RPTS JOHNSON

DCMN ROSEN

BUSINESS MEETING ON CONTEMPT OF CONGRESS RESOLUTION: MARKUP OF H.R. 1843, H.R. 1199, H.R. 400, H.R. 2740, H.R. 2102, AND H.R. 3013

Wednesday, July 25, 2007

House of Representatives,

Committee on the Judiciary,

Washington, D.C.

The committee met, pursuant to call, at 10:23 a.m., in Room 2141, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the committee] presiding.

Present: Representatives Conyers, Berman, Boucher, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Meehan, Delahunt, Wexler, Sanchez, Cohen, Johnson, Sutton, Gutierrez, Sherman, Baldwin, Weiner, Schiff, Davis, Wasserman Schultz, Ellison, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Chabot, Lungren, Cannon, Keller, Issa,

Pence, Forbes, King, Feeney, Franks, Gohmert, and Jordan.

Staff Present: Perry Apelbaum, General Counsel/Staff Director; Elliot Mincberg, Oversight Chief Majority Counsel; Anita Johnson, Chief Administrative Officer; George Slover, Parliamentarian; and Joseph Gibson, Chief Minority Counsel.

Chairman Conyers. Good morning, members of the press. Please remove yourselves from the front. We would like to look at all of our visitors here today. Thank you very much. Good morning. The committee will come to order. Without objection, the Chair is authorized to declare a recess. Pursuant to the notice already given, we have a number of items on our agenda today, the report regarding Ms. Harriet Miers and Mr. Joshua Bolten and a number of bills. Before we begin those items, I would first ask unanimous consent that Mr. Weiner of New York be assigned to the vacancy on the Immigration Subcommittee. And without objection, I thank the ranking member and the members. So ordered.

Pursuant to notice, I now call up the report regarding Harriet Miers and Joshua Bolten for purposes of consideration. And I ask the clerk to read the report.

The Clerk. Resolution recommending that the House of Representatives find Harriet Miers and Joshua Bolten, Chief of Staff, White House, in contempt of Congress for refusal to comply with subpoenas duly issued by the Committee on the Judiciary. Mr. Conyers, from the Committee on the Judiciary submitted the following report together with additional views. The Committee on the Judiciary, having considered this report --

[The information follows:]

******** INSERT 1-1 ********

Chairman Conyers. Without objection, the report will be considered as read. And let me begin by saying that today the committee will consider a report recommending that the House cite Harriet Miers and Joshua Bolten for contempt of Congress. It is not a step that as Chairman I take easily or lightly, but it is one that I believe necessary, not only to allow us to gain an accurate picture of the facts surrounding the United States Attorneys controversy, but to protect our constitutional prerogatives as a co-equal branch of government. It is my view that the investigation we have been engaged in over the last several months is an important one. It is not about whether the U.S. attorneys serve at the pleasure of the President. They clearly do. And we all agree to that. But it does concern whether this or any administration can terminate or retain such individuals in order to influence pending criminal investigations or influence an election, whether administration officials are permitted to make false statements to the Congress, and whether the American people can be assured that their laws are being fairly and impartially enforced.

In order to pursue this investigation, we have done what committees and the Congress have always done. We have sought the documents and testimony initially of course on a

voluntary basis, and through compulsory process only as a last resort. The investigation did not begin with the White House, but has ended up there only after the review of thousands of pages of documents, and obtaining the testimony and interviews of 20 current and former Department of Justice employees. We have been open, at all times, to reasonable compromise and have been fully respectful and cognizant of the prerogatives of the executive branch. What I am not open to is accepting a take-it-or-leave-it offer, which would not allow us access to the information we need, would not even provide for a transcript, and would prevent us from seeking additional information in the future.

This is the only proposal we have ever received from White House counsel. And I hope all members would, as an institutional matter, recognize the problems inherent in such an approach. This is not a confrontation we have sought, and is one we are still hoping to avoid. However, I believe on the merits our case is quite strong. Unlike other disputes involving executive privilege, the President has never personally asserted privilege. The committee has never been given a privilege law, and there is no indication the President was ever personally involved in the termination decisions.

Even if privilege was properly asserted under the balancing of interests tests, I believe that we would

prevail. This is particularly true where there is evidence of wrongdoing, where we have sought to obtain the information elsewhere, and where there is no overriding issue of national security. Some may argue that the stakes in this confrontation are so high we can't afford the risk that we might lose. And I would say to them that if we countenance a process where our subpoenas can be readily ignored, where a witness under a duly authorized subpoena doesn't even have to bother to show up, where privilege can be asserted on the thinnest basis and in the broadest possible manner, then we have already lost. We won't be able to get anybody in front of this committee or any others. I would also say that if we are really concerned about Congress's rights, we should contact the White House Counsel's office and encourage them to work with us to find a meaningful compromise.

This is not a partisan concern or a partisan exercise. I could not voice the important principles at stake in this matter better than did the ranking Republican on the Senate Judiciary Committee did yesterday, when he asked do you think constitutional government in the United States can survive if the President has the unilateral authority to reject congressional inquiries?

And so I began this investigation with a simple question. Who put the list of fired U.S. attorneys together

and why? I would think it would be in everyone's interests to get the facts on the table so that we could reassure the American people that the Nation's laws are being fully and faithfully enforced. I hope that we can vote out this report today, and that we can obtain the information we need to complete our investigation, and that it be done in a bipartisan manner. I am very pleased now to recognize the distinguished gentleman from Texas, the ranking member of the Judiciary Committee, Mr. Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman. Quote, the great enemy of the truth is very often not the lie, deliberate, contrived, and dishonest, but the myth, persistent, persuasive, and unrealistic. That insightful observation was offered by President John F. Kennedy, one of many Presidents to assert the right of executive privilege. His warning about myths comes to mind today. The majority wants to create the myth that President Bush is asserting something improper. To dispel the myth and get to the facts, a little comparative history is in order. President Clinton removed 139 U.S. Attorneys. President Bush removed 56. President Clinton pardoned or commuted the sentences of 457 individuals.

President Bush has pardoned or commuted the sentences of 117 individuals, about one fourth as many. President Clinton claimed executive privilege 14 times, in some

instances helping his wife, Hillary Clinton. President Bush has asserted executive privilege just three times. President Clinton invoked executive privilege primarily to shield his own personal misdeeds and to shield his wife, now Senator Clinton. In the Bush administration, President Bush has invoked executive privilege only involving official business, and where there is no evidence of wrongdoing. In the Clinton administration, there was Travelgate. In that matter, Jack Quinn refused to cooperate with the House Committee on Government Reform's investigation when Republicans were in the majority. Eventually, the committee reported out a contempt resolution against Mr. Quinn, but that happened only after more than 2 years of trying to work with the White House, and the resolution did not receive floor consideration.

Admittedly, the Clinton administration is forgettable in a number of ways, but the memory loss by the majority shows they are out of touch with reality. The Clinton, Carter, and Truman administrations all insisted on the kind of executive privilege that underlines President Bush's instructions to Ms. Miers and Mr. Bolten that they not comply with the committee's subpoenas. There is another myth, that we needed subpoenas to get to the information from the White House, and that criminal contempt is necessary since the subpoenas have been rejected. If the

majority really wanted the facts, they could have had them.

The White House offered to have Harriet Miers and Karl Rove meet with the majority and answer their questions. If the majority really wants the truth, it should take up the White House on that offer today. How can the majority say they want answers and then pass up the opportunity to get those answers? The majority's unwillingness to meet with administration officials clearly demonstrates their refusal to face the facts.

The majority knows that the President's assertions of executive privilege go back to George Washington, and rest on long-standing and well-reasoned court rulings and bipartisan executive practices. It knows that the courts have long honored the President's need to keep advisers' advice confidential. The executive branch could not function without such protection, just as Congress could not if the conversations of our staff were not confidential, and the courts could not if the conversations of their clerks were not confidential. The majority knows that it "may only investigate into those areas in which it may potentially legislate or appropriate," end quote, and that, "it cannot inquire into matters which are within the exclusive province of one or the other branches of government," because the Supreme Court has told us so.

Finally, the majority knows that it would leap to the

barricades of executive privilege if a Democrat were in the White House, just as it did when the Clintons were there, bobbing and weaving in Whitewater, around Paula Jones, and away from Monica Lewinsky, trying to sweep it all under the rug.

I have mixed feelings about spending time on the resolution today. On one hand, it thankfully takes up time we might have spent reporting suspect legislation. On the other, it regrettably takes up time we should have spent on legislation that could reduce crime, secure our borders, and protect children from Internet predators. I hope someday we will find the time for those priorities. Thank you, Mr. Chairman, and I will yield back.

Chairman Conyers. I thank the gentleman, and we are going to hear from the Chair of the Subcommittee on Commercial and Administrative law as well as the ranking minority member. I call on first the gentlelady from California, Linda Sanchez, for a comment that she would like to make on this report. I thank her for all the work that she has been doing on the committee.

