

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA,
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA)
)
 v.) Crim. No. 1:01cr455 (LMB)
)
 ZACARIAS MOUSSAOUI,)
)
 Defendant.)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION OF U.S. REPRESENTATIVE CURT WELDON
TO QUASH SUBPOENA**

In connection with the current criminal prosecution of Zacarias Moussaoui, counsel for Mr. Moussaoui issued a subpoena (Exhibit A) to the Honorable Curt Weldon, U.S. Representative for the 7th congressional district of Pennsylvania. The subpoena, dated January 23, 2006, directs Congressman Weldon to appear at Mr. Moussaoui's sentencing proceedings on March 6, 2006, and seeks testimony and production of documents relating to "[a]ny and all documents that refer or relate to the 'Able Danger Program,' including, but not limited to, any charts created by same" and "[a]ny and all documents that refer or relate to any of the hijackers on September 11, 2001, including, but not limited to, Mohammed Atta and /or Marwan Al-Shehhi."¹

The subpoena must be quashed because it is barred by the Speech or Debate Clause of the U.S. Constitution, U.S. Const. art. I, § 6, cl. 1 ("for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place"), which the courts

¹ We understand that the scope of the testimony Mr. Moussaoui seeks from Congressman Weldon is essentially the same as the scope of the documents sought. See Letter from David Plotinsky, Esq., to Edward B. MacMahon, Jr., Esq. (Feb. 16, 2006) (Exhibit B).

have consistently held to protect the very type of congressional information that Mr. Moussaoui seeks. Indeed, while it is not uncommon for criminal defendants such as Mr. Moussaoui to believe that congressional investigative files may contain material information and therefore to seek access to such information, no court has ever compelled such production.

BACKGROUND

Congressman Weldon, currently in his tenth term as a Member of Congress, serves as Vice Chairman of the House Armed Services Committee, and Chairman of the Subcommittee on Tactical Air and Land Forces of the Armed Services Committee. The Armed Services Committee has jurisdiction over, among other things, tactical intelligence and intelligence-related activities of the Department of Defense. Rule X(1)(c)(8) of the Rules of the House of Representatives (109th Congress) (Exhibit C).

The Congressman also serves as Vice Chairman of the House Committee on Homeland Security. The Homeland Security Committee has jurisdiction over, among other things, overall homeland security policy and the interactions of all government departments and agencies with the Department of Homeland Security. Rules X(1)(i)(1), X(3)(f) of the Rules of the House of Representatives (109th Congress) (Exhibit D).

The Able Danger program was a Department of Defense planning effort, tasked to the Special Operations Command (SOCOM) by the Chairman of the Joint Chiefs of Staff (JCS), to identify and target Al-Qaeda on a global basis and, through the use of cutting-edge technology, to present options for national command authority leaders to manipulate, degrade or destroy the global Al-Qaeda infrastructure.

In the spring of 2005, Congressman Weldon learned from Pentagon personnel that the

Able Danger program had been disbanded, and in the summer of 2005, he was told by Pentagon personnel that, prior to September 11, 2001, the Able Danger program had identified as members of an Al Qaeda cell several of the individuals who later carried out the September 11, 2001 attacks. This information caused Congressman Weldon to form a strong belief that federal legislation might be necessary to ensure that the technologies and methods of Able Danger were not abandoned.

Ever since then, Congressman Weldon has been actively investigating the Able Danger program for the purpose of eventually introducing his legislation. To this end, he has gathered a plethora of information and documents, and has taken a variety of actions. Some of the more significant actions he has taken – which are already a matter of public record – help demonstrate both: 1) the Congressman’s overarching legislative purpose; and 2) the fact that all of the information and documents he gathered were in furtherance of that legislative purpose.

For instance, just two days ago, on February 15, 2006, the House Armed Service Committee held the first of what Congressman Weldon hopes will be a series of hearings on Able Danger and data mining. Several panels testified at the hearing, some in open session and some in closed executive session to protect classified information. The primary topics of the hearing were precisely the topics about which Mr. Moussaoui seeks testimony and documents from Congressman Weldon, e.g., what the intelligence community knew about Mohammed Atta prior to September 11, 2001, why information derived from Able Danger was not passed on to the FBI, what type of work Able Danger was doing, why Able Danger was shut down, and what happened to the information and technology used by Able Danger.

Congressman Weldon has also taken to the Floor of the House several times in the course

of his investigation into Able Danger. On June 27, 2005, Congressman Weldon was recognized for a Special Order on the Floor of the House of Representatives dealing with Able Danger and what had been known about Mohammad Atta prior to September 11, 2001. 151 Cong. Rec. H5244 (daily ed. June 27, 2005) (statement of Rep. Weldon). Later, the Congressman spoke again on the Floor of the House about Department of Defense efforts to stifle military personnel who wanted to share information on Able Danger with Congress. 151 Cong. Rec. H8728 (Oct. 6, 2005) (statement of Rep. Weldon). On October 19, 2005, Congressman Weldon once again took to the Floor of the House to criticize the treatment of Lieutenant Colonel Shaffer. 151 Cong. Rec. H8979 (Oct. 19, 2005) (statement of Rep. Weldon).

