

**RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES
FIND KARL ROVE IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY
WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON THE JUDICIARY**

July XX, 2008—Referred to the House Calendar and ordered to be printed

**Mr. Conyers, from the Committee on the Judiciary
submitted the following**

R E P O R T

together with

ADDITIONAL VIEWS

The Committee on the Judiciary, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of Resolution that the Committee on the Judiciary would recommend to the House of Representatives for citing former White House Adviser Karl Rove for contempt of Congress pursuant to this Report is as follows:

Resolved, That former White House Adviser Karl Rove is in contempt of Congress for failure to comply with the subpoena issued to him on May 22, 2008; and it is further

Resolved, That pursuant to 2 U.S.C. 192 and 194, the Speaker of the House of Representatives shall certify the Report of the Committee on the Judiciary, detailing the refusal of former White House Adviser Karl Rove to appear before the Subcommittee on Commercial and Administrative Law as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Mr. Rove be proceeded against in the manner and form provided by law; and it is further

Resolved, That the House of Representatives should pursue enforcing the subpoena through other legal remedies as appropriate.

BACKGROUND AND EXPLANATION

I. Background of Committee Investigation and Requests for Information from Karl Rove

A. House Judiciary Committee Hearings

Beginning in March 2007, the House Judiciary Committee and its Subcommittee on Commercial and Administrative Law (CAL Subcommittee) have held a number of hearings on the alleged politicization of the Justice Department, including the termination of U.S. Attorneys in 2006, allegations of selective prosecution, and related issues. These have included:

U.S. Attorneys & William Moschella. On March 6, 2007, six of the terminated U.S. Attorneys¹ and William E. Moschella, Principal Associate Deputy Attorney General, U.S. Department of Justice, among others, testified before the CAL Subcommittee.² At this hearing (and in private briefings on February 28 and March 5 to CAL Subcommittee members and staff that preceded it), Mr. Moschella testified, *inter alia*, as to the Justice Department's then-claimed reasons for firing these U.S. Attorneys. The terminated U.S. Attorneys testified, *inter alia*, that they had not been given reasons for their firing and, among other matters, responded to some of the Department's asserted reasons for their firing, and discussed potentially improper political and other factors that may have been related to their firing.

Ensuring Executive Branch Accountability. On March 29, 2007, the CAL Subcommittee heard testimony assessing the validity of White House assertions concerning executive privilege in the U.S. Attorney controversy.³ Beth Nolan, former White House Counsel under President Clinton, indicated that she had testified four times before congressional committees on matters directly related to her White House duties, including three times while she was serving in that position.⁴

¹*H.R. 580, Restoring Checks and Balances in the Confirmation Process of U.S. Attorneys: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2007). The six former U.S. Attorneys who testified were Ms. Lam, Mr. Iglesias, Mr. Cummins, Mr. McKay, Mr. Bogden, and Mr. Charlton.

²The other witnesses included the following: Representative Darrell E. Issa (R-CA); former Representative Asa Hutchinson (R-AR); John A. Smietanka, a former United States Attorney for the Western District of Michigan; George J. Terwilliger, III, former Deputy Attorney General of the U.S. Department of Justice; T.J. Halstead, Legislative Attorney, American Law Division, Congressional Research Service; and Atlee W. Wampler, III, President of the National Association of Former United States Attorneys.

³*Ensuring Executive Branch Accountability: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2007). The witnesses at the hearing included John Podesta, former White House Chief of Staff to President Bill Clinton; Beth Nolan, former White House Counsel to President Bill Clinton; Frederick A.O. Schwarz, Jr., Senior Counsel, Brennan Center for Justice; and Noel J. Francisco, former Associate Counsel to President George W. Bush.

⁴Id. (testimony of Beth Nolan, former White House Counsel to President Bill Clinton).

James Comey. On May 3, 2007, former Deputy Attorney General James Comey testified before the CAL Subcommittee.⁵

Alberto Gonzales. On May 10, 2007, Attorney General Gonzales appeared before the full Judiciary Committee for an oversight hearing that focused on the U.S. Attorneys controversy.⁶

Monica Goodling. After a grant of limited use immunity, Monica Goodling, former Senior Counsel to Attorney General Alberto Gonzales and the Department's White House Liaison, appeared before the full Committee on May 23, 2007.⁷

Paul McNulty. On June 21, 2007, Deputy Attorney General Paul McNulty testified before the CAL Subcommittee.⁸

Harriet Miers. Former White House Counsel Harriet Miers refused to comply with a subpoena requiring her appearance before the CAL Subcommittee on July 12, 2007.⁹ Ms. Miers not only failed to provide testimony or documents; she failed even to appear for the hearing. CAL Subcommittee Chair Linda Sánchez proceeded to overrule the White House's claims of immunity and privilege with respect to Ms. Miers, and the ruling was sustained by CAL Subcommittee Members in a recorded vote of 7-5.¹⁰

Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Justice System. On October 23, 2007, the Subcommittee on Crime, Terrorism, and Homeland

⁵*Continuing Investigation into the U.S. Attorneys Controversy: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2007) (testimony of James Comey, former Deputy Attorney General).