Ms. Sanchez. Thank you, Mr. Chairman. Mr. Chairman, I urge my colleagues on this committee on both sides of the aisle to support the resolution and report recommending to the White House -- or to the House of Representatives that former White House Counsel Harriet Miers and White House

Chief of Staff Joshua Bolten be cited for contempt of Congress. I read with interest in Sunday's Washington Post that the White House's current strategy in Iraq is to press Iraqi leaders to reach political accommodation. And I find it interesting that the White House is not practicing at home what it is preaching abroad. Since March 9th of 2007, Chairman Conyers and I have patiently negotiated, in good faith, to reach a political accommodation with the White House for documents and testimony relevant to the U.S. Attorney investigation.

Unfortunately, the White House has stubbornly refused to move off its opening position, an unreasonable offer that testimony be given without oath or transcript, and that testimony and documents preclude internal White House communications. To have negotiations work, concessions on both sides are necessary. Otherwise, it is just capitulation. Despite our best efforts to avoid confrontation, Chairman Conyers reluctantly issued subpoenas to Ms. Miers for testimony and documents and to Mr. Bolten, as the custodian for White House documents, related to the controversy.

We are here today because Ms. Miers, Mr. Bolten, and the White House have ignored those subpoenas. We have arrived at this point after a very deliberative and thoughtful process. The committee has held seven hearings

on the U.S. Attorneys controversy and related matters, five of those before the subcommittee on Commercial and Administrative Law. Chairman Conyers has reached out to White House Counsel Fred Fielding time and time again to seek a compromise. I am extremely disappointed that Ms. Miers, Mr. Bolten, and the White House have based their refusal to comply with our subpoenas on sweeping claims of executive privilege and immunity that some experts have called Nixonian in breadth.

The committee carefully considered these claims in two separate meetings earlier this month. In detailed rulings, I found that these claims were not properly asserted and not legally valid. Even if the claims were properly asserted and legally valid, the strong public need for the information substantially outweighs the assertion of executive privilege here. I am also very disappointed that this administration continues to direct U.S. attorneys to prosecute cases that benefit it politically and to not prosecute cases that hurt it politically.

I was troubled to read a letter received late last night from the Office of Legislative Affairs indicating that the administration will direct the D.C. U.S. attorney not to prosecute contempt cases if the full House were to pass resolutions before us today. Given what we have learned in this controversy, the time has long passed that this

administration end its manipulation of U.S. attorneys for partisan political gain. That being said, the central question before the committee today is whether private citizens or executive branch officials can simply ignore congressional subpoenas by asserting extreme theories of executive privilege and immunity.

Members on both sides of the aisle should answer that question with a resounding no. After 6 years of the Bush administration's vast expansion of Presidential power, time is long overdue for Congress to reassert itself as a co-equal branch of government and restore checks and balances in our democracy. If we allow the White House's mere utterance of executive privilege to thwart our efforts to conduct legitimate oversight and gather critical information needed to consider changes in Federal law, then we will have set a shameful precedent for many Congresses to come. I hope that my colleagues on the other side of the aisle will stand up for this body's institutional prerogatives by supporting the resolutions in the report. And with that, I would yield back the balance of my time.

Chairman Conyers. I thank the gentlelady. And I am now pleased to recognize Chris Cannon, the gentleman from Utah, who is the ranking member on this subcommittee of Commercial and Administrative Law.

Mr. Cannon. Thank you, Mr. Chairman. Let me pick up

where the distinguished ranking member left off. There is a lot of myth and innuendo surrounding this investigation, but the one thing there is not a lot of is evidence that the White House did anything wrong. Actually, the evidence points the other way. Let me just read to you from the transcript of an interview with Kyle Sampson earlier this month. Mr. Sampson was the White House key contact at the Department during the U.S. attorney review. He was asked, whether Ms. Miers ever mentioned any desire on the part of the White House to seek the replacement of a U.S. attorney for reasons related to a desire to shut down any prosecution or investigation or start any prosecution or investigation that was not being conducted by the sitting U.S. attorney.

What was his response? To my knowledge, that was not the case. He was asked whether he remembered Karl Rove ever attempting anything like that. His response? I don't remember anything like that. To my knowledge, that was not the case. He was then asked about Bill Kelley. His response? Same answer. Sara Taylor? Same answer. Scott Jennings? Same answer. Chris Oprison? Same answer. Any other White House staffer with whom he had contact during the process of the review? Same answer.

Finally, he was asked, do you recall any attempt by any of those individuals or others at the White House to seek the removal of a U.S. attorney or U.S. attorneys generally

for reasons other than performance-related reasons or the desire that simply another person be given an opportunity to serve? His answer? I don't remember anything like that.

Frankly, it surprises me that the majority refuses to acknowledge where this testimony leads us, which is 180 degrees in the other direction from threatening Harriet Miers and Josh Bolten through contempt proceedings. With clear evidence -- or what clear evidence does one need that the White House was not involved in wrongdoing in the dismissals of these U.S. attorneys? What clear evidence does one need to know that we do not need to have a constitutional showdown over this issue?

Perhaps we should consider the first example listed in the members' meeting memo distributed by the chairman as evidence that the terminations were motivated by political reasons. Presumably, the listing of former U.S. attorney David Iglesias first indicates his position of importance as the centerpiece of this investigation. The allegation is that David Iglesias was removed because he was not moving cases the administration wanted to move for partisan reasons. If that's what the administration wanted to do, you would think it would have replaced David Iglesias with a partisan. With whom did the administration replace David Iglesias? With Larry Gomez, a career prosecutor from Iglesias's office, who had been Mr. Iglesias's first

assistant U.S. attorney, who had long been the day-to-day manager of the office, who presumably had been part and parcel of the office not moving the cases the administration allegedly wanted to move for partisan purposes.

Does that make any sense? No. If the administration had wanted to manipulate the U.S. attorney position in New Mexico to move those cases, Larry Gomez is the last person it would have put in that seat. The obvious conclusion is that David Iglesias wasn't fired because of political interference by the White House, he was fired because he wasn't up to the job, as Department officials explained long ago. And as I think he demonstrated here in his hearing before us. If the majority were sincere with itself, us and with the American people, it would admit that.

And lastly, if the majority were sincere about all this, it would allow a debate today on the other facts that ostensibly underlie the resolution we are being asked to obtain. Less than a week ago, the Subcommittee on Commercial and Administrative Law met to consider a ruling on the assertion of executive privilege made in response to Mr. Bolten's subpoena. At that meeting, the minority asked for a debate of the facts. We were told there would be a time for that later. We assumed that time would be an opportunity today. And yet there are no facts in the draft report and resolution we are considering. Why? Is the

majority trying to hide the facts? I can assure you that we in the minority are not afraid of the facts.

In the members' memo received yesterday, some facts were discussed, but we don't know today what facts the majority actually -- majority's members actually embrace. Apparently, we won't find that out until they submit their additional views after today's markup. Those views are due at the same time as the minority's views, so we won't be able to see them before filing our views. That is not a debate or a discussion worthy of a constitutional crisis. We investigated this matter for months. And I believe that the key facts point inescapably to one conclusion. We don't need to force a constitutional showdown over contempt and executive privilege to know that the White House was not involved in wrongdoing in the dismissal of the U.S. attorneys.

As I said when subpoenas were first considered, the only purpose of subpoenas issued to the White House was to fan the flames and photo ops of partisan controversy for partisan gain. Today we are proven correct. I yield back the remainder of my time, Mr. Chairman.

Chairman Conyers. I thank the gentleman. And all other statements will be entered into the record. Are there any amendments to the report or possible amendments?

Mr. Cannon. Yes, Mr. Chairman. I have an amendment at

the desk.

Chairman Conyers. The gentleman has an amendment. And the clerk will report the amendment. And I ask that it be allowed to be read in full.

The Clerk. Amendment to the report on refusal of former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten to comply with subpoenas issued by the House Judiciary Committee offered by Mr. Cannon of Utah. Page three, after the sentence on June 21st, 2007, Deputy Attorney General Paul McNulty testified before the subcommittee, insert the following. Mr. McNulty also was interviewed by staff. In his interview, Mr. McNulty offered a great deal of information. For example, when asked questions regarding the respective roles of the Department and the White House in the U.S. attorneys' review and removal process, he answered as follows: Even with all those e-mails that I have now come to understand and see, the extensive back and forth that existed between Kyle and the White House and so forth, I still understand the process at its final stage having -- requiring an initiative by the Department to identify who these individuals are and put them together in a list and then send them to the White House.

As I sit here today, my view is that if Kyle had decided not to do that, or just never gotten around to it,

we may have not done this. So that is why I still see it as being something the Department initiated when it went forward with putting together those names. Page 5, after the sentence, in addition, majority and minority staff from both the House and Senate Judiciary Committees have so far jointly conducted on the record interviews of 12 current and former Department of Justice officials, insert the following: Staff interviews have been conducted with the following DOJ officials: David Margolis, Associate Deputy Attorney General; William Mercer, U.S. attorney for the District of Montana and former Associate Attorney General; Michael Elston, former chief of staff to the Deputy Attorney General; William Moschella, Principal Assistant Deputy Attorney General; Mary Beth Buchanan, U.S. attorney for the Western District of Pennsylvania and former Director of the Executive Office of U.S. attorneys; Michael Battle, former Director of the Executive Office of U.S. attorneys; and Matthew Friedrich, counsel to the Attorney General. Mr. Margolis, the Department's top career official, when asked whether he ever heard anyone suggest that the terminations of these eight U.S. attorneys or the request for their resignations were to influence a political corruption case, Mr. Margolis answered as follows: Well, I've read newspaper articles after the fact, and I've read Iglesias' public statements after the fact, and some statements from John

McKay. But you don't mean that. You mean anybody in a position of authority.

