MEMORANDUM

TO: Rep. Zoe Lofgren, Chair

FR: R. Blake Chisam, Staff Director and Chief Counsel

RE: Personnel Issues Related to the Matter of Rep. Maxine Waters

As requested, I am writing this memorandum to detail information discovered relating to the above-referenced matter. In sum, the lead counsel and the senior attorney in the above-referenced matter, failed to disclose material facts relating to actions they asked the adjudicatory subcommittee to take, such as authorizing subpoenas, misled Members about the facts, engaged in impermissible *ex parte* contacts with Members of the Committee and adjudicatory subcommittee, and repeatedly acted in an insubordinate manner, refusing to provide material information to the Committee's Chief Counsel. For these reasons and others, I recommended that adverse employment actions be taken against two employees. Certain of those bases are set forth below.

On November 19, 2010, the Committee announced that it had "voted to recommit the matter regarding Representative Maxine Waters to the investigative subcommittee due to materials discovered that may have had an effect on the investigative subcommittee's transmittal to the Committee."[1]

Since that time, Respondent has sought clarification of this process. In recommitting the matter to the investigative subcommittee, the Committee acted after the adjudicatory subcommittee forwarded for its review and consideration an email that had been provided to Committee counsel on October 29, 2010, while preparing for the respondent's adjudicatory hearing, which had been scheduled to begin on November 29, 2010. This action, while without precedent in the Committee, was consistent with House rules and was taken upon my advice and after consultation with the Office of the Parliamentarian.[2]

In recommitting the matter, the Committee neither recommended that the investigative subcommittee take any particular action nor altered or expanded the original jurisdiction of the investigative subcommittee. Instead the Committee merely recommitted the matter to the investigative subcommittee for such action, if any, as it deems necessary and appropriate.

On November 15, 2010, Committee counsel had filed with the adjudicatory subcommittee a motion seeking recommittal of the matter to the investigative subcommittee.[3]

Committee counsel's motion, which was unsigned, stated:

[1] Exhibit 1, Statement of the Chair and Ranking Republican Member of the Committee on Standards of Official Conduct Regarding Representative Maxine Waters (Nov. 19, 2010).
[2] *See* Exhibit 2.
[3] *See* Exhibit 3.

> While Committee counsel was preparing a witness for the adjudicatory hearing in the matter of Representative Maxine Waters, that witness gave Committee counsel a new piece of evidence. A copy of this evidence is attached as Exhibit 1. The investigative subcommittee did not have access to this evidence. Committee counsel believes that this evidence may have had a material impact on the investigative subcommittee's investigation and the resulting statement of alleged violation that the investigative subcommittee transmitted to the full Committee. For this reason, Committee counsel moves that the adjudicatory subcommittee send this new evidence to the full Committee with a recommendation that the Committee recommit the matter to the investigative subcommittee.

The respondent was served with a copy of this motion.[4] Respondent, through counsel, asked for an opportunity to respond to Committee counsel's motion.[5] By letter dated November 15, 2010, you, acting as Chair of the adjudicatory subcommittee, gave Respondent until 6 p.m. on Tuesday, November 16, 2010, to respond.[6] By email, Respondent, through counsel, transmitted her timely response on November 16, 2010.[7]

In her response, Respondent argued:

> Committee counsel's filing is an explicit acknowledgment of Respondent's oft-stated assertion that Committee counsel cannot use the adjudicatory hearing process to expand the facts relevant to the SAV [Statement of Alleged Violation]. Respondent also maintains that Committee counsel's filing is, at least, a tacit recognition that the facts presented in the current SAV are insufficient to establish the legal charges in the document.[8]

Committee counsel, in a reply filed November 18, 2010, to Respondent's response to the Motion to Recommend Recommittal, noted that the investigative subcommittee would "have the authority to adopt a different statement of alleged violation, to adopt the same statement of alleged violation, to adopt no statement of alleged violation, or to recommend expansion of the scope of its inquiry by including different or additional respondents."[9]

On November 18, 2010, the adjudicatory subcommittee met and voted to forward the new evidence to the full Committee for its consideration. The full Committee met the same day and voted to recommit the matter to the investigative subcommittee.

