50) AmEx IDS Cash Management Fund Confirmation of Purchase of $1,205,630 in Class A Shares (10/15/98)

51) AmEx IDS Cash Management Fund Confirmation of Surrender of $1,205,630 (10/14/98)

52) Letter from Stuart Sednick, IDS President, to POGO concerning renewal of IDS Preferred Investors Certificate (10/2/98)

53) Copy of Check Stub # 1094 (9/1/98)($5000 made out to "POGO")

54) Copy of Check Stubs #'s 1099 and 1100 (11/2/98)(made out to Robert A. Speir and Robert A. Berman in the amounts of $383,600)

55) Copy of hand-drawn picture of Don Quixote having vanquished the giant (windmill)

56) "Exhibit A" from Johnson Settlement "Allocation by Relators and Attorneys" (8/19/98)(total settlement is $8,100,000 and attorneys' share is $3,662,064)

57) "Exhibit B" from Johnson Settlement "Proposed Disbursement from Settlement Fund" (8/19/98)

58) Telephone Conversation between Ben Johnson and Robert Berman (8/12/96)(transcript of recording of discussion concerning Berman's work on oil royalty underpayment)

59) Telephone Conference between Ben Johnson and Robert Berman (12/20/96)(transcript of recording of conference concerning oil valuation methods)

60) Press Release, "An Epic Case of David Beating Goliath: The Project on Government Oversight Earns a Victory for American Taxpayers in Mobil Corp. Settlement" (9/1/98)

61) **CORRECTED** 1998 POGO IRS Form 990 and Schedule A (7/10/00)(attached to letter from Raffa and Associates- correction of 2 "private" supporters to "public" supporters, and co-relator fee correction to "program service revenue"

62) Fax cover sheet with notation from Hank Banta to Danielle Brian (11/16/98)(joking about not understanding attached article and asking Speir, and not understanding what Speir says)

63) Fax cover sheet with notation from Hank Banta to Robert Speir (11/13/98)(referring Speir to attached article on oil valuation)

64) Fax coversheet with notation from Hank Banta to Mike Fisher (3/29/99)(referring to attached draft letter asking MMS for certain information)

65) Fax coversheet with notation from Hank Banta to Danielle Brian ((3/29/99)(referring to attached draft letter asking MMS for certain information)

66) Fax coversheet with notation from Hank Banta to Robert Speir (7/29/99)(referring to attached draft letter asking MMS for certain information)

67) Deposition of Henry Banta (11/16/99)

68) E-mail from Robert Speir to Brian, Ashton, McMahon, Hamlin, Berman, "Speir", Banta, and Helfrich (10/8/99)(Cathy Landry, "US Natural Gas Prices Could Spike This Winter", Platt's Oilgram, Vol.77, No. 194, Oct. 8, 1999)

69) E-mail from Robert Speir to Brian, Ashton, McMahon, Hamlin, Berman, "Speir", Banta, and Helfrich (10/19/99)(BNA, "Peabody, Subsidiary Settle for $11 Million In Suit Alleging Underpayment of Royalties", Energy Executive Daily, Vol. 2, No. 201, Oct. 19, 1999)

70) E-mail from Robert Speir to Brian, Ashton, McMahon, Hamlin, Berman, "Speir", Banta, and Helfrich (10/25/99)(BNA, "Conference Report on Interior Spending Passes Congress with Environmental Riders", Energy Executive Daily,)

71) E-mail from Robert Speir to Brian, Ashton, McMahon, Hamlin, Berman, "Speir", Banta, and Helfrich (10/14/99)("New Player in Debate on US Royalties: GAO", Platt's Oilgram, Vol. 77, No. 198, Oct. 14, 1999)

72) E-mail from Robert Speir to Brian, Ashton, McMahon, Hamlin, Berman, "Speir", Banta, and Helfrich (10/06/99)(BNA, "House Seeks Removal of Senate Riders During Conference on FY 2000 Interior Bill", Energy Executive Daily, Vol. 2, No. 193, Oct. 6, 1999)

73) Minutes of the POGO Board Meeting of 2/17/98 (Banta steps down as Chairman to avoid appearance of impropriety)

74) Minutes of the POGO Board Meeting of 10/27/98 (Board goes over its actions in determining legality of award to Berman and Speir, outlines plans on what to do with settlement without Banta)

75) Memorandum re: California Royalty Underpayment (3/18/94)

76) 26 E-mails from Bob Speir re: oil royalties articles (8/16/99- 10/14/99)

79) Unsigned memorandum re: Saudi Arabia oil pricing formula (10/6/99)

80) Unsigned Memorandum re: Congressional Investigation of oil valuation (10/7/99)

81) Invitation to Hank Banta from POGO re: Behind the Headlines Award (1/11/00)

82) Fax from Brian to Banta enclosing letters and article re: False Claims Act (6/8/99)

83) Fax from Brian to Banta enclosing Washington Times article re: Awards (6/2/99)

84) Senate Committee on Energy Press Release re: suspension of oil valuation (5/19/99)

85) Senate Committee on Energy Press Release re: Interior reply to request for delay (6/23/99)

86) Monday morning report (4/12/99)

87) Fax from Brian to Banta enclosing Senate press release re: nomination of Baca (2/17/00)

88) Fax from Brian to Banta enclosing 2/17/00 subpoenas (2/23/00)

89) Fax from Brian to Banta enclosing transcript for hearing on Defendant's motion to dismiss (2/3/99)

90) Fax from Brian to Banta enclosing related documents for Defendant's motion to dismiss (2/3/99)

91) Final Interagency Report re: Valuation of oil in CA (5/16/96)

92) Appendix 4: Companies' use of ANS crude oil to value CA crudes

93) Meeting notes, 6/22/95, Telecon interagency team, Ca oil valuation issue

94) Memorandum from Spier to Peter Orzog re: potential royalty and interest collection (12/14/95)

95) Fax from Berman to Banta re: Calvert's opening statement for HR 1975 (2/28/96)

96) Fax from D. Hubbard to Lee Helfrich enclosing memorandum re: option paper CA oil royalty valuation issue

97) Handwritten notes interagency team (6/22/95)

98) Memorandum from Dave Hubbard to Spier re: response to memo on audit/collection authority (1/10/95)

99) Memorandum from Spier to Hubbard re: implications of Chevron settlement for CA royalty underpayment evaluation (8/23/94)