Absolutely not, and they would get my sharp stick in the eye if they suggested that. When asked did you ever hear from anyone in the administration, either at the Department of Justice or the White House, that they were terminating these -- or asking for the resignations of these eight U.S. attorneys in order to chill or jump-start a particular case, Mr. Margolis answered as follows: No. In addition, when Mr. Margolis was asked questions concerning a contact by a member of his congressional delegation that Mr. Iglesias failed to report to the Department, Mr. Margolis answered as follows: I would be remiss if I didn't point out that I am furious at Mr. Iglesias for not reporting that. And I don't think I'd be sitting here answering questions if he had reported that, because the way we react at the Department when something like that comes up is, we run the other way to make sure that nobody thinks we're fixing the case.

So that's unforgivable, and his explanation was unforgivable. His explanation was, oh, this guy was my mentor. That's what -- we hold out an independent U.S. attorney to the public. To say, oh, well, I'm not going to follow the rules if I like this guy or something like that, I am furious about that. Ms. Buchanan, for her part, when

asked about whether politics had entered into prosecutions in her district, the Western District of Pennsylvania, answered as follows: Nobody ever suggested to me who should be considered for investigation or prosecution within the Western District of Pennsylvania. I am not aware of any United States Attorney in any district who the Department has made suggestions with regard to who should or should not be investigated. Never in my career at the Department of Justice have I ever heard politics of a defendant to ever be taken into consideration in whether an individual should be investigated.

It is offensive for anyone to suggest otherwise. Page 5, at the end of number 17, insert the following: Mr. Sampson's interview testimony included the following with regard to the input of the White House into the US Attorneys review. Number one, when asked whether Harriet Miers ever mentioned any desire on the part of the White House to seek the replacement of a U.S. attorney for reasons related to a desire to shut down any prosecution or investigation or start any prosecution or investigation that was or was not being conducted by the sitting U.S. attorney, Mr. Sampson responded as follows: To my knowledge, that was not the case. Number two, when asked whether he remembered Karl Rove ever attempting anything like that, Mr. Sampson responded as follows: I don't remember anything like that.

To my knowledge, that was not the case.

Number three, when asked whether he remembered William Kelley, Sara Taylor, Scott Jennings, Chris Oprison, or any other White House staffer attempting anything like that, Mr. Sampson responded as follows: Same answer. Number four, when asked, do you recall any attempt by any of those individuals, or others at the White House, to seek the removal of a U.S. attorney or U.S. attorneys generally for reasons other than performance-related reasons or the desire that simply another person be given an opportunity to serve, Mr. Sampson responded as follows: I don't remember anything like that.

Chairman Conyers. The gentleman, Mr. Cannon of Utah, is recognized in support of his amendment.

Mr. Cannon. I thank the Chair. The Chair had earlier pointed out that he believes we will prevail in this matter. I believe that if we failed we will be doing a great disservice to this institution and we will make the presidency in America a much stronger, more imperial office, and above the kind of review that I think is appropriate by us. If you will look at the amendment, in fact, if you look at the report on page 3, you will see some conclusions. James Comey, former Deputy Attorney General testified before the subcommittee. That's all we have said about Mr. Comey. That's all we said about Mr. Gonzales or Ms. Goodling or

Paul McNulty or Harriet Miers.

My amendment would give flesh to the facts behind the statements by those people who spoke before the committee. And let me just point out this is an emotional issue on many levels. It's an emotional issue for this committee. We have strong disagreements. We have absolutely contrary views of what has happened apparently. The partisan results of what we do here have been significant. And in fact, the result of what we do here is going to have a profound effect on how we govern ourselves here in America. Mr. Margolis was furious, he said twice in the amendment as read, and that's because he has very strong feelings about the Department of Justice and what its role should be. And he was furious that Mr. Iglesias didn't report a couple of phone calls.

And in fact, his later discussions of what those -- why he didn't report them made it clear that he is not a person competent to do the job that he was attempting to do at the time. In fact, he said before this committee that he did report those phone calls, and the way, the medium he used was by holding a press conference instead of using e-mail or telephone call to report them. And so we end up here in a world where there is a great deal of concern about the fundamental rules of how we govern ourselves. It seems to me that it is inappropriate to go forward without a factual

basis, without including in the record statements that substantiate why we are going forward.

Now clearly, the quotes that I have included in my amendment are quotes that make the case that there is no case to go forward. On the other hand, we don't have anywhere a set of statements of facts that we have discovered that justify the fact that we are going forward.

In fact, I would hope that we would have a second degree amendment here so that we could find out what the majority wants to say is actually wrong, hear what the evidence is that wrongdoing has happened, instead of the conclusions and the allegations which are very hard to confront and to respond to factually. What we want are the facts that establish the basis for going forward.

And so I offer this amendment in the hope that we can actually have a debate today about what the facts are. What are the facts that support or contradict the proposed report and resolution? Where are they? The very first hearing after the very first opening statement corruption was raised and raised and raised several times. And at the end of that first opening statement by the chairman of the subcommittee on Commercial and Administrative Law, I made the point that we had to have corruption if we are calling for corruption. And nothing has been shown, as far as I can tell, that indicates there was corruption in the process.

And yet we have dozens and dozens of interviews, hundreds, if not thousands of pages of interview reports, we have tens of thousands of pages of e-mail, we have tracked this thing everywhere except to the personal conversations that have happened in the White House. And the White House has made a bona fide good faith effort to protect those prerogatives for the long term, but to help us understand whether or not or what the basis for any kind of a claim of corruption or criminality would be.

And we haven't done that. We haven't taken the White House up. So we are rushing here, in front of a great number of cameras, and in front of a press that is vastly more interested in the outcome than I think the American people are. In fact, my sense is that the American people are really disgusted by the partisanship and the pettiness of this, and to the degree they have looked at it, the lack of evidence of any significant wrongdoing. And so, Mr. Chairman, I hope that we will either have a debate about the facts that justify what we are doing, an amendment to my amendment, or that we will vote in favor of my amendment and move on. Thank you, Mr. Chairman, and I yield back what little time remains.

Chairman Conyers. I'm going to recognize myself, Mr. Sensenbrenner. Well, I'm struck by your statement in support of your amendment. The one thing I want to assure

you of is a concern that we share, in which you said if we fail to make -- if we fail in this challenge for contempt we could make this a more imperial President. Please, that's the last thing I want to do. So don't let us fail on this this morning, Chris.

Mr. Cannon. No, if we fail to make our case in court. If the chairman would yield, our failure is not here. You have the votes here. If we fail in court and the White House ends up with a precedent that is clear that they can withhold evidence from Congress, then we have a problem in the future. That's when we make the presidency imperial. I thank the gentleman.

Chairman Conyers. Well, you see, the problem is that your appeal for evidence is before the fact. This is what we are trying to do is get to the evidence. The reason we can't get to the evidence, the White House has, against the rules of Congress, withheld the materials that may or may not prove the case. We can't get Harriet Miers up here. And then we could get to the evidence. Unfortunately, we can't get to the evidence before we get to the witnesses and the documents that we have requested.

And so I fully respect the gentleman's right to express his views regarding what facts have been uncovered thus far, but there will be time during the debate for that to happen if we can get who we need to get here. Now let me explain

why those kinds of statements aren't necessary for what we are doing this morning and why they don't belong in the report as we are voting on it. This report is different in many ways from the product that we are normally used to. It is closer to a bill, a resolution in some ways than a report on legislation.

In our usual markup we have a bill, a resolution before us, and we vote on that. And if it is approved by the committee, then after that the majority or minority writes a report and explains it to the House. But either way, the report is typically after the markup. The report is not voted on, the bill or resolution is. And all we usually have formally before us at the time of markup is the bill or resolution itself. Now, here the parliamentarian has advised us that the proper way to consider a resolution of contempt is to have the report already written and formally before the committee.

The committee votes on the report, not the resolution by itself. This report does not even technically contain the resolution per se, but rather contains a proposed resolution for the House to consider. So that is why we have this report in front of the markup, like a bill. And like a bill, the main body of this report cannot be revised after we vote on it except for technical revisions. So we can add to the report through additional views like the ones

you have expressed, and like all members can, but we are really voting this morning on the report before us, as we do customarily with a bill.

Secondly, related is that we need to keep in mind that we are not voting on our investigation today. This is not dispositive of the investigation. We are voting on the narrow issue of the refusal of Miers and Bolten to comply with the subpoenas we have served on them in the course of our investigation. That is all. That is it. The report sets forth the factual predicate for the resolution of contempt, which deals not with the ultimate results of the investigation, which has been talked about, which is not over yet, but with the actions of these two persons that are impeding us from getting to the results. Nor is this a brief in support of the proposed contempt resolution. It is more in the nature of a procedural and jurisdictional predicate.

And I want to assure everybody on the committee that we prepared this report in the closest consultation with the House parliamentarian and the House general counsel. We are totally confident it contains the appropriate elements and in the appropriate form for these purposes. We are naturally interested in where the investigation may be leading. And the memo prepared for the members, I think, does a good job of placing the narrow factual predicate of

the report into the broader context of the investigation.