Congressman Weldon also testified about Able Danger before the Senate Committee on the Judiciary. He was introduced to the Committee as the “lead witness . . . who has key positions on the House of Representatives’ Armed Services Committee and on subcommittees dealing with intelligence.” *Able Danger and Intelligence Information Sharing: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. (2005) (statement of Sen. Arlen Specter, Chairman, S. Comm. on the Judiciary).

In short, all of Congressman Weldon’s actions regarding Able Danger were clearly investigative and legislative in nature, and all of the information and documents he gathered were an integral part of his investigative and legislative efforts.

ARGUMENT

For the reasons set forth below, with one narrow exception, the subpoena to Congressman

Weldon must be quashed.²

I. The Speech or Debate Clause of the Constitution Absolutely Bars The Subpoena.

The subpoena issued to Congressman Weldon seeks testimony and documents that are absolutely protected from compelled production by the Speech or Debate Clause of the U.S. Constitution. U.S. Const. art. I, § 6, cl. 1.³

A. The Purpose and Scope of the Speech or Debate Privilege.

The Speech or Debate Clause was intended by the Founders “to [e]nsure that the legislative function the Constitution allocates to Congress may be performed independently. . . . [T]he ‘central role’ of the Clause is to ‘prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary’” *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 502 (1975) (quoting *Gravel v. United States*, 408 U.S. 606, 617 (1972)); see also *United States v. Johnson*, 383 U.S. 169, 178 (1966) (“In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders.”).

“[T]he guarantees of th[e Speech or Debate] Clause are vitally important to our system of government and therefore are entitled to be treated by the courts with the sensitivity that such

² Press releases issued by the Office of Congressman Weldon that are responsive to the subpoena are not protected by the Speech or Debate Clause and will be produced, as we have notified counsel for Mr. Moussaoui. See Letter from David Plotinsky, Esq. to Edward B. MacMahon, Jr., Esq. (Feb. 16, 2006) (Exhibit B). Production of these documents does not constitute a waiver of the Congressman’s Speech or Debate privilege with respect to any other documents in the Congressman’s possession, custody or control. See Part C, *infra*.

³ Pursuant to Rule VIII of the Rules of the House of Representatives (109th Cong.), Congressman Weldon submitted the required notification to the House (Exhibit E) that he had received a subpoena and that compliance with the subpoena was inconsistent with the privileges and precedents of the House.

important values require.” *Helstoski v. Meanor*, 442 U.S. 500, 506 (1979). “Without exception,” the Supreme Court has “read the Speech or Debate Clause broadly to effectuate its purposes.” *Eastland*, 421 U.S. at 501. Furthermore, the Supreme Court has stated unequivocally that when the Speech or Debate privilege applies, it is “absolute.” *Id.*⁴

The protections of the Speech or Debate Clause apply to all activities “within the ‘legislative sphere,’ even though the[] conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes.” *Doe v. McMillan*, 412 U.S. 306, 312-13 (1973) (citation omitted) (quoting *Gravel*, 408 U.S. at 624-25). The “legislative sphere” includes all activities that are “‘an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.’” *Eastland*, 421 U.S. at 504 (quoting *Gravel*, 408 U.S. at 625); *see also McMillan*, 412 U.S. at 311 (quoting *Kilbourn v. Thomson*, 103 U.S. 168, 204 (1881)) (legislative activity protected by the Clause encompasses “anything ‘generally done in a session of the House by one of its members in relation to the business before it.’”).

As construed by the Supreme Court and the lower courts, the privilege has two primary

⁴ *Eastland* repeatedly reaffirmed the absoluteness of the privilege. *See* 421 U.S. at 503 (discussing “the absoluteness of the term ‘shall not be questioned,’ and the sweep of the term ‘in any other Place.’”); *id.* at 507 (“[T]he Speech or Debate Clause provides complete immunity for the Members”); *id.* at 509-10 (“[Respondents’ argument] ignores the absolute nature of the speech or debate protection and our cases which have broadly construed that protection”); *id.* at 510 n.16 (“[B]alancing plays no part. The speech or debate protection provides an absolute immunity from judicial interference.”); *see also Barr v. Matteo*, 360 U.S. 564, 569 (1959) (“[T]he Constitution itself gives an absolute privilege to members of both Houses of Congress in respect to any speech, debate, vote, report, or action done in session.”).

applications. First, the clause provides immunity from lawsuits for all actions within the legislative sphere. *McMillan*, 412 U.S. at 312-13. This legislative immunity extends both to civil suits and criminal prosecutions. *See, e.g., Johnson*, 383 U.S. 169; *Eastland*, 421 U.S. 491.