⁶*United States Department of Justice: Hearing Before the H. Comm. on the Judiciary*, 110th Cong. (2007) (testimony of Attorney General Alberto Gonzales).

⁷*Continuing Investigation into the U.S. Attorneys Controversy and Related Matters: Hearing Before the H. Comm. on the Judiciary*, 110th Cong. (2007) (testimony of Monica Goodling, former Senior Counsel to Attorney General Alberto Gonzales and White House Liaison, U.S. Department of Justice).

⁸*Continuing Investigation into the U.S. Attorneys Controversy and Related Matters: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2007) (testimony of Paul McNulty, Deputy Attorney General).

⁹*Continuing Investigation into the U.S. Attorneys Controversy and Related Matters: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2007).

¹⁰Id. On July 25, 2007, the Committee met in open session and adopted a resolution "recommending that the House of Representatives find that former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten be cited for contempt of Congress for refusal to comply with subpoenas issued by the Committee." The Committee voted 22-17 to report a resolution recommending finding them in contempt to the full House. On February 14, 2008, the House voted 223-32 to hold Ms. Miers and Mr. Bolten in contempt of Congress and to grant the Chairman of the Committee the power to file a civil suit to seek declaratory and injunctive relief for the failure to comply with the subpoenas. Attorney General Michael Mukasey declined to refer the contempt citations to a grand jury, and the Chairman of the Committee initiated a lawsuit in the U.S. District Court for the District of Columbia. That case is currently pending.

Security and the CAL Subcommittee held a joint hearing exploring several cases of alleged selective prosecution, including the prosecutions of former Democratic Alabama Governor Don Siegelman, Wisconsin state employee Georgia Thompson, and prominent Democrat Cyril Wecht in Pittsburgh. Testimony was received from former Attorney General Richard Thornburgh, Professor Donald C. Shields, and former Alabama U.S. Attorney Doug Jones.¹¹ Part II of the hearing was held on May 14, 2008, at which testimony was received from the Hon. Paul W. Hodes (D-N.H.), consultant Allen Raymond, Attorney Paul Twomey, and Professor Mark C. Miller.¹²

Karl Rove. Former White House Deputy Chief of Staff Karl Rove refused to comply with a subpoena requiring his appearance before the CAL Subcommittee on July 10, 2008, failing to appear for the hearing to answer questions.¹³ CAL Subcommittee Chair Sánchez proceeded to overrule the claims of immunity and privilege with respect to Mr. Rove, and the ruling was sustained by CAL Subcommittee Members in a recorded vote of 7-1.¹⁴

B. Requests for Information from the White House and Subpoena Issued to Karl Rove

Because Mr. Rove was considered a central witness who could provide information that is unavailable through any other source, in March 2007 Chairman John Conyers, Jr. and CAL Subcommittee Chair Linda Sánchez sought Mr. Rove's voluntary compliance with the Committee's investigation, along with that of other witnesses, by letter to White House Counsel Fred Fielding.¹⁵

In response, Mr. Fielding explained that he was prepared to make Mr. Rove and other White House officials available for interviews with the House and Senate Judiciary Committees on a joint basis; but his offer was conditioned on various preconditions and scope restrictions.¹⁶ Mr. Fielding's offer required that the interviews be confined to "the subject of (a) communications between the White House and persons outside the White House concerning the

¹¹*Allegations of Selective Prosecution: The Erosion of Public Confidence in our Federal Justice System: Joint Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security and the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2007).

¹²*Allegations of Selective Prosecution Part II: The Erosion of Public Confidence in our Federal Justice System: Joint Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security and the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2008).

¹³*The Politicization of the Justice Department and Allegations of Selective Prosecution: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2008).

¹⁴Id.

¹⁵Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (Mar. 9, 2007).

¹⁶Letter from Fred Fielding, Counsel to the President, to Patrick Leahy, Chairman, S. Comm. on the Judiciary, John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Lamar Smith, Ranking Member, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law (Mar. 20, 2007).

request for resignations of the U.S. Attorneys in question; and (b) communications between the White House and Members of Congress concerning those requests.”¹⁷ Questioning on internal White House discussions of any kind, by personnel at any level, would not be allowed. In addition, Mr. Fielding required that the interviews “be private and conducted without the need for an oath, transcript, subsequent testimony, or the subsequent issuance of subpoenas.”¹⁸ In other words, no matter what might be revealed, no other testimony or documents could be requested from the White House.