When it comes time for members to write additional views, some of the broader context will, no doubt, make its way into the additional views. Different members have a wide range of perspectives on that, especially on this committee, and they will all be included as submitted. But formal expressions of our perspectives on the broader context do not belong in this part of the report and should be reserved for additional views. For the evidence of wrongdoing, by the way, we found a date, I would refer the gentleman to the 52-page memo with 321 footnotes that we have distributed to all members, who have them before us. And so that is why members of the committee, although I welcome my colleagues' views, I must oppose this amendment to insert them into the main body of the report. And I recognize the ranking member from Texas, Mr. Smith.

Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, first of all, I want to thank you for your indulgence in having the amendment read in its entirety. I do think it was important that all members hear the complete text.

Chairman Conyers. Thank you.

Mr. Smith. I also want to compliment the clerk, Ms. Johnson, for how well she read the amendment. She read it so well, in fact, Mr. Chairman, I'm concerned the next time the majority might insist that she read it too rapidly and

without inflection. Mr. Chairman, I strongly support the amendment offered by the gentleman from Utah. When there is evidence directly rebutting the allegations that have been bandied about, why not address it in the report and resolution before us? When there is evidence that clearly tells us that there may be no reason to tempt constitutional fate in an executive privilege battle, why seek to send it to the floor in a report that does not even mention it? When there is evidence that would help us clear the cloud of suspicion over the Justice Department and the White House, why keep it from the full House of Representatives? When there is evidence that could help members responsibly decide that we should bring our investigation to a close rather than hasten it to a constitutional showdown, why seek to bury it? So I support this amendment.

The majority has more than once said that we have bred crumbs that point toward the White House. But when there are whole loaves of bread that point in the other direction, why aren't we discussing them? They might help us get out of the woods. Mr. Chairman, I yield back.

Chairman Conyers. I think I remember who said that. Let's see, now we go on this side. I will recognize the chairwoman of the subcommittee that brought this all on, Ms. Sanchez of California.

Ms. Sanchez. It appears that my microphone isn't

working.

Chairman Conyers. Your mike isn't working. Well, we will have to have that investigated to see if it is pure accident.

Ms. Sanchez. It's an interesting perspective to be sitting all the way down here. I would just like to add some of my two cents in terms of the amendment. And I think it is an amendment that should be rejected. What it seeks to do is basically add a few selected items of data that don't fairly or comprehensively reflect the total information that came up during the interviews that are cited in the amendment. As you mentioned, Mr. Chairman, the memo to all members contains 52 pages and over 300 footnotes of specific evidence. And I just want to refute a few specific things that Mr. Cannon said in support of his amendment. He talked at length about Mr. McNulty and some of the testimony that he gave.

But McNulty's views are just his opinion. He wasn't aware of all of the facts. And I want to remind the committee that Mr. McNulty gave inaccurate or incomplete testimony to Congress on this very point, in fact, on February 6th. So to take excerpts of his testimony and insert them into the report as if they were completely true I don't think serves the committee well. Mr. McNulty might not have also been aware of the January 9th, 2005, e-mail in

the White House Counsel titled Question from Karl Rove, asking if U.S. attorneys would be replaced during the President's second term. And perhaps Mr. McNulty wasn't aware of testimony from Bill Mercer or David Margolis stating that Harriet Miers had pushed the idea of replacing U.S. attorneys.

Other e-mails that we have received show not just back and forth, but Miers asking the status of the plan, such as a September 13th, 2006, e-mail from her stating, Kyle, any current thinking on holdover U.S. attorneys? I want to also refute some of the statements that Mr. Cannon has made about Mr. Margolis, because that seems to be a favorite source of his to cite. But the fact is that Margolis didn't hear anyone say that these firings were to influence pending cases or that he would have been angry to hear that. That doesn't really tell us anything. He testified that he played only a marginal role in the process, and only had a few conversations with Mr. Sampson about it. It is also irrelevant that Margolis was angry at Iglesias for not having reported contacts from Members of Congress. That is not the reason given why Mr. Iglesias was fired.

So even though Margolis is angry at him, that really isn't relevant to our discussion about who compiled the list and why were certain U.S. attorneys selected for that list? Margolis also testified that he was also very angry at Tim

Griffin for his comments about Senator Pryor. Should we amend the report then to include that as evidence of Mr. Griffin's qualifications? I don't think that that would be prudent.

So, you know, it seems to me that it is a poor idea to take selections of testimony and try to insert them into a report that is a very thorough factual report. And I just think that the amendment should be defeated as not being in line with what this committee needs in order to set forth the factual information which has been culled from all of the testimony that has been presented so far.

Mr. Cannon. Would the gentlelady yield?

Ms. Sanchez. I will yield.

Mr. Cannon. Hopefully, this will allow us to get to the core issue more quickly. In the committee's memorandum for this hearing, the majority states, and just in conclusion it says, we have uncovered serious evidence of wrongdoing. That is on the executive summary, page one. And then after that you have three paragraphs, A, B, and C. And let me just read A. The decision to fire or retain some attorneys may have been -- that is may have been raised in part on whether or not their offices were pursuing or not pursuing public corruption. That is a conclusion, not evidence. And I'm happy to include vast amounts of evidence. And in fact, frankly, if the majority wants to

put a lot of evidence in and let us respond to that evidence, I think that is appropriate.

Ms. Sanchez. Reclaiming my time, I believe from the testimony that we have had in the seven hearings that there is a question as to whether or not these U.S. attorneys were fired for politically motivated reasons. And I think that there is ample evidence that supports that. And the fact that the report language says may shows that we need additional information in order to make that determination. In fact, that is why we are here today, because we are seeking that information which has not been provided to us, even though subpoenas have been issued, to try to get that information to help clear up this investigation and wrap it up once and for all.

And I see that my time is dwindling. I would yield back the remainder of my time to the chairman, and ask my colleagues to defeat this amendment.

Chairman Conyers. I thank the gentlelady. It is the view of the Chair now to recognize the former chairman of the committee and then the gentleman from California, Mr. Schiff, and we would hope to conclude this. We have yet another amendment to deal with, not to mention other bills on our agenda. So all of my friends on the committee could ask these two gentlemen to yield, but everyone else that wants to submit additional comments on this first amendment

of Mr. Cannon's will be included in the record. The Chair recognizes the distinguished gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. Sensenbrenner. Thank you, Mr. Chairman. I rise in support of the amendment.

Chairman Conyers. The gentleman is recognized.

Mr. Sensenbrenner. Mr. Chairman, I believe that both the gentleman from Texas, Mr. Smith, and the gentleman from Utah, Mr. Cannon, have adequately stated why this amendment should be adopted. I would like to speak on a little broader subject, however. I think that bringing a statutory contempt resolution before the committee today is a needless escalation of this entire issue. And I do believe, as Mr. Smith has said, that this is going to prejudice the Congress in fights with this executive branch and future executive branches in the future over getting access to information in order for this Congress to discharge its constitutionally obligated over the executive branch and judicial branches. I believe that this is an unnecessary provocation of a constitutional crisis. And let me say why.

First, I think it is quite plain that United States attorneys serve at the pleasure of the President. The President nominates them, the Senate confirms them, and like other officials in the executive branch, the President can dismiss any appointee for whatever purpose the President

wants to. And absent showing that a crime was committed during this process, I think that the White House is going to win an argument in court.

On the other hand, I'm quite concerned about the fact that if we do bring a case to court, and remember there are jail terms involved for the President's Chief of Staff and the former White House Counsel, and lose, then that is going to be viewed as a blank check by the present President and the future President to do whatever they want to to effectively stiff the Congress in discharging their oversight responsibilities. That being said, it seems to me that rather than going through a lengthy review process in committee, bringing this resolution to the floor, and then fighting it out in court, and having it delayed forever and ever, the proper thing to do to determine the executive privilege claim, aside from who said what, who refused to submit to what, who didn't show up for a subpoena, is to direct the general counsel for the Clerk of the House of Representatives to file a civil suit in the United States District Court for the District of Columbia exclusively on the executive privilege claim and ask for expedited consideration of this issue, which I believe the Court would grant because it effectively is an attempt to adjudicate a dispute between two separate and co-equal branches of government, the Congress and the White House.

This to me seems to be the way to go about resolving the executive privilege claim in a manner that is most favorable to the Congress' side of the argument. I would support such a move to file a lawsuit in the District Court for the District of Columbia because I think there is a bipartisan interest involved in doing this and getting this issue resolved. I'm afraid that what the majority is doing now, and you have the votes to pass it, is making this a partisan escalation of a constitutional issue that shouldn't be partisan to begin with. This is a clash between the two branches of government.

It seems to me that the way to deal with this issue is to reach out and to have those of us who have been honored by our constituents to be elected to serve in the legislative branch of government to approach the executive privilege issue in a bipartisan manner. If we are going ahead, and you folks have got the votes to do whatever you want to, we ought to adopt this amendment, we ought to adopt the amendment of the gentleman from Virginia, Mr. Forbes, which will be forthcoming, but we ought to step back and think twice before going full speed ahead and reporting out this resolution on a party line vote. And I yield back the balance of my time.