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[4] *Id.*
[5] *See* Exhibit 4.
[6] *See* Exhibit 5.
[7] *See* Exhibit 6.
[8] *Id.*
[9] *See* Exhibit 7.

At present, the investigative subcommittee has pending before it four recusal motions filed by Respondent, each of which urges a Member of the investigative subcommittee to step down from his or her service on the investigative subcommittee.[10] I provided the Chair and Ranking Member of the investigative subcommittee with my opinion on the appropriate process for dispensing with Respondent's recusal motions.

In addition, the investigative subcommittee has not had an opportunity to meet since the matter was recommitted. As such, it appears that the Waters matter will need to be carried over in the 112th Congress.

It would not be appropriate for me to comment here on the strength or significance of the evidence in the Waters matter as the makeup of the Committee for the 112th Congress remains unknown. However, since the Committee's decision, the press has made or reported numerous assertions regarding the Committee's decision.

For example, POLITICO, on November 30, 2010, reported, "Two attorneys for the House ethics committee have been placed on indefinite 'paid administrative leave' stemming from serious problems within the secretive panel."[11] The article also stated, "It is unclear if the decision to place [two attorneys] on paid leave was related to the Waters' case or another matter, although they were placed in that status on the same day that Reps. Lofgren (D-Calif.) and Jo Bonner (R-Ala.), the chairwoman and ranking member of the committee, announced the Waters' [sic] trial was delayed."

In another example, the Washington Post, on December 2, 2010, wrote, "House investigators have begun a probe into why the powerful House Financial Services Committee did not fully comply with its promise to turn over all documents pertinent to an investigation of subcommittee chairwoman Maxine Waters (D-Calif.), according to congressional staff and other sources close to the inquiry."[12] The article continued, "Four officials, congressional staff members, and others familiar with the probe confirmed on Thursday that her trial was postponed two weeks ago in part to explore the delay in not turning over that e-mail and to examine whether other evidence was withheld."[13]

However, as noted above, Committee counsel's motion to recommit the matter merely stated, "this evidence may have had a material impact on the investigative subcommittee's investigation and the resulting statement of alleged violation that the investigative subcommittee transmitted to the full Committee."[14] It made no reference to an expansion of the investigative subcommittee's inquiry. The Committee's recommittal was made without instructions to the investigative subcommittee.

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[10] *See* Exhibit 8.
[11] Exhibit 9, Bresnahan, J., "2 House ethics attorneys suspended," POLITICO (Nov. 30, 2010).
[12] Exhibit 10, Leonnig, C. and Smith, R., "House ethics probe to investigate whether Finance committee withheld records," The Washington Post (Dec. 2, 2010).
[13] *Id.*
[14] *See* Exhibit 3.

Committee counsel's motion was structured as blandly as it was to avoid the risk of tainting the Members of the adjudicatory subcommittee, who were to have served essentially as jurors in the Respondent's case, and to provide the Respondent with notice and to provide her with an opportunity to respond, if she chose.[15]

The motion to recommit, once adopted, also had the effect of ameliorating potential issues related to impermissible *ex parte* contacts between Committee counsel and Members of the adjudicatory subcommittee regarding the substance of the matter, the weight of the matter and the credibility of potential witnesses.

On October 29, 2010, Committee staff working on Respondent's case received a document – a single, two-page email -- from a witness while preparing for a scheduled adjudicatory hearing.[16] The staff produced the email to Respondent and gave notice of their intent to use the document at the hearing.[17]

On November 3, 2010, staff of the Committee sent an email to every Member of the Committee, including the eight Members of the adjudicatory subcommittee who were to have sat, essentially, as jurors in the case.[18] This email attached the document received on October 29. The email to the Members was not served on, or provided to, Respondent or her counsel.