Second, and more important here, the Speech or Debate Clause provides a testimonial privilege. *See Gravel*, 408 U.S. at 616; *Helstoski*, 442 U.S. at 484-86. This aspect of the privilege protects Members of Congress and their staffs from being compelled to give testimony or produce documents on privileged matters.⁵ The scope of the Speech or Debate testimonial privilege is the same as the scope of Speech or Debate immunity, namely, it applies to matters that “fall within the ‘sphere of legitimate legislative activity.’” *Eastland*, 421 U.S. at 501; *see also Brown & Williamson*, 62 F.3d at 421 (“A party is no more entitled to compel congressional testimony – or production of documents – than it is to sue congressmen.”); *Minpeco*, 844 F.2d at 857.

Investigations and information-gathering by Members of Congress on matters relating to potential legislation indisputably fall within the sphere of legitimate legislative activity and are therefore protected by the Speech or Debate Clause. As the Supreme Court has recognized, “[a]

⁵ *See also Maddox v. Williams*, 855 F. Supp. 406, 413 (D.D.C. 1994), *aff’d sub nom. Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408 (D.C. Cir. 1995) (“[T]he Speech or Debate Clause stands as an insuperable obstacle to [a party’s] attempt to acquire by compulsion documents or copies of documents in the possession of the Congress.”); *United Transp. Union v. Springfield Terminal Ry. Co.*, 132 F.R.D. 4, 5-7 (D. Maine 1990) (quashing document subpoena to Senator); *Minpeco, S.A. v. Conticommodity Services*, 844 F.2d 856, 859-61 (D.C. Cir. 1988) (quashing document subpoena to congressional subcommittee); *United States v. Peoples Temple of the Disciples of Christ*, 515 F. Supp. 246, 248-49 (D.D.C. 1981) (quashing document subpoena to congressional committee); *McSurely v. McClellan*, 553 F.2d 1277, 1296-97 (D.C. Cir. 1976) (en banc); *Dombrowski v. Burbank*, 358 F.2d 821, 823-24 (D.C. Cir. 1966) (dicta), *aff’d in part and rev’d in part sub nom. Dombrowski v. Eastland*, 387 U.S. 82 (1967); *Hearst v. Black*, 87 F.2d 68, 71-72 (D.C. Cir. 1936).

legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.” *Eastland*, 421 U.S. at 504 (quoting *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927)). “[F]act-finding, information gathering, and investigative activities are essential prerequisites to the drafting of bills and the enlightened debate over proposed legislation.” *Government of Virgin Islands v. Lee*, 775 F.2d 514, 521 (3d Cir. 1985); see also *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 530 (9th Cir. 1983).⁶

B. The Information Gathered By Congressman Weldon With Respect to Able Danger Is Precisely the Type of Information That Is Absolutely Privileged Under the Speech or Debate Clause.

Everything Congressman Weldon has done in the course of his investigation into the Able Danger program has been done for the purpose of eventually introducing legislation that would require the intelligence community to continue to utilize the technologies and methods of the Able Danger program. (As a result of his experiences with former Able Danger personnel who wanted to provide information to Congress, Congressman Weldon also intends his Able Danger-related legislation to include provisions for the protection of whistleblowers within the intelligence community.) The Congressman has spoken with witnesses, gathered documents,

⁶ Moreover, if information and documents obtained by a Member of Congress as part of investigative and legislative activities could be obtained by subpoena, it could interfere with the ability of Congress to obtain information needed for legislative purposes by discouraging cooperation with congressional investigations, discouraging vigorous investigation by Congress itself, chilling the candid exchange of views and information among Members of Congress and staff, and enabling outside parties to drown congressional offices in a flood of subpoenas on every imaginable topic. The danger of enforcing such subpoenas is particularly stark in situations involving “parallel” investigations – such as this one – where one or more congressional investigations proceed in tandem with federal criminal investigations and prosecutions.

generated internal work product, and conducted the first of several hearings – all of which are standard investigative methods designed to provide Congress with the information necessary to pass legislation. *See Eastland*, 421 U.S. at 504. In addition, he has given speeches on the Floor of the House and testified before a Senate committee in an effort to generate support for his legislative efforts.