Chairman Conyers. I thank the gentleman. And I want Mr. Sensenbrenner to know that we will think very carefully

about his suggestion of moving more swiftly if we have to go into court. I appreciate it. But of course, the one thing we have to keep in mind, this is an unnecessary provocation of a constitutional crisis that was not brought on by us. I mean, I was sure that people with the experience of the kind that are now being cited for contempt, that they would understand that they could at least come before us and explain why. But at any rate, the gentleman's suggestion is very welcomed. The Chair recognizes now the gentleman from California, Mr. Schiff.

RPTS MERCHANT

DCMN ROSEN

[11:20 a.m.]

Mr. Schiff. Thank you, Mr. Chairman. I just wanted to take a minute to discuss some of the claims that have been made in opposition to the issuance of the report and in support of the amendment. And I think it is important for us to step back from it and consider the context of where we are today. It would be one thing if the administration witnesses came before this body and said on a particularized base that I can't answer this question, or I can't submit this document because of a claim of executive privilege backed up by a letter from the president. That would be one thing.

It would be yet another thing if the witnesses came into this committee room and said, I refuse to answer any question, I refuse to provide any document with a claim of executive privilege. But it is yet even another thing for the administration to take this position with respect to a former administration official, I won't even come into the Congress, I won't even show up, I have that much contempt for the institution of Congress I won't even come. The audacity of that takes your breath away.

On the question of whether an administration or foreign administration official can simply blow off a subpoena and

not show up, there is no legal support for that whatsoever. That is beyond the pale. Whatever my friends on the other side of the aisle may think of the claim of privilege generally or the case law in this area, there is not a single case, not a single precedent, not a single legitimate argument in favor of simply not showing up. It would be as if someone who received a subpoena to come in any courtroom in the United States said, I'm not coming, and I'm not even going to dignify this subpoena by coming and explaining why I won't testify.

That to me is the real gravamen of why we are here. Now, my friends say, let us not challenge this because if we lose, then it might affect our ability to get information in the future. And I say, if we don't challenge it, it will most definitely affect our ability to get information in the future. It will legitimize this refusal, this contemptuous refusal to even appear. And in fact, the reason why we are here, I submit Mr. Chairman, is because for the last 5 or 6 years this is exactly what we have done. We have rolled over with every claim of executive power. We have never challenged the president of the United States. We have never challenged administration, when it stepped across the separation of powers, when it violated the rule of law we have sat silent in this body.

And that is exactly why it is not only refusing to come

in here and make a claim, but even beyond that it says that if the Congress finds us in contempt, we will instruct the U.S. attorney to never go forward. Our word on executive privilege is the only word, it is the first word, the second word, the third word and the last word. That is the audacious breadth of what is being claimed before us today. And whatever my friends on the other side of the aisle may think about how much evidence there is of wrongdoing in the White House or connection to the White House, I would say do not allow the White House to be so contemptuous of this institution that it will not even provide a former official, a nonfederal employee, to even come and state the basis of the privilege that she would claim.

We can't allow that kind of contempt for this institution. We just can't. And if we do, how can we ever complain when the administration abuses its authority? And what kind of a Congress are we going to leave behind in the next confrontation with the executive?

Now, many of you feel, well, we don't want to take issue with our Republican President, he's the President of our party. Well, a year and a half there may be a President who is not of your party. Will you take the same position then if that administration says in response to a subpoena for a former member of that administration, we are not even going to come before Congress to dignify that with an

answer. I guarantee you that you will rue the day that you sat on your hands if we allow the administration to walk over us as it has attempted to do. And I yield back the balance of my time.

Chairman Conyers. The Chair is prepared to hear down the aisle Ric Keller of Florida seeking recognition.

Mr. Keller. Thank you, Mr. Chairman. I wasn't going to talk here, but some of the comments made by Mr. Schiff, I think, deserve some explanation from the other side. The gist of it is, boy, we sure are treating Republican Presidents a lot better than Democrat Presidents. And it is just contemptuous of this White House to raise executive privilege or issue pardons or replace U.S. attorneys. And I think the historical facts show just the opposite. In reality, President Clinton has raised executive privilege five times more than President Bush. President Clinton has issued four times as many pardons and commutations than President Bush. President Clinton has replaced 2-1/2 times as many U.S. attorneys as President Bush.

Now, there is a real and legitimate reason for executive privilege, and it is simply this. We did not want the President of the United States to be surrounded by a bunch of yes men. We want him to get critical unvarnished advice that those advisors know will not be made public, otherwise, it will be used to embarrass the President. That

is why all the presidential administrations, the Clinton administration, Carter administration and others, have raised executive privilege.

The other thing Mr. Schiff pointed out is that there is just some sort of weak legal authority or no legal authority for what we are trying to do here. Under the controlling legal authority of the U.S. Supreme Court and the D.C. Circuit, it must be shown that there are two things in order to get these materials. First, there must be shown to be a likelihood that the subpoenaed individuals and documents have important evidence that prove the allegations. And second, it must be shown that the evidence cannot be obtained through alternative means with due diligence. So let us take the first prong. There has been no evidence whatsoever that there is a likelihood that Josh Bolten or Harriet Miers possess a smoking gun regarding the U.S. attorney situation.

Now, let us take the second prong. There has been no attempt to gather this information through alternative means. For example, the White House has made Harriet Miers available to talk about any communications that she had with DOJ officials, Members of Congress or outside sources on an informal basis. They have turned down that interview opportunity. Similarly, they are seeking the documents for Josh Bolten. Josh Bolten said I will provide you with any

documents regarding the situation between the White House and DOJ, as well as any documents between the White House and Congress or other third parties. They have turned that request as well. So I think the legal claim is pretty weak. But it is not up for the Democrats or Republicans to decide. We will have an independent judiciary to decide that issue.

Mr. Schiff. Will the gentleman yield on that point?

Mr. Keller. I will yield.

Mr. Schiff. I thank the gentleman for yielding. I think the gentleman's argument and that of the former Chair of the committee misperceives my fundamental aspect of law. The former chairman said that the President can fire any U.S. attorney for whatever reason he chooses. That is simply not true. The President cannot fire a U.S. attorney for an improper or illegal reason. The President cannot --

Mr. Keller. I am going to reclaim my time here. Let me just address the specific there. The biggest allegation you can raise that has been raised is Democrats say, well, look at this bad guy Duke Cunningham who took bribes and Carol Lam prosecuted him and now she's fired, it must be that he is firing people for this improper reason because she went after a Republican congressman and maybe go after others. Well, when we had a hearing on this matter, I had a chance to present Carol Lam some documents and talk with her. And we pointed out that the complaints regarding Carol

Lam's performance in failing to prosecute illegal alien smugglers were raised 16 months before the local San Diego paper even brought up the Duke Cunningham scandal.

It was literally impossible that these complaints were fictitious. They were brought up beforehand. And she sat right there and I asked her, Ms. Lam, do you have any evidence whatsoever that you were fired because you went after Duke Cunningham or other Republicans? And she said, no, I have no such evidence. So what we have here, I believe, is a partisan fishing expedition and there is no smoking gun evidence whatsoever.

Mr. Schiff. Will the gentleman yield?

Mr. Keller. I have already yielded once and I have to yield back. Let me just say, Mr. Chairman, I respect you totally, I think you handle every hearing like a gentleman. But I have to say that this smacks of partisanship, particularly when you compare the situation with President Clinton and President Bush dealing with U.S. attorneys, pardons and executive privilege. And I will yield back the balance of my time.

Chairman Conyers. I thank the gentleman. I think that was a compliment and I appreciate it.

Mr. Delahunt. Mr. Chairman --

Mr. Lungren. Mr. Chairman --

Chairman Conyers. The Chair's very excellently reputed

way of holding hearings patience is drawing to a near. Mr. Delahunt and Mr. Lungren, and then I respectfully suggest that we insert into the record all the other statements. Mr. Delahunt.

Mr. Delahunt. Yes, I thank the Chair. And I too would echo the sentiments that you expressed regarding the comments of the former Chair, Mr. Sensenbrenner. But I would note that the argument that we are hearing in terms of this institution is the possibility of the potential to establish a bad precedent in terms of the powers of this committee and the U.S. Congress in terms of its relationship with the executive branch. It is as if we ought to be afraid of losing. Well, the reality is during the course of this administration since January of 2001, we have abdicated, if you will, many of our prerogatives to the executive. We have been losing. And we have an administration that has developed stonewalling into a fine art. One would only have to inquire of Mr. Sensenbrenner his difficulties in terms of dealing with the Department of Justice in terms of securing information. It was extraordinarily difficult, and it was unsatisfactory when Republicans controlled this particular committee.

I was invited participate by the former chairman of the Government Reform Committee, Dan Burton, in an investigation into misconduct of the FBI office in Boston. The only way

that that committee under his leadership had the ability to compel cooperation was to threaten a contempt of the then-White House counsel and the Attorney General. This is not new, my friends. This has been the pattern of conduct by this administration. This administration does not appreciate the relationship between the branches in a constitutional sense. And it is time that Congress assert itself. After today, are there opportunities for further discussion? Of course there are. We are not foreclosing those options. And I think that is what I heard the chairman say in response to Mr. Sensenbrenner. And there will be continuing conversations and discussions hopefully.