On March 21, 2007, the CAL Subcommittee authorized Chairman Conyers to issue subpoenas to Karl Rove and other present and former White House officials to obtain testimony and documents.¹⁹ Both before and after March 21, letters were exchanged between the Committee and the White House to seek to resolve voluntarily the Committee’s requests for information from the White House; but those efforts were not successful. Committee letters (one of which was sent jointly with Senate Judiciary Committee Chairman Leahy) included letters of March 9, March 22, March 28, and May 21, 2007.²⁰

As the Committee’s investigation proceeded and as additional allegations and information emerged, Chairman Conyers, CAL Subcommittee Chair Sánchez, and Committee Members Artur Davis and Tammy Baldwin wrote to Mr. Rove on April 17, 2008, asking that he voluntarily testify on the alleged politicization of the Justice Department, including the termination of U.S. Attorneys in 2006, allegations of selective prosecution, and related issues.²¹ On April 29, 2008, Robert Luskin, who represents Karl Rove, offered to make Mr. Rove available for an interview only on the Siegelman matter, which would neither be under oath nor transcribed.²² Committee Members responded on May 1 by rejecting Mr. Luskin’s offer and

¹⁷Id.

¹⁸Id.

¹⁹*Meeting to Consider Subpoena Authorization Concerning the Recent Termination of United States Attorneys and Related Subjects Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2007). In addition, the Subcommittee authorized Chairman Conyers to issue a subpoena for D. Kyle Sampson, former Chief of Staff to the Attorney General. Mr. Sampson has thus far voluntarily cooperated with the Committee’s investigation.

²⁰Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (Mar. 9, 2007); Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (Mar. 22, 2007); Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Patrick Leahy, Chairman, S. Comm. on the Judiciary, to Fred Fielding, Counsel to the President (Mar. 28, 2007); and Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Fred Fielding, Counsel to the President (May 21, 2007). All of these letters are on file with the House Committee on the Judiciary.

²¹Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Karl Rove (Apr. 17, 2008).

²²Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (Apr. 29, 2008).

requesting that Mr. Rove reconsider his decision not to testify voluntarily.²³ On May 9, Mr. Luskin offered that Mr. Rove respond to written questions and only with respect to the Siegelman prosecution.²⁴ Committee Members responded in a May 14 letter rejecting Mr. Luskin's offer and reiterating that Mr. Rove should testify on the politicization in the Department, including such matters as the U.S. Attorney firings as well as the Siegelman case.²⁵ On May 21, Mr. Luskin restated the two offers in his April 29 and May 9 letters.²⁶ Because of Mr. Rove's refusal to testify voluntarily about the politicization of the Department, Chairman Conyers issued a subpoena to Mr. Rove on May 22, pursuant to the previous authorization, directing him to appear before the CAL Subcommittee on July 10.

Subsequently, Committee staff had several discussions with Mr. Luskin in which he offered to have Mr. Rove interviewed without a transcript or oath, but without prejudice to the Committee's right to pursue its subpoena for sworn testimony. However, such an interview would be limited to questions concerning the Siegelman matter. Chairman Conyers and CAL Subcommittee Chair Sánchez wrote to Mr. Luskin to express their encouragement about the offer that Mr. Rove be interviewed without prejudice, but reiterated that Mr. Rove should be prepared to answer questions about the entire issue of politicization as described above and would be expected to appear on July 10 to do so.²⁷ On July 1, Mr. Luskin indicated that Mr. Rove would decline to appear before the CAL Subcommittee.²⁸

On July 3, Chairman Conyers and CAL Subcommittee Chair Sánchez wrote to Mr. Luskin urging Mr. Rove to reconsider his position and to appear pursuant to his legal obligations.²⁹ On July 9, Mr. Luskin confirmed that Mr. Rove would not appear, and attached a July 9 letter from White House Counsel Fred Fielding, an Office of Legal Counsel (OLC) letter regarding Mr. Rove dated August 1, 2007, and an OLC letter regarding Ms. Miers dated July 10, 2007.³⁰ According to Mr. Fielding's letter, Mr. Rove has "constitutional immunity . . . because Mr. Rove was an immediate presidential adviser and because the Committee seeks to question

²³Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Robert Luskin, counsel to Karl Rove (May 1, 2008).

²⁴Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 9, 2008).

²⁵Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, Artur Davis, member, H. Comm. on the Judiciary, and Tammy Baldwin, member, H. Comm. on the Judiciary, to Robert Luskin, counsel to Karl Rove (May 14, 2008).

²⁶Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 21, 2008).

²⁷Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (June 16, 2008).

²⁸Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (May 21, 2008).

²⁹Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (July 3, 2008).