The information and documents Mr. Moussaoui now seeks are integral to Congressman Weldon’s investigation and to the legislation he plans to introduce, and are therefore precisely the type of materials that are absolutely protected from compelled production by the Speech or Debate Clause. *See, e.g., Brown & Williamson*, 62 F.3d at 416 (“The [Speech or Debate] privilege also permits Congress to conduct investigations and obtain information without interference from the courts”); *People’s Temple of the Disciples of Christ*, 515 F. Supp. at 249 (D.D.C. 1981) (“Once it is determined . . . that the Movants’ actions fall within the ‘legitimate legislative sphere,’ judicial inquiry is at an end. Otherwise, Members of Congress conducting investigations would be forced to consider at every turn whether evidence received pursuant to the investigation would subsequently have to be produced in court. This would ‘imperil’ the legislative independence protected by the Clause.”); *Minpeco*, 844 F.2d at 856 (affirming the quashing of a subpoena seeking documents from a House subcommittee relating to one of its investigations); *Tavoulaareas v. Piro*, 527 F. Supp. 676, 680 (D.D.C. 1981) (“[T]he active acquisition of information by congressional staff, whether formally or informally, in an activity within the protective ambit of the speech or debate clause.”); *United States v. Ehrlichman*, 389 F. Supp. 95, 97 (D.D.C. 1974), *aff’d on other grounds sub nom. United States v. Liddy*, 542 F.2d 76 (D.C. Cir. 1976) (criminal defendant’s attempt to obtain statements made

by prosecution witness in an executive session hearing before House subcommittee was barred by the Speech or Debate Clause).⁷

C. Congressman Weldon Has Not Waived His Speech or Debate Privilege.

In a telephone conversation with undersigned counsel, one of Mr. Moussaoui's attorneys, Edward B. MacMahon, Jr., asserted that Congressman Weldon had waived his Speech or Debate privilege by speaking publicly about Able Danger. Because we anticipate that Mr. Moussaoui and/or his counsel may argue this in opposition to Congressman Weldon's Motion to Quash, we preemptively address the waiver issue now.

As an initial matter, it is not clear that it is even possible to waive the Speech or Debate privilege, and no case has ever squarely held that the Speech or Debate privilege may in fact be waived. Instead, the Supreme Court has made clear that *if* the privilege can even be waived in the first place, then the standard is extremely high for such a waiver. "Assuming that [waiver of the Speech or Debate privilege] is possible, we hold that [it] can be found only after *explicit and unequivocal renunciation* of the protection." *Helstoski*, 442 U.S. at 490-91 (emphasis added). Congressman Weldon has certainly not made any such "explicit and unequivocal renunciation" of the privilege here.

In *Helstoski*, the Supreme Court held that Congressman Helstoski's numerous grand jury appearances, voluntary production of privileged documents to the grand jury, and testimony to the grand jury about his legislative activities were all insufficient to constitute an "explicit and

⁷ See also *Minpeco*, 844 F.2d at 860 ("[T]he process by which a committee takes statements . . . clearly qualifies as an activity 'within the "legislative sphere.""); *Peroff v. Manuel*, 421 F. Supp. 570, 574 (D.D.C. 1976) ("[T]he preparation of a subcommittee witness by a congressional investigator clearly falls within the protected 'legislative sphere.'").

unequivocal” waiver of the privilege. 442 U.S. at 492. Similarly, in a post-*Helstoski* district court case, the plaintiff asserted that Senator Rockefeller had waived his Speech or Debate protections because he voluntarily disclosed certain records to the defendant in the litigation. The court in that case found the plaintiff’s argument “meritless.” *Pittston Coal Group, Inc. v. International Union, UMWA*, 894 F. Supp. 275, 279 n.5 (W.D. Va. 1995). The court ruled that “Pittston produced no evidence that Senator Rockefeller renounced his privilege, let alone made the ‘explicit and unequivocal expression’ required to waive it.” *Id.* Accordingly, the Court quashed a subpoena issued to the Senator’s aide. *Id.*⁸

If the actions by Congressman Helstoski and Senator Rockefeller were not sufficient to constitute a waiver of the Speech or Debate privilege, it is inconceivable that Congressman Weldon’s limited public statements about Able Danger could possibly constitute such a waiver.

⁸ See also *Johnson*, 383 U.S. at 184-85 (defendant congressman’s introduction of legislative speech did not permit the government to rely on that speech in indictment and prosecution); *Brown & Williamson Tobacco Corp.*, 62 F.3d at 421 n.11.

CONCLUSION

For the foregoing reasons, the subpoena to Congressman Weldon must be quashed.