But not to proceed today would be a mistake. It is that moment in time for this institution, this Congress to assert itself against an administration that has expanded executive power to a point where I would suggest it has become dangerous to our democracy, and I yield back.

Chairman Conyers. The Chair now recognizes the distinguished gentleman from California on the condition that he does not refer to his career as attorney general of California.

Mr. Lungren. So as long as the chairman does not. Thank you very much, Mr. Chairman, and I would like to echo the comments of Mr. Keller about the respect that I have for your leadership in this committee. And that is why I am

somewhat surprised at the actions being taken today. I looked across at my friends on the other side and noticed that today's proceedings seem to be somewhat askew, so much so that they even knocked askew the portrait of Hatton Sumners, the former chairman of the committee who served from 1932 to 1946 as the chairman of this committee, during which time he had opportunity to deal with the executive privilege assertions made by President Franklin Delano Roosevelt. Interestingly enough, some of the accusations against the White House are that they or the U.S. Justice Department thought that illegal voter activity, that is voter fraud, was so important that it ought to be investigated and prosecuted. Hatton Sumners' career was started with an investigation of illegal voting in Dallas County, Texas and launched a distinguished career which ended up with 34 years in the United States Congress.

My point is that the executive privilege did not start with this President or even President Clinton, it started with President Washington. We know that most presidents, at least Washington, Jefferson, Madison, Jackson, Polk, Lincoln, Theodore Roosevelt, Franklin Delano Roosevelt, Truman, Eisenhower, Kennedy and Reagan all asserted executive privilege. The notion was relevant and asserted by our first President, but the terminology "executive privilege" was first used by President Eisenhower. As far

as I can tell, in recent memory, we have not forced this issue to the courts, in part, because of a concern that this is a gray area as to precisely where executive privilege ends and where it would come up against the prerogatives of the Congress.

And so I would echo the comments of some of my colleagues that it is the better part of judgment to attempt to negotiate. And I understand we have said that there has been an attempt to negotiate. But why reject out of hand White House counsel Fred Fielding's offer to make available for interviews Harriet Miers, Karl Rove, William Kelley, Sara Taylor, Scott Jennings, to make those individuals available, specifically to discuss communications between the White House and persons outside the White House concerning the request for resignations of U.S. attorneys in question and communications between the White House and Members of Congress concerning these requests. Why reject out of hand his offer to provide the committee with two categories of documents.

Communications between the White House and the Department of Justice concerning the request for resignations of the U.S. attorneys and communications on the same subject between White House staff and third parties, including Members of Congress or their staffs, isn't that the better part of wisdom to try and take care of that

problem this way.

In past years the White House and the Congress has seen that we really don't want to ultimately have a decision by the courts for fear that either one of us will lose in the end. And I must say that in the report we are asked to adopt in today's vote, we are supposed to accept the conclusion that serious evidence of wrongdoing has been found. And when you go to the attached 52-page document from the majority, you will find, for instance, when discussing the Carol Lam case, the factual presentation, yes, has footnotes to newspaper articles, but not a single footnote to her direct testimony in the subcommittee whereupon examination by Mr. Keller, she specifically denied she was aware of any evidence of improper conduct by anybody with respect to her removal.

Now, she indicated she didn't like it, she indicated that she might have had different priorities than some in the Justice Department and perhaps the White House. But in direct response to Mr. Keller's questioning she denied it, yet that is not in this report upon which we are supposed to vote for this resolution today.

Now, where is the fairness there? You cite the newspaper articles, you don't cite the direct testimony. If that doesn't sound like a fishing expedition, I don't know what it does. But that is why we have some concern that we

are rushing to judgment here. That we are not following the proper procedures. And in the end, we will be diminished as a Congress because we very well may lose our argument in court if we bring it on the basis of these kinds of factual presentations. And so I would at least ask that we adopt the gentleman's amendment to add some facts to the presentation.

Chairman Conyers. I thank the gentleman. And the question is now on the amendment. All those in favor will signify by saying aye. Those opposed say no.

Mr. Lungren. Mr. Chairman, can we have a roll call on that Mr. Chairman --

Chairman Conyers. A roll call --

Mr. Lungren. -- so my gentleman to my left can get this vote right.

Chairman Conyers. The clerk will call the roll.

The Clerk. Mr. Chairman.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Boucher.

Mr. Boucher. No.

The Clerk. Mr. Boucher votes no.

Mr. Nadler.

[No response.]

The Clerk. Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Ms. Waters.

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Delahunt.

Mr. Delahunt. No.

The Clerk. Mr. Delahunt votes no.

Mr. Wexler.

[No response.]

The Clerk. Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Cohen.

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson.

Mr. Johnson. No.

The Clerk. Ms. Sutton.

Ms. Sutton. No.

The Clerk. Ms. Sutton votes no.

Mr. Johnson votes no.

Mr. Gutierrez.

Mr. Gutierrez. No.

The Clerk. Mr. Gutierrez votes no.

Mr. Sherman.

Mr. Sherman. No.

The Clerk. Mr. Sherman votes no.

Ms. Baldwin.

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no.

The Clerk. Mr. Weiner.

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Mr. Davis.

Mr. Davis. No.

The Clerk. Mr. Davis votes no.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Mr. Ellison.

Mr. Ellison. No.

The Clerk. Mr. Ellison votes no.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble.

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye.

Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Chabot.

[No response.]

The Clerk. Mr. Lungren.

Mr. Lungren. Yes.

The Clerk. Mr. Lungren votes aye.

Mr. Cannon.

Mr. Cannon. Aye.

The Clerk. Mr. Cannon votes aye.

Mr. Keller.

Mr. Keller. Aye.

The Clerk. Mr. Keller votes aye.

Mr. Issa.

[No response.]

The Clerk. Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye.

Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Feeney.

Mr. Feeney. Aye.

The Clerk. Mr. Feeney votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes aye.

Chairman Conyers. Anyone else who chooses to vote? Yes, Mr. Wexler.

Mr. Wexler. Mr. Wexler votes no.

The Clerk. Mr. Wexler votes no.

Chairman Conyers. Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Chairman Conyers. The clerk will report.

The Clerk. Mr. Chairman, 23 members voted nay, 14 members voted aye.

Chairman Conyers. The amendment fails. And for what purpose does the gentleman from Virginia, Randy Forbes, ranking member of Crime seek recognition?

Mr. Forbes. Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. The clerk will report the amendment.

The Clerk. Amendment to the report on refusal of former White House counsel Harriet Miers and White House chief of stays Joshua Bolten to comply with subpoenas issued

by the House Judiciary Committee offered by Mr. Forbes of Virginia. In the first paragraph of Section 2 entitled, Authority and Legislative Purpose, strike inter alia judicial proceedings, civil and criminal and criminal law enforcement and insert the following: The judiciary and judicial proceedings, civil and criminal, administrative practice and procedure, apportionment of representatives, bankruptcy, mutiny, espionage and counterfeiting, civil liberties, constitutional amendments, criminal law enforcement, federal courts and judges in local courts in the territories and possessions, immigration policy and nonborder enforcement, interstate compacts generally, claims against the United States, meetings of Congress, attendance of members, delegates and the resident commissioner and their acceptance of incompatible offices, national penitentiaries, patents, the patent and trademark office, copyrights and trademarks, presidential succession, protection of trade and commerce against unlawful restraints and monopolies, revision and codification of the statutes of the United States, state and territory boundary lines and subversive activities affecting the internal security of the United States.

[The information follows:]

******** INSERT 2-1 ********

Chairman Conyers. The gentleman from Virginia is recognized in support of his amendment.

Mr. Forbes. Thank you, Mr. Chairman. Mr. Chairman, my amendment would amend the report before us at page 8, paragraph 1 to refer to all the legislative and oversight jurisdiction, the Judiciary Committee has under House Rule 10. As a result of my amendment, the report would accurately reflect the committee's full responsibility rather than unduly exaggerate those responsibilities that the majority believes pertain to the U.S. attorneys investigation. I offer my amendment because I am extremely concerned that this investigation, while uncovering no crime, has prevented us from addressing real crime that is happening all around us across this country.

The House Judiciary Committee has held six hearings in the 110th Congress relating to executive privilege. Republicans on this committee joined together to introduce America's law and order agenda at the beginning of the 110th Congress to address real issues impacting the lives of every day Americans; cybercrime, gang violence, violent crime, terrorism, crime victims, emergency and disaster assistance fraud, drug trafficking. Not one of the 11 hearings held by the full committee this year addressed these important issues, yet our constituents have real concerns about the

safety of their children when they are online, the prevalence of gang violence in their community.

Mr. Chairman, in today's Washington Times, it shows that MS-13 is trying to unite around the country, something that we have feared for a long time. We have had no hearings on that. Waste, fraud and abuse and government spending. These through which children can access drugs in their school. Violent crime in their neighborhoods and the threat of terrorism. We have been told al-Qaeda sales are now in the U.S., and each time our answer to them is always the same, we'll get to these issues later, but we have to do the politics first. I am also concerned that this investigation in which we have incessantly hunted for a crime that didn't happen is hurting our government's ability to prosecute crimes that do happen.

