

Hearing before the House Committee on Veterans' Affairs
“The Power of Legislative Inquiry – Improving the VA by Improving Transparency”
Testimony of

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Chairman Miller, Ranking Member Brown, other members of the House Committee on Veterans' Affairs, thank you for inviting me to testify before you this evening. My name is Michael Bopp and I am a partner at the law firm, Gibson Dunn & Crutcher. I also head our firm's Congressional Investigations Group.

I spent more than a decade conducting investigations on Capitol Hill, in House and Senate committees, and on special committees convened to investigate a particular issue or problem. I have helped orchestrate more than one hundred hearings, I have taken countless depositions and interviews and I have managed massive document discovery efforts both pursuant to letter and subpoena. I have been at Gibson Dunn for more than six years and have represented individuals, companies and other organizations in dozens of congressional investigations. In other words, I have been on both sides of the dais; seeking documents and information, and being asked to provide them.

The power of Congress to investigate, though not explicit in the Constitution, is woven into its fabric. As George Mason noted, Members of Congress “are not only Legislators but they possess inquisitorial powers.”

The U.S. Supreme Court has also concluded that Congress has the authority and obligation to investigate. In one seminal case, *McGrain v. Daugherty*, the Supreme Court held: “We are of opinion that the power of inquiry – with process to enforce it – is an essential and appropriate auxiliary to the legislative function.”

Why is that the case? What is the reason for this investigative authority? Because Congress needs up-to-date, granular information to legislate effectively. After the terrorist attacks of September 11, 2001, Congress did not rush immediately to pass legislation reforming the intelligence community based on available information. Instead, Congress created the 9/11 Commission, waited for its report, then embarked on its own investigation of our intelligence community. The legislation that ensued effected a seismic change in how intelligence is collected, analyzed and shared by government agencies. And it was the result of cooperation and information-sharing by the intelligence community with Congress.

In 2005, when Hurricane Katrina hit the Gulf Coast, both the House and Senate initiated investigations into what went wrong with federal, state and local preparations for – and responses to – the hurricane. As part of the Senate investigation, we interviewed more than 325 (mostly government) witnesses, held 22 public hearings and reviewed more than 800,000 pages of documents. There was a lot to look at. What followed was legislation that overhauled the

way FEMA addresses natural and other disasters. This legislative action would not have occurred absent the thorough investigative actions taken by the House and Senate.

It is important to note that Congress need not investigate with the sole purpose of drafting or amending legislation. During the Katrina inquiry, were we investigating specific ways to amend federal response protocols? No. We were investigating what happened; what went wrong. So, too, the Supreme Court in *McGrain* held that it is entirely appropriate for Congress to investigate matters “on which legislation could be had.”

The Executive Branch – no matter which party is in control – might not always like Congress’ investigative authority, or the way that it chooses to exercise that authority. But it should respect it, because congressional investigations help Congress perform its constitutional functions more effectively. Congressional oversight of executive agencies helps ensure that the government is functioning the way it should: in the best interests of the American people. The Executive Branch should respect Congress’s power to investigate and legislate just as Congress must respect the Executive Branch’s responsibility to ensure that laws are implemented and enforced -- even when they are enforced against Members of Congress.

Vigorous oversight and investigative activities will always cause some degree of friction between Congress and the Executive Branch. In fact, that is how our system was designed. But they should not cause agencies to look for questionable ways to withhold information from congressional committees, to hide the ball. In the private sector context, the types of obfuscation alleged here would not be tolerated. In the case of investigations of the Executive Branch, such activities are not unique to a particular agency or office of inspector general, and they are also not unique to a particular political party. But they are all too common.

I applaud the Committee for standing up for the prerogatives of Congress through this hearing.

And I welcome any questions you may have.