100) Memorandum from Spier to Hubbard re: unpaid royalty collection option paper (11/30/95)

101) Potential royalty and interest collection graph from Spier to Banta (11/17/95)

102) Fax from Spier to Banta and Helfrich re: enclosing effect of statute of limitations on potential royalty and interest collection (11/14/95)

103) Fax from Spier to Banta and Helfrich re: enclosing effect of statute of limitations on potential royalty and interest collection (11/15/95)

104) Fax from Spier to Helfrich enclosing option paper for Assistant Secretary Armstrong (11/9/95)

105) Fax to Banta enclosing memorandum from Spier to Hubbard re: Chevron settlement (8/31/94)

106) Fax enclosing memorandum from Berman to B. Yeager re: CA common carrier and crude valuation (8/6/93)

107) E-mail from Hubbard to James Shaw re: CA interagency oil team (9/6/94)

108) Fax from Berman to Banta enclosing Platt's Oilgram news (10/5/94)

109) Memorandum from Spier to Hubbard re: audit related questions (7/13/94)

110) Fax from Berman to Banta enclosing letter and questions from Senate to Assistant Secretary Armstrong (5/9/?)

111) Excerpt of Union Oil Co. statement (6/27/97)

112) Fax from Spier to Banta enclosing Oil Daily (5/10/95)

113) Fax from Pete Rainor to Banta enclosing DOI release re: Babbit Statement (8/7/98)

114) Fax from Spier to Banta enclosing Platt's Oilgram re: Mobil settlement (7/1/98)

115) Articles and Babbit statement re: Mobil settlement (9/2/98)

116) Memorandum re: CA royalties

117) Deposition of Danielle Brian Stockton (7/23/99)

118) Letter from Martin Lobel to R. Gutman enclosing 7/23/99 deposition of Brian (11/10/99)

119) Deposition of Danielle Brian Stockton (9/13/99)

120) Deposition of Robert A. Spier (6/23/99)

121) Deposition of "Robert L. Berman" (4/27/99)

122) Deposition of Danielle Brian (8/6/98)

123) Fax from Katja to Banta enclosing settlement agreement (8/2/98)

124) Deposition of James W. Shaw (8/10/98)

125) Judge Hanna Memorandum and order (12/8/98)

126) Joint motion to stay discovery (9/10/99)

127) Judge Hanna Memorandum and order (1/14/99)

128) Federal Crude oil royalty payment presentation (2/29/96)

129) Fax from POGO to Martin Lobel enclosing article re: oil settlements and Senate oil royalty vote (9/13/99)

130) Deposition of J. Benjamin Johnson, Jr. (8/3/98)

131) Relators Consolidated and Second Amended Complaint (9/28/98)

132) Unfiled copy of Relators Consolidated and Second Amended Complaint with exhibits attached (9/28/98)

ATTACHMENT B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

UNITED STATES OF AMERICA, *ex rel.* J. BENJAMIN JOHNSON, JR., *et al.*,	)	
Plaintiff,	)	
v.	)	Civil Action No. 9:96CV66 JUDGE JOHN H. HANNAH, JR.
SHELL OIL COMPANY, *et al.*,	)	
Defendant.	)	

OPPOSITION OF DEFENDANT SHELL OIL COMPANY TO PROJECT ON GOVERNMENT OVERSIGHT AND HENRY M. BANTA'S MOTION FOR PROTECTIVE ORDER

INTRODUCTION

Defendant Shell Oil Company ("Shell") has subpoenaed Henry M. Banta to provide deposition testimony. Among other things, Shell intends to question Mr. Banta about payments the Project on Government Oversight ("POGO") has made and intends to make to government employees in order to influence the government's conduct relating to this matter. On November 2, 1998, POGO paid $383,600 each to Robert Speir, a former employee of the Defendant of Energy ("DOE"), and Robert Berman, an employee of the Department of the Interior ("DOI"). Exhibits 1, 2. Shell intends to question Mr. Banta about these payments and to explore whether POGO made or promised to make other payments.

POGO and Mr. Banta have moved for a protective order prohibiting Shell from questioning Mr. Banta about POGO's agreement to share settlement proceeds in this case with Messrs. Berman and Speir. POGO and Banta suggest that "it is the law of the case that the Berman/Speir matter is unrelated to the merits of the case and that Defendants are not entitled to probe into these matters." Memorandum in Support of Project on Government Oversight and Henry M. Banta's Motion for Protective Order and Request for Expedited Consideration of Motion ("Banta Mem.") at 2. They also suggest that "any questions relating to [the sharing of settlement proceeds] will neither be relevant to any issue in the case nor reasonably calculated to lead to the discovery of admissible evidence." *Id.*

The Court should deny the motion for a protective order.[1] POGO is not a party and has not been subpoenaed; therefore, it lacks standing to seek a protective order. In addition, Mr. Banta has not demonstrated "good cause" for a protective order. *See* Fed. R. Civ. P. 26(c). The Court has not ruled that the subject matter of Mr. Banta's testimony is unrelated to this lawsuit and, in any event, the Court has been misled in several key respects. Further, the proposed testimony is directly relevant to Shell's defense of this case because it bears on the motivations of the United States in abandoning settled interpretations of federal royalty regulations in prosecuting this case.

ARGUMENT

I. POGO LACKS STANDING TO SEEK A PROTECTIVE ORDER

Rule 26(c) permits a motion for a protective order to be filed only "by a party or by the person from whom discovery is sought." Fed. R. Civ. P. 26(c). The Court dismissed POGO from

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[1] Given the impending close of discovery, Shell concurs in the request for expedited treatment of Mr. Banta's motion. Shell and Mr. Banta have agreed to postpone the deposition until after the Court rules on Mr. Banta's motion.

this action on March 12, 1999; accordingly, it is no longer a party for purposes of discovery. Nor is POGO a "person from whom discovery is sought," *id.*, given that the deposition subpoena is directed to Mr. Banta. Accordingly, POGO lacks standing to seek a protective order.