The Los Angeles Times has reported that defense attorneys around the country have started to challenge prosecutions on the basis of the smoke and mirrors from this allegation having evidence, then investigation. We also understand that prospective jurors are beginning to ask assistant U.S. attorneys in voir dire why Federal prosecutors should be trusted? What does it say when it is our investigation that undermines the justice system, not any actual wrongdoing that we discover.

Accordingly, I am offering my amendment and I am

imploring this committee again to turn to the real issues of crime that beset this country and do what we alone can do to help solve them. Now, I know there are voices in our country, often shrill voices, who echo the hatred they feel for the President, other elected officials, or perhaps every elected official. But there are also quieter voices, I would suggest more reasoned voices. Less concerned with the rights of Congress, the chairman mentioned in his opening statement, than with the rights of their children to be safe from criminal gang members. Less concerned with destroying the executive branch and more concerned with the destruction of their children's lives through predators on the Internet, less concerned with terrifying public servants through hearing after hearing and more concerned with stopping terrorism that threatens the lives of their families.

Mr. Chairman, they are not concerned with what I have heard in here about whether we are winning and we are losing against the executive. They are not concerned with whether Republicans and democrats are winning each other. They are concerned with whether or not they are winning and losing the war on drugs with their children. And although these voices are often not equally represented in the media, it is easy to discern them and those who speak for them. I know the odds the American people face, but hope springs eternal, and therefore, I cling to the hope that there will come a

day when this committee and this Congress will, again, address the real concerns of Americans in their communities and their neighborhoods.

Hopefully that will happen before this Congress loses the meager 14 percent approval rating it has rightfully earned. And Mr. Chairman, with that, I yield back.

Chairman Conyers. I thank you very much Mr. Forbes. Does the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. Scott. Yes, Mr. Chairman.

Chairman Conyers. The gentleman is recognized.

Mr. Scott. Mr. Chairman, my friend from Virginia suggesting that we haven't done anything fails to notice that four bills are on the agenda for this morning that came out of our subcommittee yesterday. The AIDS in Prison Act, Drug Endangered Children Act, War Profiteering Prevention and Expansion and Enforcement of exterritorial jurisdiction. The attorney-client privilege bill also came out of the committee. We may not take them all up today, but our subcommittee has certainly been extremely, extremely busy. We have also had a series of hearings in the subcommittee on the gang problem and we will have more hearings in a few weeks.

Mr. Chairman, I would want to inquire whether or not the President has properly claimed executive privilege and

stated his basis for such a privilege.

Chairman Conyers. Will the gentleman yield?

Mr. Scott. I yield.

Chairman Conyers. No.

Mr. Scott. That certainly comes as a surprise. And are there documents being withheld for which the administration acknowledges that there is no privilege?

Chairman Conyers. Yes.

Mr. Scott. Mr. Chairman, I yield to the gentleman from California, Mr. Sherman, for a minute or so. Then I want to yield to his colleague from California.

Mr. Sherman. We would get to the important bills from the crime subcommittee if we didn't have so many dilatory amendments from the minority, who then attack us for spending too much time debating their dilatory amendments. We are told al-Qaeda is an excuse for presidential dictatorship. That does nothing to defeat al-Qaeda. We are told that pardons in replacing U.S. attorneys is something prior presidents have done. Those might have been very good things. We are told that Clinton has asserted executive privilege. He had 6 years of a hostile Congress, so he asserted it fairly often. Whilst this President has asserted pretty often with only 6 months of a Democratic control of this Congress.

But it is fine for a president to assert executive

privilege. What is wrong is for a president to fail to negotiate in good faith to offer something as silly as an off-the-record, no-sworn testimony discussion and then to tell us we can't go to court and get a judicial determination of the boundaries of executive privilege because he controls the prosecutors.

Imagine if this was an investigation of, say, arson or some other crime and we were told we can't have the investigation because the victim has no evidence they are pointing to anyone. So you interview the victim and if they don't have documentary proof that a suspicious fire is a crime, well, you can't investigate any further. Yet Ms. Lam doesn't have proof that there is a crime, therefore, we shouldn't investigate. Or if we were told that a Grand Jury should have an informal meeting, not under oath, with those that have evidence that is relevant. Let us have a judicial determination of what the extent of executive privilege is and let us treat investigations by Congress as seriously as we treat Grand Jury investigations. I yield back to the gentleman from Florida.

Mr. Scott. Thank you. I yield to the gentleman from California.

Mr. Schiff. I thank the gentleman for yielding, and I just want to make two additional points beyond my colleague from California. The Fielding offer to have Ms. Miers be

interviewed off the record, not under oath, went on to say that nothing that she provided in that interview could be followed up upon. He might as well have offered to put her in a crypt and seal it for 50 years. More than that, this may be the first time where executive privilege is being claimed for things that the minority party says never took place.

The President claims he was never part of these conversations, his staff claims he was never briefed, they never discussed it. So they are making a claim of executive privilege to protect conversations they say never took place. That would be a first. These conversations never happened, we never discussed what advice to give the President, but we are claiming the privilege to protect conversations that we had to discuss how to advise the President on something we never advised him and never discussed. You can't have it both ways. Either the spin is wrong we are getting from the White House, and they did discuss this, they were part of the decision making, or they had no basis for a claim of executive privilege, and I yield back.

Mr. Scott. I yield back, Mr. Chairman.

Mr. Gohmert. Mr. Chairman --

Chairman Conyers. Judge Gohmert, we -- wait a minute. The ranking member, Mr. Smith, is recognized.

Mr. Smith. Thank you, Mr. Chairman, and I will yield to the gentleman from Texas shortly. Mr. Chairman, I strongly support the amendment of the gentleman from Virginia. We have spent an extraordinary amount of time on this investigation and still have found no crime. Why don't we spend our time on what we alone can do, which is to legislate. The Justice Department's Office of the Inspector General and others can sort through the gatherings of the investigation so far and see it through to the end. I do not expect that they will find any wrongdoing in the dismissals of the U.S. attorneys, and I hope that they will be able to issue a report that will clear the air and correct the distorted view of our prosecutors and their prosecutions. When that report appears, I hope we will by then have left a record of legislative achievement behind us rather than numerous committee trails leading to who knows where. Mr. Chairman, I yield the balance of my time, and I yield to the gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. I appreciate it. I want 4 or 5 minutes. I think the gentleman from Utah wanted some time. If I can yield back to Mr. Smith.

Mr. Smith. Okay. I yield to the gentleman from Utah, Mr. Cannon.

Mr. Cannon. I thank the gentleman from yielding. And just sort of to get context here, we are talking about Mr.

Forbes' amendment. I haven't heard any opposition to the amendment, but I have heard opposition to the White House. But I am hoping this amendment will be accepted. We are beyond my amendment. I don't want to raise that again. But I would just before yielding back to the gentleman suggest that the real fundamental argument here is not over the audacity of the White House, but over the strength of our bargaining position over generations with the White House and this debate, the result of this debate, the result of going forward I think seriously undermines our position.

I would plead with the majority to consider going a little ways, but not all the way to court to get a decision on what is acceptable and what is not acceptable by this body in our discussions with the White House on trying to pierce executive privilege. I thank the gentleman and yield back.

Mr. Smith. Thank you for those comments. And I yield to the gentleman from Texas, my colleague, Mr. Gohmert.

Mr. Gohmert. Thank you. The gentleman from Utah makes a good point. In support of this amendment, there are -- it is just shocking that the last amendment went down as it did. That sought to add truth to this record. Why would anybody be against that? There was nothing said about any of the matters in the prior amendment being untrue. And this amendment offered by Mr. Forbes makes a more complete

record.

Now, Mr. Cannon brings up the fact that he hopes we do not pursue this to court. Those who have been lawyers, been in courts, know the old adage bad facts make bad law. You pursue this to court with no basis in fact, it is going to make bad law and it is going to make it difficult to ever go after the real true abuses that may be out there. Fortunately, I think we are finally going to get to have a hearing on the national security letters and what came out from the inspector general's report. But what we heard over and over in the testimony was these were political firings. And the newspapers, the media, just seized on that, oh, gee, that must be terrible.

Every time a U.S. attorney is hired or let go it is for political purposes. The only crime here was not a violation of the law, it was a crime against common sense and the way every administration in the past has let U.S. attorneys go. And for the Clinton administration that was 139 of them compared to the 53 by Bush. The problem was that this group had the arrogance to say, and by the way we think you did a bad job. In the past when U.S. attorneys were routinely let go, like the 139 for political reasons, what they did was say, and thanks, nice job, don't let the door hit you in the rear, but we want somebody else to replace you, we like their priorities, we will give you a good letter of

recommendation, you are a good lawyer.

Not this administration. We are going to blast them so they come back firing and then we make political hay out of it. The vote on the last amendment made clear this process is not about truth or seeking truth, it is about partisan pointless petty political polluting of the process, and I hope we won't continue to pursue that.

Now, as far as these being dilatory amendments, they are adding to the process. And some of us around here, I think virtually all of us, would like to get to the truth when there are true abuses. And we are concerned about the national security letters and the abuse thereof. But I would submit to you when national security letters are sent when there is no basis, in fact, for sending them, they are right along the lines of a committee sending subpoenas and demanding appearance when there is absolutely nothing in the record to indicate that they are justified. Thank you. I see my time is expired.