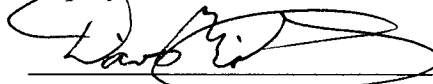
Respectfully submitted,

GERALDINE R. GENNET

General Counsel

KERRY W. KIRCHER

Deputy General Counsel



DAVID PLOTINSKY

Assistant Counsel

Office of General Counsel

U.S. House of Representatives

219 Cannon House Office Building

Washington, D.C. 20515

Telephone: (202) 225-9700

Facsimile: (202) 226-1360

Counsel for U.S. Representative Curt Weldon

February 17, 2006

CERTIFICATE OF SERVICE

I certify that on February 17, 2006, I served one copy of the foregoing Memorandum of Points and Authorities in Support of Motion of U.S. Representative Curt Weldon to Quash Subpoena, by hand delivery, on each of the following:

Edward B. MacMahon, Jr.
107 East Washington St.
P.O. Box 903
Middleburg, VA 20118

Robert Spencer
United States Attorney's Office,
Eastern District of Virginia
2100 Jamieson Ave.
Alexandria, VA 22314



David Plotinsky

EXHIBIT A

EDWARD B. MACMAHON, JR.

ATTORNEY AT LAW

107 EAST WASHINGTON STREET

P.O. BOX 903

MIDDLEBURG, VIRGINIA 20118

TELEPHONE (540) 687-3902
METRO (703) 589-1124

FACSIMILE (540) 687-6366
E-MAIL ADDRESS: ebmjr@verizon.net

January 25, 2006

BY HAND

William Canfield, Esquire
Williams & Jensen
1155 21st Street, N.W., Suite 300
Washington, DC 20036

Re: **United States v. Moussaoui**, Crim. No. 01-455-A
Subpoena ad Testificandum and Duces Tecum to Hon. Curt Weldon

Dear Mr. Canfield:

It was a pleasure speaking with you yesterday regarding the Moussaoui matter and our need to have Congressman Weldon appear as a witness in the case. Please find enclosed the Subpoena that we discussed and which you have agreed, as counsel to Congressman Weldon, to accept in lieu of personal service.

I hope that Congressman Weldon will understand that it is our intention that the jury in this case, which is set to decide whether a human being should be executed, learns all of the facts that are available. Our interest in calling Congressman Weldon is driven only by that interest and none other. Of course, the defense will work with you and Congressman Weldon to schedule his appearance in court in a manner that is most convenient to him and his schedule. Similarly, I would appreciate the opportunity to meet with Congressman Weldon and discuss his testimony before the trial begins.

I look forward to speaking with you soon and appreciate your courtesy in this matter.

Best Regards,



Edward B. MacMahon, Jr.

EBM/mlj

RECEIVED TIME JAN. 31. 1:02PM

UNITED STATES DISTRICT COURT

EASTERN

DISTRICT OF

VIRGINIA

UNITED STATES OF AMERICA

v.

ZACARIAS MOUSSAOUI

**SUBPOENA IN A
CRIMINAL CASE**

Case Number: 01-455-A

TO:
The Honorable Curt Weldon
2542 Rayburn House Office Building
Washington, D.C. 20515

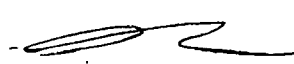
■ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE United States District Court for the Eastern District of Virginia United States Courthouse 401 Courthouse Square Alexandria, VA 22314	COURTROOM 700 <hr/> DATE AND TIME 3/06/06 @ 10:00 a.m.
---	---

■ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

Any and all documents that refer or relate to the "Able Danger Program," including, but not limited to, any charts created by same.

Any and all documents that refer or relate to any of the hijackers on September 11, 2001, including, but not limited to, Mohammed Atta and /or Marwan Al-Shehhi.

U.S. MAGISTRATE JUDGE OR CLERK OF COURT ELIZABETH H. PARET, CLERK OF THE COURT	DATE January 23, 2006
(By) Deputy Clerk 	

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER:
 Gerald T. Zerkin
 Office of the Federal Public Defender
 1650 King Street, Suite 500
 Alexandria, VA 22314 (703) 600-0800

RECEIVED TIME JAN. 31. 1:02PM

PROOF OF SERVICE	
RECEIVED BY SERVER	DATE _____ PLACE _____
SERVED	DATE _____ PLACE _____
SERVED ON (PRINT NAME)	FEES AND MILEAGE TENDERED TO WITNESS <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ _____
SERVED BY (PRINT NAME)	TITLE _____

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE _____ SIGNATURE OF SERVER _____

ADDRESS OF SERVER _____

ADDITIONAL INFORMATION

EXHIBIT B

GERALDINE R. GENNET
GENERAL COUNSEL

KERRY W. KIRCHER
DEPUTY GENERAL COUNSEL

U.S. HOUSE OF REPRESENTATIVES
OFFICE OF THE GENERAL COUNSEL
219 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6532
(202) 225-9700
FAX: (202) 226-1360

DAVID PLOTINSKY
ASSISTANT COUNSEL

CHRISTINE DAVENPORT
ASSISTANT COUNSEL

JOHN D. FILAMOR
ASSISTANT COUNSEL

February 16, 2006

VIA FACSIMILE (540-687-6366)

Edward B. MacMahon, Jr., Esq.
107 East Washington St.
P.O. Box 903
Middleburg, VA 20118

Re: Subpoena to U.S. Representative Curt Weldon

Dear Ed:

It was good talking with you this afternoon, not just once but twice. I am writing to confirm that in our second telephone conversation I notified you that the motion to quash we plan to file tomorrow will not encompass any press releases issued by the Office of Congressman Weldon. Accordingly, we will provide to you any of those press releases that are in the Congressman's possession, custody or control and responsive to your subpoena.