II. THE DOCTRINE OF LAW OF THE CASE DOES NOT PRECLUDE SHELL FROM QUESTIONING MR. BANTA ABOUT POGO'S ILLICIT SHARING AGREEMENT

POGO and Mr. Banta contend that the Court already has been fully briefed about POGO's payments to Mr. Berman and Mr. Speir and that the Court has held that the payments are unrelated to the merits of the underlying litigation. According to POGO and Mr. Banta, the law of case bars Shell from questioning Mr. Banta regarding those payments. Banta Mem. at 2. The Court, however, has issued no order concluding that POGO's decision to share settlement proceeds with government employees lacks relevance to the merits of this case. Furthermore, subsequent testimony by Mr. Banta and POGO's Executive Director, Ms. Danielle Brian, demonstrates that POGO's prior representations to the Court regarding the payments to Mr. Berman and Mr. Speir were inaccurate or, at best, incomplete.

The "law of case doctrine provides that once a court of competent jurisdiction decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages of the same case." *Copeland v. Merrill Lynch & Co.*, 47 F.3d 1415, 1423-24 (5th Cir. 1995) (citing *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988)). In a conclusory statement, POGO and Mr. Banta assert that the law of the case prohibits Shell from probing into the circumstances surrounding POGO's payments to Mr. Berman and Mr. Speir because "[o]n at least five occasions, the Court has held that these matters are unrelated to the underlying litigation." Banta Mem. at 2. They cite five documents in which the Court granted relators' and POGO's

motions to file certain pleadings under seal. *See* Banta Mem. at 2 (citing Docket Nos. 563, 644, 645, 656, 741). The documents simply do not provide any indication that the Court has foreclosed Shell from further discovery on the question of POGO's payments. There is no language in those orders (or for that matter, any other orders) remotely suggesting that the Court has decided upon a "rule of law" to govern the proceedings on the issue of POGO's payments. Instead, the orders state only that the Court is granting the motions of the relators, POGO, Ms. Brian, and Mr. Brock to file certain pleadings under seal. The mere fact that the Court initially granted the relators' motions to resolve the dispute under seal hardly establishes a definitive precedential ruling on the relevance of the payments for all future proceedings.

In any event, the Court subsequently determined that the relators' dispute could not be litigated under seal. The Court unsealed the documents on which POGO and Mr. Banta rely, *see* Docket No. 908, ordered that Plaintiffs provide Defendants with transcripts of all past depositions and court testimony relating to payments by POGO, and ordered that Plaintiffs provide Defendants with notice of depositions relating to POGO and afford Defendants an opportunity to attend such deposition, *see* Docket No. 929. In making the orders, depositions, and court testimony regarding the POGO payments available to Defendants, *see* Docket No. 929, and by unsealing other orders relating to those payments, *see* Docket No. 607, 908, the Court has indicated that these issues may be relevant to the merits of the underlying litigation.[1] At a minimum, the Court orders demonstrate that the Court has done nothing to foreclose further discovery on the illicit payments.

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[1] In fact, the Court has indicated in another proceeding that the payments might indeed be relevant. *See* Transcript of December 10, 1999, Status Conference, page 14 (noting its grant of a "temporary quashing" of Union Pacific Resources 30(b)(6) deposition of the Department of Justice regarding its investigation of and response to the POGO payments, but indicating that the Court was not "finally persuaded" on the government's need for a protective order).

Moreover, the Court would not be bound by "law of the case" because there is new evidence bearing on the issue. *See Copeland*, 47 F.3d at 1424 (where disputed issues were not fully litigated in prior proceeding, court not bound by law of the case). Contrary to POGO's and Mr Banta's contention here, the Court has not been "thoroughly briefed about POGO's sharing with Messrs. Berman and Speir." Banta Mem. at 2. Subsequent testimony by Mr. Banta and Ms. Brian in recent Congressional oversight hearings demonstrates that POGO did not accurately advise the Court in its pleadings and in the November 29, 1999 hearing on the Relators' Motion to Void the Multi-Relator Counsel Agreement ("Motion To Void the MRCA"), of its continued commitment to share future settlement proceeds with Mr. Berman and Mr. Speir consistent with the December 1996 oral agreement and the January 5, 1998 written confirmation. *See* Exhibits 3, 4.

In their Opposition to the Motion to Void the MRCA, POGO, Mr. Brock, Ms. Brian, and their attorneys stated that "the uncontrovertible evidence is that neither Berman nor Spier [sic] will receive any portion of future settlement proceeds." Docket No. 731 at n.13. When the Court specifically asked counsel in the November 29, 1999, hearing whether that statement represented Mr. Brock's, Ms. Brian's, and POGO's position, counsel confirmed that it did. *See* Exhibit 5 at 7. Counsel for the POGO/Brian group further agreed with the Court that subsequent developments had "abrogated the promise of future settlements" and that there "is no ongoing reason to fulfill any moral or gentlemen person statements made" in the October 8, 1998 letter from Danielle Brian to Bob Berman, which confirmed the commitment to share in equal thirds all past and future settlements. *Id.* at 8-9.

The testimony of Mr. Banta and Ms. Brian during Congressional oversight hearings on May 18, 2000, provides much more insight than did the November 29th hearing into POGO's initial

understanding of its agreement to pay Mr. Berman and Mr. Speir and of its commitment to live up to that agreement should the Department of Justice not indict Mr. Banta and Ms. Brian. On May 18, 2000, Ms. Brian was directly asked about POGO's intent to pay additional compensation to Mr. Berman and Mr. Speir from settlement proceeds. In direct conflict with the representation made by her counsel to this Court, Ms. Brian made it quite clear to the Subcommittee on Energy and Mineral Resources that, should the Justice Department conclude its investigation without charging Mr. Banta or her with a crime, POGO would continue to pay Mr. Berman and Mr. Speir equal shares of any future settlement proceeds because it would be the "honorable thing to do." She stated outright that Mr. Banta and she had agreed with Mr. Berman and Mr. Speir to share in equal thirds not only the Mobil settlement, but all future settlements. *See also* Exhibit 6 at 178, 290-291. While Ms. Brian disagreed with the characterization of the decision to pay Mr. Berman and Mr. Speir as an "agreement," she clearly stated that the POGO Board of Directors would revisit payment once the investigation by the Justice Department concluded, that no one on the Board or POGO staff had concerns over whether the agreement was legally binding, and that POGO is "morally obligated" to continue the payments. Ms. Brian acknowledged not only that POGO had not informed Mr. Berman that it had revoked its statement of October 27, 1998 "confirming [its] commitment to live up to our existing understanding that POGO will share in equal thirds with [Berman] and Bob Speir all past and future settlement amounts we receive through our filing of the False Claims Acts case," *see* Exhibit 7, but indeed that the Board had not made such a decision to revoke that "moral obligation." Finally, contrary to her counsel's prior representation to this Court, Ms. Brian did not categorically say in her congressional testimony that POGO would not make further payments to Berman and

Speir. Instead she stated that she never believed it was wrong to do make the payments in the first place.