The November 3 email from Committee counsel began by arguing that the Committee should "return" the Respondent's matter to the investigative subcommittee to address:

> important issues raised by the evidence, including: (1) possible obstruction of the ISC investigation; (2) reconsideration of the ISC's decision not to charge [the Respondent's] Chief of Staff ..., [sic] and (3) reconsideration of the ISC's decision not to charge [the Respondent] with direct knowledge of the actions taken by [her Chief of Staff].[19]

It went on to argue that the email demonstrated "greater involvement by [Respondent's Chief of Staff] and more knowledge of [his] activities by [Respondent] than was understood by the [investigative subcommittee]."[20] It then "raised" issues that Committee counsel asserted flowed from the new evidence, including whether staff of the Committee on Financial Services acted negligently in complying with a document request or attempted to "obstruct the ISC's investigation, in violation of 18 USC § 1505."[21] The email further suggested that Respondent's Chief of Staff failed to produce the document. The November 3 email went on to question whether "any witness [made] a false statement to, or attempt to obstruct the investigation of, the [investigative subcommittee], in violation of 18 USC § 1001 or 18 USC § 1505?"[22] Finally, the email recommended that the Committee "vote to return the matter" to the investigative

[15] *See* Exhibit 2.
[16] *See* Exhibit 11.
[17] *See* Exhibit 12.
[18] *See* Exhibit 13.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

subcommittee and that the investigative subcommittee conduct additional investigation, including "inquiries of [Financial Services Committee] staffers regarding the adequacy of their response to the [investigative subcommittee's] document requests, and conducting additional interviews of [Respondent] and [her Chief of Staff], and possibly other witnesses."[23]

The November 3 email was an *ex parte* contact with the fact finders regarding the substance of the matter, the weight of evidence in the matter and the credibility of both Respondent and other potential witnesses between Committee counsel and Members of the adjudicatory subcommittee. In addition, the conclusions drawn were potentially prejudicial to Respondent, were likely based on facts known to be incorrect, were made for purposes other than the merits of the aspersions, and were reinforced with additional contacts with certain Members of the Committee.

It is my understanding that at least one member of the Waters team refused to transmit the November 3 email after expressing concern over both the tone and content of the email. In addition, in an email conversation between the lead counsel and a senior attorney on October 29, 2010, the two expressed doubt about the merits of their aspersions and indicated that what would become the substance of the November 3 email was being undertaken to "get what we want on the [adjudicatory subcommittee] hearing," as opposed to the merits of the aspersions.[24] Further, it appears that at least one of the lawyers had discussions with at least one Member of the Committee and his designated counsel about this plan.[25]

Moreover, the recommendation to focus on the Respondent's conduct more directly was apparently not triggered by the discovery of the new email. In an email dated August 16, 2010, the lead attorney wrote to the Ranking Member of the adjudicatory subcommittee and his counsel:

> Thank you for sending the email out and for taking time out of your meeting schedule to do so. I would be happy to provide greater detail regarding the facts in dispute when you require it - - there are a lot of them.
>
> Essentially the disputed facts involve official action and official resources used to benefit a singular bank that her husband had 350,000 in stock. No other minority bank was similarly situated (was on the brink of failure) due to an overexposure of Fannie/Freddie preferred shares.
> 3 important things had to happen in order to avert the bank's failure: 1) FDIC provided a 20 million tax credit waiver (that had not been done in the history of the FDIC and regulators had to go to the Board to obtain approval. The FDIC looked at Rep. Frank's provision of the TARP (103(6)), which they believed provided clear "legislative intent" in departing from precedent): 2) OneUnited obtained a 17 million private investment; and 3) OneUnited received 12 million dollars from TARP.

[23] *Id.*
[24] *See* Exhibit 14.
[25] *See* Exhibit 2; Exhibit 15; Exhibit 16; Exhibit 17; Exhibit 18; Exhibit 19; Exhibit 20; Exhibit 21.

> Most of the reporting fails to realize that the ISC did not charge a substantive violation (receipt of an actual benefit). Rather, the ISC charged what amounts to an appearance of impropriety (spirit of the personal benefits rule and reasonable person standard). Because of that, I believe the burden is much lower. Nevertheless, the emails, documents and witnesses are strong enough to show an actual substantive violation (benefit).[26]

The email demonstrates that there were *ex parte* substantive conversations with a fact finder that argued a position both at odds with the charging document and likely prejudicial to Respondent.