I would also like to confirm my understanding, based on our first telephone conversation this afternoon, that the testimony you seek from Congressman Weldon encompasses essentially the same scope as the documents you seek from him, i.e., "[a]ny and all documents that refer or relate to the 'Able Danger Program,' including, but not limited to, any charts created by same" and "[a]ny and all documents that refer or relate to any of the hijackers on September 11, 2001, including, but not limited to, Mohammed Atta and /or Marwan al-Shehhi."

I'll do my best to get to the courthouse around 12:30pm tomorrow so that we can have a few minutes to chat and catch up, but if I can't get over there that early I'll make sure that one way or another we get you a copy of our motion to quash tomorrow.

Sincerely,



David Plotinsky
Assistant Counsel

EXHIBIT C

RULES OF THE

shall have precedence of all other questions except motions to adjourn only at a time or place, designated by the Speaker, in the legislative schedule within two legislative days after the day on which the proponent announces to the House his intention to offer the resolution and the form of the resolution. Oral announcement of the form of the resolution may be dispensed with by unanimous consent.

(2) The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

(b) A question of personal privilege shall have precedence of all other questions except motions to adjourn.

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:

(a) **Committee on Agriculture.**

(1) Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.

(2) Agriculture generally.

(3) Agricultural and industrial chemistry.

(4) Agricultural colleges and experiment stations.

(5) Agricultural economics and research.

(6) Agricultural education extension services.

(7) Agricultural production and marketing and stabilization of prices of agricultural products, and commodities (not including distribution outside of the United States).

(8) Animal industry and diseases of animals.

(9) Commodity exchanges.

(10) Crop insurance and soil conservation.

(11) Dairy industry.

(12) Entomology and plant quarantine.

(13) Extension of farm credit and farm security.

(14) Inspection of livestock, poultry, meat products, and seafood and seafood products.

(15) Forestry in general and forest reserves other than those created from the public domain.

(16) Human nutrition and home economics.

(17) Plant industry, soils, and agricultural engineering.

(18) Rural electrification.

(19) Rural development.

(20) Water conservation related to activities of the Department of Agriculture.

(b) **Committee on Appropriations.**

(1) Appropriation of the revenue for the support of the Government.

(2) Rescissions of appropriations contained in appropriation Acts.

(3) Transfers of unexpended balances.

(4) Bills and joint resolutions reported by other committees that provide new entitlement authority as defined in section 3(9) of the Congressional Budget Act of 1974 and referred to the committee under clause 4(a)(2).

(c) **Committee on Armed Services.**

(1) Ammunition depots; forts; arsenals; and Army, Navy, and Air Force reservations and establishments.

(2) Common defense generally.

(3) Conservation, development, and use of naval petroleum and oil shale reserves.

(4) The Department of Defense generally, including the Departments of the Army, Navy, and Air Force, generally.

(5) Interoceanic canals generally, including measures relating to the maintenance, operation, and administration of interoceanic canals.

(6) Merchant Marine Academy and State Maritime Academies.

(7) Military applications of nuclear energy.

(8) Tactical intelligence and intelligence-related activities of the Department of Defense.

(9) National security aspects of merchant marine, including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference, and merchant marine officers and seamen as these matters relate to the national security.

(10) Pay, promotion, retirement, and other benefits and privileges of members of the armed forces.

(11) Scientific research and development in support of the armed services.

(12) Selective service.

(13) Size and composition of the Army, Navy, Marine Corps, and Air Force.

(14) Soldiers' and sailors' homes.

(15) Strategic and critical materials necessary for the common defense.

(d) **Committee on the Budget.**

(1) Concurrent resolutions on the budget (as defined in section 3(4) of the Congressional Budget Act of 1974), other matters required to be referred to the committee under ti-

ties III and IV of that Act, and other measures setting forth appropriate levels of budget totals for the United States Government.

(2) Budget process generally.

(3) Establishment, extension, and enforcement of special controls over the Federal budget, including the budgetary treatment of off-budget Federal agencies and measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(e) **Committee on Education and the Workforce.**

(1) Child labor.

(2) Gallaudet University and Howard University and Hospital.

(3) Convict labor and the entry of goods made by convicts into interstate commerce.

(4) Food programs for children in schools.