Although Ms. Brian's statements to the Subcommittee are inconsistent with her counsel's repeated representations to this Court that "there's no intention to share any money," Exhibit 5 at 7, her understanding of the agreement with Mr. Berman and Mr. Speir is completely consistent with POGO's and Mr. Banta's continued belief that Mr. Berman and Mr. Speir are unnamed relators in the False Claims case and that they are thus entitled under the agreement to receive any future proceeds in that case. *See* Exhibit 3 ("Mr. Banta noted that POGO is the only relator that is public. The others are in private agreements . . ."); Exhibit 6 at 301-04.[3] Although Mr. Banta disputed whether POGO's commitment to pay Mr. Berman and Mr. Speir was a binding "agreement," he acknowledged on May 18, 2000, when testifying in Congress regarding his alleged recusal from Board meetings, that the False Claims lawsuit and the payments to Mr. Berman and Mr. Speir were one and the same. Indeed, he testified that he recused himself from any discussion of both matters, suggesting that he considered the payments and the suit to be indivisible. The agreement was in effect a means to pay Mr. Berman and Mr. Speir without naming them as relators in the lawsuit. When asked whether the POGO Board had reached a decision to stop payments to Mr. Berman and Mr. Speir, Mr. Banta declined to state, as had his counsel before this Court, that POGO would make no such further payments.

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[3] That belief is reflected in Mr. Banta's deposition by Relators on November 16, 1999, of which Defendants became aware over four months later. *See* Docket No. 929. In that deposition, Mr. Banta stated, as had Ms. Brian in her deposition, *see* Exhibit 6 at 178, that from December 1996 forward, the agreement with Mr. Berman and Mr. Speir was to share proceeds from all the settlements in equal thirds, not just from the Mobil settlement, *see* Exhibit 8 at 44-45. Mr. Banta confirmed in his testimony during the Congressional oversight hearing on May 18, 2000, that the agreement reached anticipated the sharing of all settlement proceeds with Mr. Berman and Mr. Speir.

In sum, the Court has not ruled that payments to Mr. Berman and Mr. Speir are irrelevant to this lawsuit. But, even if it had made such a ruling, the Court would not be precluded from revisiting it in light of new evidence that is contrary to representations that have been made to the Court.

III. QUESTIONS ABOUT THE SHARING OF SETTLEMENT PROCEEDS ARE RELEVANT AND LIKELY TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE

A. Rule 26(b)(1) Permits Discovery Where There Is Any Possibility That The Information May Be Relevant To The Subject Matter Of The Action

Rule 26(b)(1) provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . ." Fed. R. Civ. P. 26(b)(1). "Relevance for discovery purposes is broadly and liberally construed." 6 J. Moore, *Moore's Federal Practice* § 26.41[1] at 26-86 (3d ed. 1997); *see Herbert v. Lando*, 441 U.S. 153, 177 (1979) (depositions and discovery rules should be accorded broad and liberal treatment). 6 J. Moore at 26-87. "The scope of relevance during discovery is much broader than the standard of admissibility at trial." *Id.* at 26-87; *see United States v. Holley*, 942 F.2d 916, 924 (5th Cir. 1991). "[D]iscovery is to be considered relevant when there is *any possibility* that the information sought may be relevant to the subject matter of the action." *United States v. International Bus. Machs. Corp.*, 66 F.R.D. 215, 218 (S.D.N.Y. 1974); *accord Jones v. Commander, Kansas Army Ammunitions Plant*, 147 F.R.D. 248, 250 (D. Kan. 1993) (discovery should be allowed unless clear that information can have "no possible bearing" on subject matter of action).

B. The Proposed Questioning of Mr. Banta Is Relevant To The Subject Matter Of The Action

Apart from baldly asserting that "[w]hether or not POGO's sharing was proper or ethical has nothing to do with Defendants' fraud against the government," Banta Mem. at 2, Mr. Banta has made no showing that the discovery sought is irrelevant; in fact, it is directly relevant to defenses raised by Shell and the legitimacy of the government's intervention in and prosecution of this action. Several of Shell's defenses in this action are based on Shell's compliance with and reliance upon agency interpretations of lease terms and royalty regulations. *See, e.g.*, Docket No. 392 (Answer to First Amended Complaint of the United States by Defendants Shell Oil Company, Shell Offshore, Inc., Shell Frontier Oil & Gas, Inc., and Shell Western E&P, Inc., Third Affirmative Defense, Fourth Affirmative Defense, Fifth Affirmative Defense). Shell expects to show that the government abandoned those interpretations in this case and was prompted to do so by a concerted campaign of at least two federal employees and relators who stood to benefit personally from the government's retroactive reversal of those interpretations.

In particular, Shell intends to show that the government improperly has abandoned many of the Department of the Interior's prior interpretations of lease terms and royalty regulations. The government, *inter alia*, has rejected reliance on prices used in arm's-length buy-sell agreements; rejected reliance on costs paid by third parties as a basis for deducting transportation costs; rejected reliance on the lowest arm's-length price in the field as an acceptable measure of royalty value; rejected evidence of the existence of substantial numbers of arm's-length sales in federal oil fields; and rejected the settled rule that a lessee appealing an agency order is permitted to continue its existing valuation practice pending appeal. For example, the government has followed the

recommendation of Mr. Berman, relayed in turn to POGO, *see* Exhibit 9 at 106:10-13; 135:22-23; 140.4-5; Exhibit 6 at 75:3-12; 282:5-19; 342:7-15; 347:5-10, that buy-sell agreements should only be used as deductions from prices set at market centers to derive values at leases. The Berman position is a key and explicit part of "the model that the Government currently contemplates using at trial . . . ." Exhibit 10 at 1. Specifically, "[b]uy/sell and exchange transactions will be used to determine the appropriate value differential between a market center price and a lease price." *Id.* at 2. At trial, Shell will highlight this recent reversal of position as part of its defense. And, through discovery, it is entitled to explore what has caused the government to reverse a prior interpretation which was based on a full understanding of how major oil companies transport and market crude oil.