The November 3, 2010, email states that the Chairman of the Financial Services Committee directed his personal and Committee staff "to 'get everything that was conceivably relevant,' which clearly would include this email."[27] This suggests that the Financial Services Committee staff failed to produce a relevant and available email, and goes so far as to imply that Financial Services Committee staff may have obstructed a congressional investigation. However, the November 3 email failed to mention that the newly discovered email would not have been responsive to the document request to which the Chairman of the Financial Services Committee responded.[28]

Similarly, as early as August 2, 2010, which was after the Statement of Alleged Violation had been transmitted from the investigative subcommittee and the adjudicatory subcommittee had been designated, the staff was apparently aware that they did not have documents from Respondent's office. By email, the lead attorney asked, "So should it bother any of you that we do not have any of [Respondent Chief of Staff's] sent emails?"[29] Two days later, a senior attorney would write:

> [Respondent's Chief of Staff] says that there was never a document request to [Respondent's] office for documents or to him. He said that all the documents we have are from what they turned over to OCE. He insists that we never asked them for any and said that he would know if we had as all the documents are his as she has no email account.
>
> Thoughts on where to go from here?[30]

The response from the lead counsel to this was:

> [Committee counsel] is going to call FDIC for any and all documents related to OneUnited, [Respondent], [Respondent's Chief of Staff], or NBA during the time period of July 1, 2008, through January 31, 2009.

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[26] Exhibit 22.
[27] Exhibit 13.
[28] *See* Exhibit 23.
[29] *See* Exhibit 24.
[30] Exhibit 25.

> [Another Committee counsel] is going to call Treasury for any and all documents related to OneUnited, [Respondent], [Respondent's Chief of Staff], or NBA during the time period of July 1, 2008, through January 31, 2009.
>
> If we catch a break, maybe FDIC and/or Treasury will voluntarily provide us with the documents without need for a subpoena.
>
> Then that will just leave the [Chief of Staff] issue. I think we will have a legitimate point to raise: that we recently discovered [Respondent's Chief of Staff's] use of his yahoo account (during settlement negotiations) and ask him for any and all documents related to OneUnited, [Respondent], [Respondent's Chief of Staff], or NBA during the time period July 1, 2008, through January 31, 2009, on the yahoo account or any other email account or other correspondence.[31]

On August 4, 2010, Committee counsel, without notifying the Members or the Chief Counsel, sent letters to FDIC and Treasury requesting that they voluntarily produce documents.[32] These requests asked for documents relating to other Members of the House and Senate, the production of which may have implicated Speech or Debate Clause concerns.[33]

On August 5, 2010, one of the lawyers sent an email to the Chair's and Ranking Member's designated counsel stating that document subpoenas might be required.[34] The staff would then present a request to subpoena records from Respondent's Chief of Staff.[35] This request was conveyed being based on newly discovered information identified during settlement negotiations.[36] On August 19, 2010, I asked:

> What are the documents you are waiting to hear from [Respondent] about? Are those the [Respondent's Chief of Staff's] yahoo account emails that were mentioned the [sic] Tuesday? Also, remind me of the circumstances by which you all learned of those again?[37]

The response from the staff was:

> Yes, we are looking for [Respondent's Chief of Staff's] emails on non-official accounts. We discovered that [Respondent's Chief of Staff] used

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[31] Exhibit 26.
[32] *See* Exhibit 27.
[33] *Id.* The Speech or Debate issue was eventually discussed by the Committee after subpoenas were presented and authorized in September 2010. *See, e.g.,* Exhibit 28. At that time, no mention was made of the voluntary document requests previously sent to, and complied with by, Treasury and FDIC.
[34] *See* Exhibit 29.
[35] *See* Exhibit 30. Significantly, the September 28, 2008, email to Respondent's Chief of Staff, which was the basis for the Committee's decision to recommit the matter to the investigative subcommittee, would not have been responsive to the subpoena as drafted.
[36] *See* Exhibit 31; *see also* Exhibit 26.
[37] Exhibit 31.

