

Chairman Colloquy on Subpoenas

I would like to explain how I intend to approach the issue of consulting with the Minority before issuing subpoenas.

First, let me provide some history for our freshmen Members.

For many decades, the Chair of this Committee has had the authority under the rules to issue unilateral subpoenas.

But even though they had this power, for decades the Chairs of this Committee exercised it responsibly. They had a practice of consulting with the minority first, even though the rule has never required that.

Unfortunately, in 1994, when Congressman Dan Burton became Chairman, he abandoned this historical practice.

He issued more than 1,000 unilateral subpoenas during the Clinton Administration. Sometimes, he would issue a subpoena to the wrong person. Other times, we would find out about a subpoena only when we read about it in the newspapers.

Needless to say, this did not reflect well on our Committee.

One of things you will hear me say over and over and over again, is that I want to make sure that we maintain the integrity of our committee.

Ms. Ocasio-Cortez, I see has adopted my words again.

Efficient and Effective. That's what we want to be about.

When Tom Davis and then Henry Waxman became Chairmen—a Republican and a Democrat—they believed this practice was abusive and counterproductive.

They decided to work together to return to the historical practice of consultation. And in most cases, it worked well. They both exercised this power responsibly.

Eight years ago, in 2011, Congressman Issa became Chairman, and I became Ranking Member.

We had a meeting just like this one at the beginning of that Congress. And I was sitting where Mr. Jordan is sitting now. And I asked Chairman Issa at that meeting to follow the same consultation process that Chairman Davis and Chairman Waxman had used.

Unfortunately, Chairman Issa did not follow that process.

He issued dozens and dozens of unilateral subpoenas to the Obama Administration. He once issued a subpoena to the Secretary of State without even calling his office to see if he would come in voluntarily.

Chairman Gowdy, when he led the Benghazi Committee, sent armed U.S. Marshals to a witness' home to serve a subpoena on his wife without first asking him to come in voluntarily—which he would have done.

It was history repeating itself all over again.

So, here is where we are today. Over the past eight years, Republican Chairmen have issued more than a hundred unilateral subpoenas.

And during that entire eight-year span, they never once agreed to any of our requests to have a debate or a vote on a subpoena—not one single time over nearly a decade.

We are better than that. We have to be better. I believe we must have our own North Star. We need to put the integrity of our Committee on higher ground.

So here is what I intend to do. We are not going to change the rules.

No substantive changes have been made to the Committee's subpoena rules as they were adopted by both Republican and Democratic Majorities over the past several decades.

But I believe we have reached agreement with the Ranking Member on the following process.

This was carefully negotiated, so I am going to read directly from the text that was negotiated. Here is what it says:

A Congressional subpoena is a powerful and coercive tool. It should be used only when attempts to reach an accommodation with a witness have reached an impasse or when necessary to obtain certain sensitive information, such as financial information, or through a so-called "friendly" subpoena to protect a witness.

I intend to avoid the use of unilateral subpoenas whenever possible.

In the normal course, I hope to work with the Ranking Member on proposed subpoenas well in advance. I intend to consult with the Ranking Member by providing his office with a physical copy of the subpoena at least two days (48 hours) before it is issued.

If the Ranking Member objects to the issuance of a subpoena in writing, my preference is to bring the subpoena before the Committee for a vote, when that is feasible.

Members deserve the opportunity to go on the record for some of the most important work they will do, and the public deserves the opportunity to see them do that work in the open.

The Chair prefers that, when the Ranking Member objects, the Committee will have an open proceeding and a vote when feasible.

There will be exceptions to this policy, when, for example, the calendar does not permit the Committee to schedule a markup between my initial consultation with the Ranking Member and the date on which a witness is scheduled to appear.

But even in those cases, I intend to be open with the Ranking Member and give him every opportunity to voice his opinion on the matter.

That is the text that we agreed to, and that's something the last three Chairmen never once agreed to in the past eight years.

But here is what I am asking in return. And it is significant.

I ask that the Ranking Member and all of our Republican colleagues not reflexively oppose any and every subpoena just because you want to protect the President.

I know there are Republican "playbooks" floating around that say you all will object to every subpoena, claim they are all overbroad, and on and on.

If that happens, we will revisit this policy.

But I ask that you—and every one of us here who swore an oath to protect the Constitution—fulfill our responsibility to serve as an independent check on the Executive Branch.

And if we all do our jobs, this Committee—and our nation—will be all the better.