Shell also expects to show that the government's conduct in this case violates due process. "The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *see, e.g., Brown v. Nationsbank Corp.*, 188 F.3d 579, 591 (5th Cir. 1999) ("[t]he Due Process Clause was intended to prevent government officials from abusing their power or employing it as an instrument of oppression"), *cert. denied*, — S.Ct. —, 2000 WL 248735 (US June 29, 2000). Few actions are more repugnant to orderly government than having public officials use the government's power of civil prosecution for private gain. The Supreme Court has struck down as a violation of due process a system in which a mayor responsible for village finances could assess fines in traffic cases where the village treasury was, by statute, the beneficiary of the assessment, even though the mayor did not benefit personally. *Ward v. Village of Monroeville*, 409 U.S. 57 (1972). When those within the government stand to gain personally, the violation is even more clear. Officers and employees of the Justice Department may not participate in any investigation or prosecution in which they have a personal or financial conflict,

28 U.S.C. § 528, and any other "scheme injecting a personal interest, financial or otherwise, into the enforcement process may . . . in some contexts raise serious constitutional questions." *Marshall v. Jenico*, 446 U.S. 238, 249 (1980).

There is every reason to believe, moreover, that the government has reversed its prior positions because of POGO's illicit payments and that Mr. Banta can testify about the payments to Mr. Speir and Mr. Berman and any other payments or promises to government employees. Many of the allegations in this case originated in litigation brought by the City of Long Beach and the California State Lands Commission against several oil and gas companies. *See United States ex. rel. Johnson v. Shell Oil Co.*, 33 F. Supp. 2d 528, 534-35 (E.D. Tex. 1998). Mr. Banta is a partner in Lobel, Novins & Lamont, which represented the State Lands Commission in that case and has long represented the Commission before the Department of the Interior and Congress. Mr. Banta also served for many years as the chairman of POGO's Board of Directors and remains a director today. Exhibit 6 at 20:5-21; Exhibit 8 at 9. Mr. Banta has been Mr. Speir's friend for many years. Exhibit 6 at 76:16-22; 77:1-7; Exhibit 8 at 16. Mr. Banta conferred with Ms. Brian prior to a December 1996 meeting with Mr. Berman and Mr. Speir regarding their involvement in the lawsuit, *see* Exhibit 6 at 102-107, 151-157, Exhibit 8 at 20-22, he met in his office with Mr. Berman, Mr. Speir, and Ms. Brian to discuss a potential role for Mr. Berman and Mr. Speir in the suit, *see* Exhibit 6 at 102, 155-160, Exhibit 8 at 23-29, and he reviewed the written confirmation of the agreement to pay Mr. Berman and Mr. Speir with any future proceeds from the suit prior to the agreement being signed in his office on January 5, 1998, *see* Exhibit 6 at 171-178, Exhibit 8 at 44-45.

On November 2, 1998, after the Mobil settlement, POGO paid $383,600 each to Mr. Speir and Mr. Berman. Exhibits 1, 2. Almost six months later, POGO issued a press release calling these

payments "public service awards," compensating these two "unsung hero[e]s" for their work in changing the DOI's policies on valuing royalties on crude oil. Exhibit 11. In fact, POGO had earlier arranged to call Messrs. Speir and Berman as witnesses on oil valuation before a Congressional subcommittee in June 1996, *see* Exhibit 6 at 91:7-11; Exhibit 12, and had regarded them as "assets" in POGO's efforts at DOI, in Congress, and with the news media, *see* Exhibit 6 at 69:18-20; 71:4-9; 84:9-15. Messrs. Speir and Berman were the persons most active in advocating that the DOI reverse prior policies and adopt the theories of valuation POGO advanced in this litigation. Exhibit 13; Exhibit 14. They were also important sources of information for POGO. Exhibit 6 at 342:11-15.

In August 1993, Mr. Berman, who had shown no interest in oil royalties since 1986,[4] developed an inexplicable enthusiasm for the issue following a phone call from Mr. Banta. Exhibit 8 at 10-11. Berman sent a memorandum to his superiors urging that because of developments in the *Long Beach* litigation, "the Department [should] proceed immediately to ascertain the amount of additional royalties due, including interest and criminal penalties, if any, and initiate collection procedures." Exhibit 14 at SOL001-0494. The next month, lawyers for Long Beach sent Berman exhibits from that case to aid Mr. Berman's presentation to his superiors. In December 1993, at his firm's Christmas party, Banta, apparently impatient with the Interior Department's response to Mr. Berman's initiative, recommended to Ms. Brian, the new Executive Director of POGO, that POGO investigate the California royalty issue. Exhibit 9 at 23:7-19. Mr. Speir, a friend of the firm and of

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[4] No document produced by the government, POGO, Mr. Berman, or Mr. Speir reveals Mr. Berman's involvement in any question of federal oil royalty valuation between August 1986 and August 1993, or Mr. Speir's involvement between April 1987 and July 1994. Although POGO defends its payments as "awards" rewarding "their constant voices on this issue over a decade," Exhibit 6, at 106:20-21, Ms. Brian has been unable to identify a single action taken or word spoken on this issue by either man during these periods. *Id.* at 111:8-15 (Berman); 127:20 to 130:22 (Speir)).

Mr. Banta's, also was present at the party. Exhibit 6 at 76:13-17. POGO had no prior experience in any issue relating to oil. *Id.* at 19:9-14.

Brian soon began a long series of conversations with Mr. Berman and Mr. Speir, and Mr. Berman apparently began a productive campaign of leaking internal government documents to Brian and, directly or through Brian, to the news media.[5] Mr. Berman also continued to try to gather data from Interior Department sources about California royalty payments, even though he was not assigned any responsibility for the issue and even in the face of questions from colleagues about the propriety of his requests. Exhibit 20, 21.