> at least one non-official account for official work on the day that the SAV was transmitted, because he started using that account to communicate with us about the settlement negotiations.[38]

In point of fact, however, the use of the account was used to convey a draft settlement offer on July 27, 2010, and to convey Respondent's request that her Chief of Staff participate in settlement negotiations.[39]

I would reply to the staff's email by asking, "Are we confident there is no risk under Rule 26(i)?"[40] That rule prohibits the use of information obtained during settlement negotiations against a respondent.

This issue would come up at a meeting of the Waters adjudicatory subcommittee on September 23, 2010, during which the following exchange occurred:

> The Chairwoman. I have another question on a document that was not asked for. And I'll go a little bit into the history. During the recess there was discussion about the use by Ms. Waters' chief of staff of a Yahoo account that might have useful information. And the issue that was raised, I raised it, is that I was advised that the existence of the Yahoo account became known during the course of settlement discussions, which would mean that you couldn't get to it under our rules.
>
> I was in the e mail we got, there was an indication that and here's the quote, I think it was Mr. Rush, but I'm not sure "We have received other documents that provide independent confirmation that respondent's chief of staff used as a personal e mail account for official business."
>
> Now, if that's the case, as we saw with the young lady who we you know, we learned of her DUI through an AO but then it became public. If you can find out the source of information from an independent source, you've cleaned the fruit of the poisonous tree, you can use it, but then I never saw anything again on it. And it's not on the document subpoena, and I didn't know what happened to it.
>
> Ms. Kim. I think the chair had expressed that it was a result of basically Maxine Waters' chief of staff used not only his official account, which we had documents on, but his Yahoo account to conduct official business. And it became apparent he had invited he's not named as a subject at all or respondent in this matter. It's Representative Waters. But he had invited himself in all the settlement meetings and wanted to participate in all of

[38] *Id.*

[39] *See* Exhibit 32. I note that, although I was apparently informed that Respondent had requested that her Chief of Staff be permitted to attend settlement negotiation meetings, I was not copied on the emails or shown them at any time.

[40] *See* Exhibit 31.

the meetings. And in wanting to participate, he was using his Yahoo account.

And we had seen the Yahoo account on for example, I believe the Treasury, as Tom mentioned, had released pursuant to the Freedom of Information Act a bunch of documents related to not only Representative Waters in this matter, but just sort of the TARP in general. We had seen that address before, but we just didn't understand in other documents the significance of what is this. It's not like Mikael Moore, chief of staff to Representative Waters at Yahoo dot com, so we really didn't understand the significance of it. Until the settlement discussions, it was clear that it was Mikael Moore that was sending it.

At that point back in August, we had asked for a subpoena, since he has a role, as we alleged in the Statement of Alleged Violation, that he was communicating on Representative Waters' behalf with OneUnited executives to create legislation that helped bail them out. So we had initially drafted it. We understood, and maybe it was a breakdown of communication, that the chair was not inclined to sign the subpoena, so we said, You know, we don't really need it, we can do without it.

The Chairwoman. The rules prohibit us using information discovered during the settlement discussions. I mean that's very clear. He was acting in his capacity as chief of staff in all of these things. So my belief but I never got an analysis back was that the rules would cover that. That doesn't mean that this would be really valuable things to get. I would assume we would want this and it would be very helpful.

And the question is, I mean, if we have independent confirmation, then we don't have the rules problem on the settlement discussions. But we would have to create, I think, that I assume there will be an objection, we should anticipate an objection. So we better have a lock sure trail that we have independent a source. And I just never got anything back.

And it just seems to me if we want to be vigorous on this subject, theoretically it could have very important information on this case.

Ms. Sovereign. We could prepare that. I mean, I think that in terms of looking at the documents we've received, we have good records as to when we received various documents from various sources. And you know some of those documents have this address on it. The address isn't self evident. Once you know who it is, it is. I think it's CA35COS or something like that.