³⁰Letter from Robert Luskin, counsel to Karl Rove, to John Conyers, Jr., Chairman, H. Comm. on the Judiciary (July 9, 2008).

him regarding matters that arose during his tenure and that relate to his official duties in that capacity.”³¹

On July 10, 2008, the CAL Subcommittee met as scheduled, and Mr. Rove in fact failed to appear. At that meeting, CAL Subcommittee Chair Sánchez issued a ruling that rejected the immunity claims with respect to Mr. Rove, and the CAL Subcommittee, by a vote of 7 to 1, sustained that ruling.³² The ruling specifically covered Mr. Rove’s refusal to appear as required by the subpoena issued to him. Chairman Conyers and CAL Subcommittee Chair Sánchez sent Mr. Rove’s counsel a letter enclosing a copy of the ruling, and again urging compliance and warning of the possibility of contempt.³³ The letter also requested that Mr. Rove’s counsel notify the Committee by July 16 as to whether Mr. Rove would comply with the subpoena.³⁴ To date, neither Mr. Rove nor his counsel have responded.

³¹Letter from Fred Fielding, Counsel to the President, to Robert Luskin, counsel to Karl Rove (July 9, 2008).

³²*The Politicization of the Justice Department and Allegations of Selective Prosecution: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary*, 110th Cong. (2008).

³³Letter from John Conyers, Jr., Chairman, H. Comm. on the Judiciary, and Linda Sánchez, Chair, Subcomm. on Commercial and Admin. Law, to Robert Luskin, counsel to Karl Rove (July 10, 2008).

³⁴Id.

On July 15, 2008, Judiciary Committee Ranking Member Lamar Smith sent a letter and a set of questions regarding the Siegelman matter to Mr. Rove's counsel.³⁵ Mr. Rove's counsel provided Ranking Member Smith with written answers to those questions on July 22.³⁶

II. Authority and Legislative Purpose

The Committee on the Judiciary is a standing Committee of the House of Representatives, duly established pursuant to the Rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the Constitution.³⁷ House Rule X grants to the Committee legislative and oversight jurisdiction over, *inter alia*, “judicial proceedings, civil and criminal,” and “criminal law enforcement”; the “application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction”; 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”; and “any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction.”³⁸

House Rule XI specifically authorizes the Committee and its subcommittees to “require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary.”³⁹ The Rule also provides that the “power to authorize and issue subpoenas” may be delegated to the Committee chairman.⁴⁰ The subpoenas discussed in this report were issued pursuant to this authority.

The investigation into the alleged politicization of the Justice Department, including the termination of U.S. Attorneys in 2006, allegations of selective prosecution, and related issues, is being undertaken pursuant to the authority delegated to the Committee under Rule X as described

³⁵Letter from Lamar Smith, Ranking Member, H. Comm. on the Judiciary, to Robert Luskin, counsel to Karl Rove (July 15, 2008).

³⁶Letter from Robert Luskin, counsel to Karl Rove, to Lamar Smith, Ranking Member, H. Comm. on the Judiciary (July 22, 2008).

³⁷U.S. Const. art. I, §5, cl. 2.

³⁸House Rule X(1)(k)(1) and (7); House Rule X(2)(b)(1)(A)-(C).

³⁹House Rule XI(2)(m)(1)(B).

⁴⁰House Rule XI(2)(m)(3)(A)(i).

above. The oversight and legislative purposes of this investigation fall into two related categories: 1) investigating and exposing any possible malfeasance, abuse of authority, or violation of existing law on the part of the Executive Branch related to these concerns, and 2) considering whether the conduct uncovered may warrant additions or modifications to existing federal law, such as more clearly prohibiting the kinds of improper political interference with prosecutorial decisions as have been alleged here.

HEARINGS

In its investigation into the alleged politicization of the Justice Department, including the termination of U.S. Attorneys in 2006, allegations of selective prosecution, and related issues, the CAL Subcommittee held six days of hearings, on March 6, March 29, May 3, June 21, July 12, 2007, and July 10, 2008. In addition, the Subcommittee on Crime, Terrorism and Homeland Security and the CAL Subcommittee held two days of joint hearings on October 23, 2007 and May 14, 2008. The full Committee held two days of hearings, on May 10 and May 23, 2007. More discussion of these hearings is contained in the background section of this Report.

COMMITTEE CONSIDERATION

[On July 30, 2008, the Committee met in open session and ordered this Report [favorably] reported, [with an][without] amendment, by [a vote of __ to __][voice vote], a quorum being present].

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following recorded votes took place:

[INSERT TALLY]

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this Report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this Report does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out the Report will be negligible.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Report will assist the Committee and the House of Representatives in vindicating Congress's responsibility to conduct appropriate oversight of the Executive Branch and vindicating the rule of law.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this Report in article 1, section 1 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, this Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

[ADDITIONAL][MINORITY][DISSENTING] VIEWS

[TO BE SUPPLIED]