These efforts soon bore fruit. By June 1994, enough adverse publicity had been generated to prompt then Assistant Secretary Bob Armstrong to create an Inter-Agency Team to investigate allegations of underpayments of federal royalties in California. Exhibit 22, at 20:7-20; Exhibit 23 at 55:2-14. Mr. Speir arranged to be appointed the Energy Department's representative, Exhibit 24

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[5] On December 2, 1993, Mr. Berman spoke with a reporter for a trade publication, *Inside Energy/with Federal Lands*. Exhibit 15. The next day, Mr. Berman told his superior that he had "been informed that *Inside Energy/with Federal Lands* is in possession of the MMS analysis showing the $2.6 + billion undervaluation and $420+ million in additional royalties due." Exhibit 16. On December 6, the publication ran the story. Later, MMS sought to clarify that those estimates were based solely on assumptions provided by attorneys in the *Long Beach* litigation, and that more careful analysis failed to find underpayments. Mr. Berman immediately sent an e-mail to his supervisor requesting that his office review the final undervaluation report before its distribution to the public. Exhibit 17. Mr. Berman expressed his concern that "the press and the Hill will have a field day with these 'revised' numbers" showing no undervaluation. *Id.* Mr. Berman apparently helped fulfill his own prophecy when an article appeared discussing MMS' finding of no undervaluation. Exhibit 18.

Finally, a memorandum from a Commerce Department official to the Interior Department made it from the Interior Department to Danielle Brian to ABC News within 48 hours and was referenced in an ABC *World News* report in Fall 1994. Exhibit 19; *see also* Exhibit 9 at 66:7-20. Because POGO identified Mr. Berman as its only ally within the Department at that time, Exhibit 6 at 105:11-22, the probable source of the leak is obvious.

at 26:6-18, and a representative of the firm of Lobel, Novins & Lamont attended Inter-Agency Team meetings otherwise closed to the public, as an unofficial member of the Inter-Agency Team. Exhibit 24 at 142:21-22; 143:1-6. Mr. Banta also attended a meeting of the task force. *Id.* Mr. Speir actively pressed the Inter-Agency Team to adopt positions inconsistent with the Department's royalty valuation rules, prompting exchanges of correspondence within the group. Exhibit 24 at 261:16-22; 262:1-9. Mr. Speir also found time to vent his frustration at DOI's positions in a letter to Associate Director Shaw. Exhibit 25; Exhibit 24 at 104:1 to 107:7.

In April 1995 and February 1996, POGO published reports provocatively titled "Department of the Interior Looks the Other Way: The Government's Slick Deal for the Oil Industry," and "With A Wink and Nod: How the Oil Industry and the Department of the Interior Are Cheating the American Public and California School Children." Although critical of the Interior Department's slow pace in collecting royalties that it was convinced federal lessees owed, POGO admitted that it lacks the knowledge necessary to understand the complex subject of oil value. Exhibit 9 at 35:11-15. POGO felt it appropriate, however, to "simplify" the topic in order to "get people to care," Exhibit 9 at 80:11 to 81:12, and felt it fair to criticize DOI for attempting to carefully consider a complex topic. In April 1996, POGO joined Representative Carolyn Maloney of Manhattan, New York, in a press conference blasting the DOI for failing to collect an alleged $856 million in unpaid federal royalties in California. Exhibit 26. At POGO's urging, Maloney then arranged to hold an oversight hearing on the issue, and pressured the Interior Department to present Mr. Berman as a witness. Exhibit 6 at 90:15-22; 91:1-11.

In May 1996, the Inter-Agency Team issued a report adopting the Speir-Berman-POGO approach to valuing royalties in California, Exhibit 27 at 54-65, 67-86, a result Mr. Banta, who

represented the California State Lands Commission, had long sought. But that did not stop Rep. Maloney's subcommittee from issuing a blistering report in September 1996 critical of the Department's mismanagement of the issue. Exhibit 28. In October and December 1996, MMS issued demands for $400 million in additional royalties for allegedly underpaid royalties in California. On January 30, 1997, Assistant Secretary Armstrong joined Senator Barbara Boxer of California at a press conference challenging "deadbeat" companies to pay the royalties demanded. Exhibit 29.

Despite the government's movement, POGO resolved, at some point before December 1996, that it needed to participate in False Claims Act litigation already pending under seal. It is unclear whether DOI or DOJ personnel breached this Court's seal,[6] but POGO plainly knew to file its case in this district instead of in California, *see* Exhibit 3; Exhibit 6 at 151:7-13, and it reached an agreement to share with Mr. Berman and Mr. Speir all proceeds POGO received from the litigation. Exhibit 4. Contrary to earlier public denials by POGO, Exhibit 30, Mr. Berman and Mr. Speir continued to remain involved in the oil valuation issue after their compensation agreement was reached. At a minimum, Mr. Speir was very active at the Department of Energy in commenting on and monitoring the progress of the Interior Department's proposed new rule on crude oil valuation,[7]

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[6] Both Mr. Banta and Ms. Brian denied in their depositions that they were aware of this suit while it was under seal. *See* Exhibit 6 at 93; Exhibit 8 at 39. In contrast, in their Congressional testimony at the oversight hearing, they were unwilling to deny knowledge of the suit. Instead, they both refused to answer the members' questions about their knowledge of the suit under seal.

[7] In an e-mail to Senator Murkowski, Mr. Speir stated that he had not been involved with DOI since the issuance of the Inter-Agency Team report in May 1996. Exhibit 33. At his deposition, however, Mr. Speir was presented with evidence refreshing his memory of his continuing involvement with DOI on rulemaking issues. Exhibit 24 at 375:14 to 377:4. Indeed, he remained very active well into 1997. Exhibits 34-38.

and even recommended, shortly before retiring from federal service, that the Energy Department pursue claims of undervaluation at the Naval Petroleum Reserve No. 2. Exhibit 31. Notably, Mr. Speir testified during the May 18, 2000, Congressional hearing that after he wrote a paper in mid-1997 regarding the Naval Petroleum Reserve alleged undervaluation, he had talked to Mr. Banta about filing a qui tam suit on the issue. According to that Congressional testimony, Mr. Speir continued to talk to Mr. Banta about oil valuation issues after the December 1996 meeting with him regarding the False Claims suit. For his part, Mr. Berman had his supervisor forward Berman's recommendation on the rulemaking to Assistant Secretary Armstrong on December 10, 1996, a recommendation that the Department adopted in its proposal. Exhibit 32. Mr. Berman had continuous communications with Mr. Johnson, a person he may have known to be relator in this case from April 1996 throughout the first half of 1997. *See* Exhibit 5 at 38-43.