The Chairwoman. So I guess the question is, can you really prove up that you've got an independent source or not?

Ms. Sovereign. Yes.

The Chairwoman. I think that would be I would like to know I mean, because if we can't, then we can't go after it; but if we can, I would assume that would be very useful stuff.[41]

At no time did staff indicate that documents had never been formally requested of Respondent during the investigative phase. Instead, on September 23, 2010, a senior counsel would write to the Members of the adjudicatory subcommittee:

> Thus, although in possession of the emails showing the Yahoo! Email account from November 2009 onward, staff was not aware of its significance until later. Staff learned of the significance of the account, independent of [Respondent's Chief of Staff's] use of the account for scheduling the negotiations, when staff obtained additional documents from Treasury employees and other witnesses showing the account being used by [Respondent's Chief of Staff] to conduct official business.[42]

Respondent's Chief of Staff's email address was ca35cos@yahoo.com, a reference to being the Chief of Staff for the 35th District of California, which Respondent represents. In addition, the emails provided to the investigative subcommittee in November 2009 clearly indicated that the emails were from Respondent's Chief of Staff, for example, by using his name, "Mikael," which is itself a unique spelling.[43] One of the emails was sent the day immediately before the September 9, 2008, meeting at Treasury and specifically referenced Treasury setting up a meeting with minority bankers.[44]

After the discovery of the October 29 email, a senior counsel wrote to the lead counsel, "I think I should start working on the obstruction argument – even if it goes nowhere (which is likely) it gives us leverage to get what we want on the ASC hearing."[45] The senior counsel also wrote, "although they (and I mean "they" to refer to ALL our opponents in this matter) will do everything possible to keep it out, it will be hard to do if anyone other than the RM [Ranking

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[41] Transcript of Adjudicatory Subcommittee Meeting at 28-31 (Sept. 23, 2010). Significantly, based upon the representations of staff to the Members of the adjudicatory subcommittee, a subpoena for Respondent's Chief of Staff's records was ultimately authorized, signed by the Chair, and issued. Respondent, through counsel, declined to comply with the subpoena until the commencement of the adjudicatory subcommittee hearing.

[42] *See* Exhibit 33.

[43] *Id.*

[44] *Id.* The later obtained documents referenced in the September 23 email, which were not attached to the email, were apparently from undisclosed voluntary document requests made of Treasury in August 2010 and included the text of the September 8, 2008, email chain. In addition, although the staff requested and obtained document subpoenas for Treasury and FDIC, the staff failed to disclose that FDIC and Treasury had agreed to voluntarily provide documents using similar, if not the exact, language the subpoena requests used. This language included references to Members of the House and Senate that may have posed Speech or Debate issues. Significantly, the fact that the requests had been made and complied with notwithstanding the presence of the potentially problematic language was not disclosed during discussion of the Speech or Debate issue when the subpoenas were authorized on September 23, 2010.

[45] *See* Exhibit 14.

Member] is involved."[46] The lead counsel responded, "My thoughts exactly. You read my mind."[47]

The staff would later conclude that Respondent's Chief of Staff email did not "contradict his transcript."[48] Nonetheless, on November 3, 2010, a senior counsel would write to the Members of the Committee, notwithstanding that no documents had been formally requested from Respondent and that Respondent's Chief of Staff's testimony did not contradict his testimony, recommending that the investigative subcommittee investigate the "adequacy of their response to the [investigative subcommittee's] document requests."[49] The senior counsel also concluded, notwithstanding that the email was not responsive to the investigative subcommittee's document request, that Financial Services staff should be investigated for the "adequacy of their response."[50]

Further, the staff would repeatedly turn to the Ranking Member and others on his side of the aisle to press their points. For example, on November 18, 2010, following a sanctions hearing on a different matter, a meeting of the Respondent's adjudicatory subcommittee was held to discuss the recommittal issue. The issue of *ex parte* contacts was discussed at that meeting.