(5) Labor standards and statistics.

(6) Education or labor generally.

(7) Mediation and arbitration of labor disputes.

(8) Regulation or prevention of importation of foreign laborers under contract.

(9) Workers' compensation.

(10) Vocational rehabilitation.

(11) Wages and hours of labor.

(12) Welfare of miners.

(13) Work incentive programs.

(f) **Committee on Energy and Commerce.**

(1) Biomedical research and development.

(2) Consumer affairs and consumer protection.

(3) Health and health facilities (except health care supported by payroll deductions).

(4) Interstate energy compacts.

(5) Interstate and foreign commerce generally.

(6) Exploration, production, storage, supply, marketing, pricing, and regulation of energy resources, including all fossil fuels, solar energy, and other unconventional or renewable energy resources.

(7) Conservation of energy resources.

(8) Energy information generally.

(9) The generation and marketing of power (except by federally chartered or Federal regional power marketing authorities); reliability and interstate transmission of, and ratemaking for, all power; and siting of generation facilities (except the installation of interconnections between Government waterpower projects).

(10) General management of the Department of Energy and management and all functions of the Federal Energy Regulatory Commission.

EXHIBIT D

(11) National energy policy generally.

(12) Public health and quarantine.

(13) Regulation of the domestic nuclear energy industry, including regulation of research and development reactors and nuclear regulatory research.

(14) Regulation of interstate and foreign communications.

(15) Travel and tourism.

The committee shall have the same jurisdiction with respect to regulation of nuclear facilities and of use of nuclear energy as it has with respect to regulation of nonnuclear facilities and of use of nonnuclear energy.

(g) **Committee on Financial Services.**

(1) Banks and banking, including deposit insurance and Federal monetary policy.

(2) Economic stabilization, defense production, renegotiation, and control of the price of commodities, rents, and services.

(3) Financial aid to commerce and industry (other than transportation).

(4) Insurance generally.

(5) International finance.

(6) International financial and monetary organizations.

(7) Money and credit, including currency and the issuance of notes and redemption thereof; gold and silver, including the coinage thereof; valuation and revaluation of the dollar.

(8) Public and private housing.

(9) Securities and exchanges.

(10) Urban development.

(h) **Committee on Government Reform.**

(1) Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement.

(2) Municipal affairs of the District of Columbia in general (other than appropriations).

(3) Federal paperwork reduction.

(4) Government management and accounting measures generally.

(5) Holidays and celebrations.

(6) Overall economy, efficiency, and management of government operations and activities, including Federal procurement.

(7) National archives.

(8) Population and demography generally, including the Census.

(9) Postal service generally, including transportation of the mails.

(10) Public information and records.

(11) Relationship of the Federal Government to the States and municipalities generally.

(12) Reorganizations in the executive branch of the Government.

(i) **Committee on Homeland Security.**

(1) Overall homeland security policy.

(2) Organization and administration of the Department of Homeland Security.

(3) Functions of the Department of Homeland Security relating to the following:

(A) Border and port security (except immigration policy and non-border enforcement).

(B) Customs (except customs revenue).

(C) Integration, analysis, and dissemination of homeland security information.

(D) Domestic preparedness for and collective response to terrorism.

(E) Research and development.

(F) Transportation security.

(j) **Committee on House Administration.**

(1) Appropriations from accounts for committee salaries and expenses (except for the Committee on Appropriations); House Information Resources; and allowance and expenses of Members, Delegates, the Resident Commissioner, officers, and administrative offices of the House.

(2) Auditing and settling of all accounts described in subparagraph (1).

(3) Employment of persons by the House, including staff for Members, Delegates, the Resident Commissioner, and committees; and reporters of debates, subject to rule VI.

(4) Except as provided in paragraph (r)(11), the Library of Congress, including management thereof; the House Library; statuary and pictures; acceptance or purchase of works of art for the Capitol; the Botanic Garden; and purchase of books and manuscripts.

(5) The Smithsonian Institution and the incorporation of similar institutions (except as provided in paragraph (r)(11)).

(6) Expenditure of accounts described in subparagraph (1).

(7) Franking Commission.

(8) Printing and correction of the Congressional Record.

(9) Accounts of the House generally.

(10) Assignment of office space for Members, Delegates, the Resident Commissioner, and committees.

(11) Disposition of useless executive papers.

(12) Election of the President, Vice President, Members, Senators, Delegates, or the Resident Commissioner; corrupt practices; contested elections; credentials and qualifications; and Federal elections generally.

(13) Services to the House, including the House Restaurant, parking facilities, and administration of the

House Office Buildings and of the House wing of the Capitol.

(14) Travel of Members, Delegates, and the Resident Commissioner.

(15) Raising, reporting, and use of campaign contributions for candidates for office of Representative, of Delegate, and of Resident Commissioner.