On January 5, 1998, POGO reduced its "standing oral agreement" to share money into a signed contract with Mr. Berman and Mr. Speir. Exhibit 4. Despite the clarity of this agreement and her knowledge of the imminence of the Mobil settlement, Brian denied under oath on August 8, 1998, that she ever provided more than "moral support" to whistleblowers. Exhibit 9 at 179:8-15. Subsequently, Mr. Berman apparently grew concerned that POGO would not honor the agreement,[8] and, as noted above, Brian sent him written reassurance of POGO's "commitment to live up to our existing understanding that POGO will share in equal thirds with you and Bob Speir all past and future settlement amounts . . . ." Exhibit 7. On November 2, 1998, POGO sent the checks to Mr.

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[8] Both Ms. Brian and Mr. Speir testified during the May 18, 2000, hearing that before this letter from POGO was sent, Mr. Berman was becoming agitated that he had not yet been paid his promised portion of the settlement proceeds from the lawsuit.

Berman and Mr. Speir. POGO only issued a press release about the payments once the matter became the subject of press inquiries in late April 1999. Exhibit 39.

POGO's press release called these payments "public service awards," but the accuracy of that characterization is best measured by the reaction of the two recipients. Mr. Speir defended the payment in an e-mail to Senator Frank Murkowski, Exhibit 33, with statements he later admitted were not true. Exhibit 24 at 375:14 to 377:4. Mr. Berman responded to all questions about his "award" by invoking his Fifth Amendment privilege against self-incrimination. Exhibit 23 at 84:4 to 85:13; 139:6-12. In the May 18, 2000, Congressional hearing, Mr. Berman again refused to answer any questions with regard to the payments or his involvement with the suit.

The influence of Berman, Speir and POGO over the actions of the Justice Department in this litigation is evident. Deputy Assistant Attorney General Stuart Schiffer of the Justice Department's Civil Division has admitted to Congress that the Civil Division consulted with Berman and Speir in connection with the Justice Department's intervention in this case.[2] Exhibit 40 at 3 ("Department counsel did discuss the allegations in the case with Messrs. Berman and Speir . . . ."). Schiffer admitted that the Department employed Mr. Speir's consulting firm to "analyze sales contracts for both the *Johnson v. Shell* case and for a gas royalty underpayment case" and that had the Department "known of [Mr. Speir's] relationship with POGO, [it] likely would not have permitted him to work on either of these matters." *Id.* at 3. While Schiffer denied that Berman and Speir played a major

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[2] Mr. Schiffer stated at the May 18, 2000, Congressional hearing that if Berman and Speir had been named relators in this False Claims action, the Justice Department likely would have moved to dismiss it. Mr. Schiffer further stated that, at the very least, Berman and Speir would have been walled off from working on the case and not consulted on the litigation. However, even after learning of the payments, Schiffer admitted that the Department has continued to employ Mr. Speir's consulting firm in connection with the case. *See* Exhibit 40.

role in the litigation, and that the integrity of the case has not been compromised by the payments, that position is not consistent with the fact that the Justice Department has adopted the Speir-Berman-POGO reinterpretations of the rules as its litigation position in this case. In fact, the Justice Department's behavior in response to learning of the payments demonstrates that the Department has been far more solicitous of Berman and Speir than one would expect in light of their acceptance of large sums of money in connection with matters in which they were admittedly involved as government employees.

It appears that the Justice Department learned of the POGO payments at least as early as November 4, 1998. Exhibit 41. POGO and the Justice Department, however, have continued to dispute whether the Department told POGO not to make the payments. In response to early assertions by POGO that the Justice Department had approved POGO's payments, Acting Assistant Attorney General Jennings wrote Representative Don Young to "assure [him] that the Department did not approve of these payments and advised attorneys for POGO that the payments should not be made." Exhibit 41 at 1. Jennings stated that Assistant U.S. Attorney Ken Dodd from the Eastern District of Texas had "received a telephone call from Von and Lon Packard, POGO's attorneys in the *Johnson* litigation" and that the "Packards told Mr. Dodd that POGO and Ms. Danielle Brian had received $1,800,000 as their share of the proceeds in the Mobil settlement" and were "planning to give checks of about $300,000 each" to Berman and Speir. *Id.* at 1-2. According to Jennings,

> Mr. Dodd advised the Packards that he did not believe POGO should make the payments to Mr. Speir and Mr. Berman. The Packards told Mr. Dodd that they did not believe there was any prohibition on POGO making the payments. Mr. Dodd requested that POGO do nothing until Mr. Dodd could consult with the Department. Mr. Dodd informed the Commercial Litigation Branch of his conversation with the Packards. A day or two later, Mr. Dodd again spoke to the

> Packards. The Packards told Mr. Dodd that the payments had been made by POGO under Ms. Brian's direction.

Id. at 1-2). At the May 18, 2000, Congressional hearing, Mr. Dodd reiterated this testimony.

Mr. Berman's lawyer, however, disagreed vehemently with Mr. Dodd's account, saying it was "so far from true, no one ever stated this money should not be paid, ..." Exhibit 42. Lon Packard, POGO's counsel, also took exception to Mr. Dodd's version stating that "on or about October 27, 1998, he had "informed Mr. Dodd that POGO was planning to disburse some of its share of the Mobil settlement proceeds arising out of the *Johnson* litigation to Mr. Berman and Mr. Speir" but that "Mr. Dodd did not advise me that he believed that POGO should not make the disbursements, and Mr. Dodd made no request that POGO do nothing until after he consulted with the Department." Exhibit 43. Lon Packard further stated that a status conference was held in *Johnson* on October 29-30, 1998, that Mr. Dodd and multiple attorneys from Main Justice were present at that conference, and that "nobody from the Justice Department mentioned the Berman/Speir disbursements." *Id.* Packard further noted that POGO made the disbursements to Mr. Berman and Mr. Speir on November 2, 1998. *Id.* He stated that Mr. Dodd called him on November 3rd or 4th, 1998, to ask him about the status of the disbursements, that he told Dodd he thought the payments had been made but would check with POGO, and that he later spoke to Mr. Dodd and advised him that the disbursements had already been made. *Id.*

Under oath, Ms. Brian confirmed Packard's account. She added that "Mr. Berman had informed me that [prior to receiving the payment] had had approval from his ethics officer, so that would obviously have been the Department of Interior that was informed."[19] Exhibit 6 at 257:8-11.

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[19] Mr. Berman's superior, William Bettenberg, has subsequently affirmed that Berman never received approval. Exhibit 44.