At that meeting, white binders were handed out to all the Members of the adjudicatory subcommittee, as well as the Chair's and Ranking Member's designated counsels.[51] They were being passed out from a box. The Ranking Member's counsel was helping to hand the binders out. Since the Waters staff served as advocates, they could not be present at the ASC discussion absent an invitation for participation by respondent. The binders were prepared by the Waters staff for the meeting. There were copies of the binder that were flagged, highlighted and contained handwritten notes and explanations when they came out of the box. The marked up copies were provided to Republican Members. Democratic Members did not receive annotated binders.

Finally, the Waters staff indicated that they were ready to proceed on September 15, 2010, during a meeting of the adjudicatory subcommittee.[52] This statement was inconsistent with statements made a month earlier,[53] ignored that there were issues outstanding on subpoenas, and failed to acknowledge that they were not in possession of relevant documents that had never been requested during the investigative phase and that they were still seeking to obtain.[54] The statement also ignored the procedural steps required during the adjudicatory phase.[55]

[46] *Id.*
[47] *Id.*
[48] *See* Exhibit 34; Exhibit 35.
[49] Exhibit 13.
[50] *Id.*
[51] *See* Exhibit 21.
[52] It was after the conclusion of this meeting that the lead counsel and senior attorney on the Waters matter engaged in an inappropriate outburst in the presence of Members of the Committee. When I suggested that they not continue, they refused and instead increased the volume and vehemence of their outburst.
[53] *See* Exhibit 36.
[54] *See* Exhibit 37; Exhibit 24; Exhibit 25; Exhibit 26.
[55] Significantly, the Waters staff, in attempting to produce documents to Respondent as required in advance of the hearing, failed to identify those documents they intended to use against Respondent. Such identification is required by Committee Rule 23(f).

For example, after the Statement of Alleged Violation was transmitted to the full Committee and the adjudicatory subcommittee was appointed, the Waters staff continued to provide discovery materials to the respondent. While I am not opposed to full and complete discovery, the rules basis for the staff to do so is questionable and the rules they cited in their transmittals to the respondent suggested they were acting under an authority they did not seek and did not have. At no time did the staff formally notify the Chair, the Ranking Member, Mr. Taylor, Ms. Strickland or me of the transmittal of materials, or the putative authority to do so.

However, at the point at which the Waters staff did attempt to provide the required notice of the evidence they intended to use against the respondent, it appears, based on filings made to the Chair (and not served on the respondent) that they provided a document dump of all the materials they had previously provided. This demonstrated a lack of good faith and noncompliance with both the letter and spirit of the Committee's pre-hearing disclosure rules. See, e.g., *Muzikowski v. Paramount Pictures Corporation*, 2004 WL 1770279 (N.D. Ill. 2004) (finding a party failed to comply in good faith with an order to identify documents the party intended to use at trial by unresponsively identifying only documents he intended to rely on for possible use at trial).[56]

This issue, had the matter not been recommitted to the investigative subcommittee, would have had to have been resolved since there were motions pending that contested the relevance of well over 1,000 pages of documents — more than 1/3 of Committee counsel's proposed evidence.[57] The failure of the Waters staff to provide adequate notice of the evidence it intended to use at the hearing would likely have complicated the evidentiary rulings in the case and likely would have delayed the matter. In other words, the Waters staff was not ready for the hearing, notwithstanding their earlier assertions to the contrary.[58]

[56] The lead counsel and the Ranking Member of the adjudicatory subcommittee went so far as to disparage the procedural rights and necessity for Committee counsel's filing at issue. *See* Exhibit 38.

[57] The lead counsel complained about the Chair's requests for information about the evidentiary record to the Ranking Republican Member on November 3, 2010. *See* Exhibit 38. While the Chair's requests appear to have been motivated by legitimate legal questions raised by Committee counsel's notice of evidence it intended to use and Respondent's objections to the evidence, the Ranking Republican Member referred to her requests as "unilateral, impusive [sic] decisions." *Id.*

[58] *See* Exhibit 36 (asserting that starting the hearing on September 14, 2010, would be "impossible").