(16) Compensation, retirement, and other benefits of the Members, Delegates, the Resident Commissioner, officers, and employees of Congress.

(k) **Committee on International Relations.**

(1) Relations of the United States with foreign nations generally.

(2) Acquisition of land and buildings for embassies and legations in foreign countries.

(3) Establishment of boundary lines between the United States and foreign nations.

(4) Export controls, including nonproliferation of nuclear technology and nuclear hardware.

(5) Foreign loans.

(6) International commodity agreements (other than those involving sugar), including all agreements for cooperation in the export of nuclear technology and nuclear hardware.

(7) International conferences and congresses.

(8) International education.

(9) Intervention abroad and declarations of war.

(10) Diplomatic service.

(11) Measures to foster commercial intercourse with foreign nations and to safeguard American business interests abroad.

(12) International economic policy.

(13) Neutrality.

(14) Protection of American citizens abroad and expatriation.

(15) The American National Red Cross.

(16) Trading with the enemy.

(17) United Nations organizations.

(l) **Committee on the Judiciary.**

(1) The judiciary and judicial proceedings, civil and criminal.

(2) Administrative practice and procedure.

(3) Apportionment of Representatives.

(4) Bankruptcy, mutiny, espionage, and counterfeiting.

(5) Civil liberties.

(6) Constitutional amendments.

(7) Criminal law enforcement.

(8) Federal courts and judges, and local courts in the Territories and possessions.

(9) Immigration policy and non-border enforcement.

(10) Interstate compacts generally.

(5) Pensions of all the wars of the United States, general and special.

(6) Readjustment of servicemembers to civil life.

(7) Servicemembers' civil relief.

(8) Veterans' hospitals, medical care, and treatment of veterans.

(t) **Committee on Ways and Means.**

(1) Customs revenue, collection districts, and ports of entry and delivery.

(2) Reciprocal trade agreements.

(3) Revenue measures generally.

(4) Revenue measures relating to insular possessions.

(5) Bonded debt of the United States, subject to the last sentence of clause 4(f).

(6) Deposit of public monies.

(7) Transportation of dutiable goods.

(8) Tax exempt foundations and charitable trusts.

(9) National social security (except health care and facilities programs that are supported from general revenues as opposed to payroll deductions and except work incentive programs).

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) review specific problems with Federal rules, regulations, statutes, and court decisions that are ambiguous, arbitrary, or nonsensical, or that impose severe financial burdens on individuals;

(C) 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;

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

(E) have a view toward insuring against duplication of Federal programs.

(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 Energy and 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 Homeland Security shall review and study on a continuing basis all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department of Homeland Security.

(g) 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.

(h) 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.

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

(j) The Committee on Rules shall review and study on a continuing basis the congressional budget process, and the committee shall report its findings

EXHIBIT E

CURT WELDON

7TH DISTRICT, PENNSYLVANIA

2466 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3807
(202) 225-2011

1554 GARRETT ROAD
UPPER DARBY, PA 19082
(610) 259-0700

63 WEST 4TH STREET
BRIDGEPORT, PA 19405
(610) 270-1486

E-mail: curtpa07@mail.house.gov
www.house.gov/curtweldon

MIGRATORY BIRD
CONSERVATION COMMISSION
REPUBLICAN STEERING COMMITTEE



Congress of the United States
House of Representatives
Washington, DC 20515-3807

February 17, 2006

COMMITTEE ON ARMED SERVICES
VICE CHAIRMAN
TACTICAL AIR AND LAND FORCES, CHAIRMAN
PROJECTION FORCES
COMMITTEE ON SCIENCE
SPACE AND AERONAUTICS
RESEARCH
COMMITTEE ON HOMELAND SECURITY
VICE CHAIRMAN
EMERGENCY PREPAREDNESS, SCIENCE
AND TECHNOLOGY
INTELLIGENCE, INFORMATION SHARING
AND TERRORISM RISK ASSESSMENT
CO-CHAIRMAN:
CONGRESSIONAL FIRE SERVICES CAUCUS
DUMA-CONGRESS STUDY GROUP
GLOBE OCEAN PROTECTION TASK FORCE
CONGRESSIONAL DIABETES CAUCUS
HOMELAND SECURITY CAUCUS

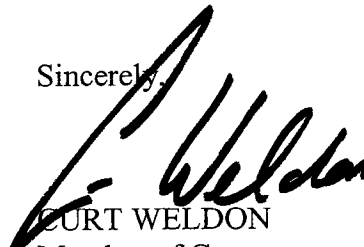
The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena for testimony and documents issued by the U.S. District Court for the Eastern District of Pennsylvania.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is inconsistent with the precedents and privileges of the House.

Sincerely,


CURT WELDON
Member of Congress