She also recounted a conversation with Mr. Dodd two to three months after his conversation with Packard in which she talked to Mr. Dodd about "the substance of the case," and he informed her that the payments were controversial. According to Ms. Brian, when she told Mr. Dodd that they had checked with lawyers on the payments, he said, "well, when you have to check with a lawyer before you can do something, maybe you shouldn't do it. . . . But he didn't say, so maybe you should try and get the money back or – anything like that." *Id.* at 270:10 to 271:2. Ms. Brian reiterated this testimony during the May 18, 2000, Congressional hearing, where she claimed that if the Justice Department had had told POGO not to make the payments, they absolutely would not have done so.

Whichever account is correct, it inexplicably took the Civil Division four weeks to forward the case to the Public Integrity Section of the Criminal Division for review. Exhibit 41; *see also* Exhibit 45 (referencing a Memorandum from Joyce Branda to Lee J. Radek, Chief of Public Integrity Section, Criminal Division of Department of Justice (Dec. 2, 1998), Interrog. 1, item 5) (withheld by DOJ under an assertion of privilege)). Then, as the government's answers to interrogatories disclose, for the next five months, the Civil Division neither created nor received any documents on the subject of the POGO payments, apparently reflecting an oral decision not to consider whether the government was ethically obliged to disclose this information to the Court or the defendants.[11] Until Clayton Dark filed his motion for leave to withdraw as POGO's counsel on April 14, 1999, Docket No. 552, the Justice Department took no action. Then, at this Court's direction, it notified

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[11] The state ethics rules specifically prohibit an attorney from obstructing another party's access to evidence and from "acquies[ing] in the offer or payment of compensation to a witness." *See* TEX. DISCIPLINARY R. PROF. CONDUCT 3.04 & cmt. 2 ("Documents and other evidence are often essential to establish a claim or defense. The right of a party, including the government, to obtain evidence through discovery or subpoena is an important procedural right."); TEX. DISCIPLINARY R. PROF. CONDUCT 3.03 (prohibiting attorneys from failing to disclose a fact necessary to avoid assisting a criminal or fraudulent act).

Defendants of the payments, Docket No. 556, and, not at this Court's direction, notified Mr. Berman's counsel of a criminal investigation. Exhibit 41 at 2. Since then, the Civil Division has asserted a continuing attorney-client relationship with Mr. Speir, prepared him for his June 23, 1999, deposition by Defendants, and continues to retain his consulting firm for use in this litigation. Exhibit 40.

In short, Shell is entitled to depose Mr. Banta for any knowledge of this extraordinary course of events. That information is crucial to several of Shell's defenses and may be the basis of an additional due process defense. Mr. Banta, a friend of Mr. Speir's, a member of the POGO board, and a partner in Lobel, Novins & Lamont, indisputably has information pertaining to POGO's efforts to influence the government in this case, including payments to two government employees, and that evidence easily meets the relevance standard of Rule 26(b)(1). Accordingly, the Court should decline to limit Shell's questioning of Mr. Banta.

CONCLUSION

For the foregoing reasons, the Court should deny the motion for a protective order.

Respectfully submitted,

Steve Roper (by permission LPL)

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Attorneys for Defendant Shell Oil Company

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2000, I caused to be served a copy of the foregoing **Opposition of Defendant Shell Oil Company to Project on Government Oversight and Henry M. Banta's Motion For Protective Order** via:

Facsimile to:

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Daniel W. Packard
Hal A. Lapray
Packard & Packard
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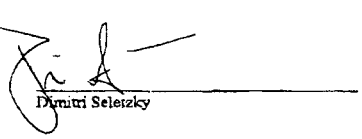
Beaumont, Texas 77707

Federal Express Overnight Delivery to:

All Lead Counsel of Record.



Dimitri Selezky

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

UNITED STATES OF AMERICA, ex rel. J. BENJAMIN JOHNSON, JR., et al.	)	
Plaintiff,	)	
v.	)	Civil Action No. 9:96CV66
	)	JUDGE JOHN H. HANNAH, JR.
SHELL OIL COMPANY, et al.	)	
Defendant.	)	

ORDER DENYING PROJECT ON GOVERNMENT OVERSIGHT AND HENRY M. BANTA'S MOTION FOR PROTECTIVE ORDER

This court having reviewed the Project on Government Oversight and Henry M. Banta's Motion for Protective Order and the memorandum in support of it, the Opposition of Defendant Shell Oil Company to the motion, and otherwise being fully advised on the premises, hereby **ORDERS** that:

1. The Project on Government Oversight and Henry M. Banta's Motion for Protective Order be **DENIED**;

2. The deposition of Henry M. Banta originally noticed by Defendant Shell Oil Company for 9:00 A.M. on July 6, 2000 be rescheduled prior to August 1, 2000, at a mutually agreeable time for Defendant Shell Oil Company and Mr. Banta.

SIGNED this _____ day of _____, 2000.

_____
JOHN H. HANNAH, JR.
United States District Judge
Eastern District of Texas

ATTACHMENT C

EOD JUL 17 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JUL 14 2000
DAVID J. MALAND, CLERK
BY DEPUTY

UNITED STATES OF AMERICA, *ex rel.* J. BENJAMIN JOHNSON, JR., JOHN M. MARTINECK, HARROLD E. ("GENE") WRIGHT, LEONARD BROCK, DANIELLE BRIAN, AND PROJECT ON GOVERNMENT OVERSIGHT,	§	
Plaintiffs,	§	CIVIL ACTION NO. 9:96CV66
	§	JUDGE JOHN H. HANNAH, JR.
VS.	§	
SHELL OIL CO., et al.	§	
Defendants.	§	

ORDER

On this day came on to be heard Project on Government Oversight and Henry M. Banta's Motion for Protective Order and Request for Expedited Consideration of Motion, and the Court having considered said Motion, is of the opinion that said Motion should be, in all things, GRANTED.

It is therefore, ORDERED, ADJUDGED and DECREED that Defendants are not allowed to ask any questions of Henry M. Banta regarding POGO's sharing of settlement proceeds with Robert Berman and Robert Speir.

SIGNED this 14th day of July, 2000.

JUDGE JOHN H. HANNAH, JR.

0832

17-Jul-00 10:41am From-US DISTRICT COURT LUFKIN 4088321210 T-921 P.03/07 F-621