Chairman Conyers. Judge Gohmert, you remind me of our witness, Mr. Saphire, who put historic words in the mouth of the Vice President when you talk about partisan political polluting of the process. I think that those will be most remembered in history about this debate, and I thank the gentleman.

Now, let me make an announcement, because a number of

members have to leave at noon. And so I am going to yield my time equally between Ms. Waters, Nadler and Jackson-Lee so that we can arrive at a conclusion of this amendment and come to a vote with your cooperation. And I would remind the three persons that I am yielding to that we have had a very rational discussion so far, and so we want to end the last discussion of this matter on the same note that has guided us all through these hearings. I recognize Maxine Waters.

Ms. Waters. Thank you very much. Mr. Chairman, I rise in opposition to this amendment. I think that the gentleman from Virginia tried to have us believe that somehow what we are doing is not important. That there are many other important issues. And he related to them as 13 and the gang issues and some other so-called crime issues. But I think it is important for the people of this country to understand that we certainly do have a responsibility for oversight and investigation.

This investigation, in more than one way, have proven that they mislead us, they have misled us on the war in Iraq, that they will stonewall as the Vice President has stonewalled. After having met with the energy barons of this country and refused to give us those documents. As the President of the United States has pardoned Mr. Libby, even though Mr. Libby was found to have broken the law. He lied

to the investigators. I could go on and on talking about how they have disrespected the rule of law, the Constitution of the United States of America.

This President as the head of the most powerful Nation in the world should be an example of respecting the law, should be an example to all of the young people of this country about how to rule and how to responsibly use power. And because they have not done that, because they have defied the law, it is important for us to exercise our responsibility. And we do it today in the most responsible way.

Chairman Conyers. Reclaiming my time.

Ms. Waters. I yield back the balance of my time.

Chairman Conyers. And I thank the gentlelady and I recognize the chairman of the Constitution Subcommittee, Mr. Nadler.

Mr. Nadler. Thank you, Mr. Chairman. The duty of this committee is not only to protect Americans against crime and other things, it is also to protect constitutional liberty. In this case, against the administration that is clearly intent on subverting liberty and assuming almost monarchical powers. They have asserted the right to arrest and hold people without warrants, to wiretap American citizens without warrants, they have stonewalled this committee and the Senate Judiciary Committee, they have sent the attorney

general here to lie and to insult our intelligence with his lies, they have subverted -- the issue in this case is the subversion of the independence of prosecutors, of spurring prosecutions for political reasons and withholding other prosecutions for political reasons.

They have now asserted the right to order U.S. attorneys not to prosecute House contempt citations, this is contrary to law and amounts to an assertion of absolute unreviewable and tyrannical executive privilege. That is why this is important and that is why this amendment is absurd. I yield back.

Chairman Conyers. Reclaiming my time, I yield finally to Ms. Jackson-Lee of Texas.

Ms. Jackson-Lee. Thank you very much, Mr. Chairman. I have sat in this committee room while we pursued the crisis that occurred in Waco, I have sat in this committee room while we pursued the impeachment against William Jefferson Clinton. I am prepared to accept a constitutional clash because the feelings of the members of this room are inferior to the needs of protecting the Constitution on behalf of the American people. And I think that we should look at the big gorilla in the room, and that is the Nixon case in 1974 when the Supreme Court said, however, it needed a doctrine of separation of powers, nor the need for confidentiality of high level communications without more

can sustain an absolute unqualified presidential privilege of immunity from the judicial process under all circumstances.

Although the President needs candor objectivity from his advisors, those calls for deference to that is not superior to the rights of the American people. It is interesting that his attorney said in the Supreme Court the President wants me to argue that he is as powerful as a monarch as Lewis the 14th only 4 years at a time and is not subject to the processes of any court in the land except the court of impeachment.

We are discussing the opportunity for this committee to reestablish the constitutional powers, the fairness entrusted to the American people and to this committee, which is to draw information, not in a frivolous manner, but a serious manner to be able to determine whether criminal activities or political activities infused into the process of U.S. attorney selection.

May I remind my colleague the 139 was 83 of those of President Clinton when he transitioned as a new President of the United States. On the Mark Rich pardon, let me remind my colleagues that the President waived executive privilege, sent his staff to the committees of jurisdiction and they answered the question. If we have to suffer the indignities of the assaults of feelings, we should do so in the name of

the Constitution. I yield back.

Mr. Watt. Mr. Chairman --

Chairman Conyers. Who is this? Mr. Watt.

Mr. Watt. Could I ask unanimous consent for 30 additional seconds for the chairman and ask him to yield to make one point?

Chairman Conyers. I haven't done this today, but I will do it for you.

Mr. Watt. I thank the gentleman for yielding. Our colleagues have indicated that we have not addressed the merits of this proposed amendment. And I simply wanted to make the point that while the amendment is an accurate statement of the committee's jurisdiction, it is irrelevant to the purpose for which we are here today. And for that reason, I don't think it should be in the resolution. We have spent now quite a bit of time debating something that is really not germane to the resolution at all. We all accept the jurisdiction of the committee. And I appreciate the gentleman offering it, but it is a diversion for what we are here for.

Chairman Conyers. The question is on the amendment. All those in favor signify by saying aye. Those opposed no. The knows have it.

Mr. Forbes. I ask for a recorded vote.

Chairman Conyers. Mr. Forbes asks for a recorded vote.

The Court will call the roll.

The Clerk. Mr. Chairman.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Boucher.

Mr. Boucher. No.

The Clerk. Mr. Boucher votes no.

Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

The Clerk. Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Ms. Waters.

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Delahunt.

Mr. Delahunt. No.

The Clerk. Mr. Delahunt votes no.

Mr. Wexler.

[No response.]

The Clerk. Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Cohen.

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Ms. Sutton.

Ms. Sutton. No.

The Clerk. Ms. Sutton votes no.

Mr. Gutierrez. No.

The Clerk. Mr. Gutierrez votes no.

Mr. Sherman.

Mr. Sherman. No.

The Clerk. Mr. Sherman votes no.

Ms. Baldwin.

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no.

The Clerk. Mr. Weiner.

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Mr. Davis.

Mr. Davis. No.

The Clerk. Mr. Davis votes no.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Mr. Ellison.

Mr. Ellison. No.

The Clerk. Mr. Ellison votes no.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble.

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye.

Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Chabot.

Mr. Chabot. Aye.

The Clerk. Mr. Chabot votes aye.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Cannon.

Mr. Cannon. Aye.

The Clerk. Mr. Cannon votes aye.

Mr. Keller.

Mr. Keller. Aye.

The Clerk. Mr. Keller votes aye.

Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. Yes.

The Clerk. Mr. Forbes votes aye.

Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Feeney.

Mr. Feeney. Aye.

The Clerk. Mr. Feeney votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes aye.

Chairman Conyers. The clerk will report, if there are no other members that wish to be recorded.

The Clerk. Mr. Chairman, 22 members voted nay and 16 members voted aye.

Chairman Conyers. The amendment fails. The Chair is prepared now to report -- a reporting quorum being present, the question is on reporting the report favorably to the

House. All in favor will signify by saying aye. Those opposed say no. The ayes have it. A roll call vote has been requested and the clerk will call the roll.

The Clerk. Mr. Conyers.

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Mr. Boucher.

Mr. Boucher. Aye.

The Clerk. Mr. Boucher votes aye.

Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

The Clerk. Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

Chairman Conyers. Andrea, call the roll.

Ms. Culebras. Mr. Watt votes aye.

Ms. Lofgren.

Ms. Lofgren. Aye.

Ms. Culebras. Ms. Lofgren votes aye.

Ms. Jackson Lee.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters.

Ms. Waters. Aye.

Ms. Culebras. Ms. Waters votes aye.

Mr. Delahunt.

Mr. Delahunt. Aye.

Ms. Culebras. Mr. Delahunt votes aye.

Mr. Wexler.

[No response.]

Ms. Culebras. Ms. Sanchez.

Ms. Sanchez. Aye.

Ms. Culebras. Ms. Sanchez votes aye.

Mr. Cohen.

Mr. Cohen. Aye.

Ms. Culebras. Mr. Cohen votes aye.

Mr. Johnson.

Mr. Johnson. Aye.

Ms. Culebras. Mr. Johnson votes aye.

Ms. Sutton.

Ms. Sutton. Aye.

Ms. Culebras. Ms. Sutton votes aye.

Mr. Gutierrez. Aye.

Ms. Culebras. Mr. Gutierrez votes aye.

Mr. Sherman.

Mr. Sherman. Aye.

Ms. Culebras. Mr. Sherman votes aye.

Ms. Baldwin.

Ms. Baldwin. Aye.

Ms. Culebras. Ms. Baldwin votes aye.

Ms. Culebras. Mr. Weiner.

Mr. Weiner. Aye.

Ms. Culebras. Mr. Weiner votes aye.

Mr. Schiff.

Mr. Schiff. Aye.

Ms. Culebras. Mr. Schiff votes aye.

Mr. Davis.

Mr. Davis. Aye.

Ms. Culebras. Mr. Davis votes aye.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

Ms. Culebras. Ms. Wasserman Schultz votes aye.

Mr. Ellison.

Mr. Ellison. Aye.

Ms. Culebras. Mr. Ellison votes aye.

Mr. Smith.

Mr. Smith. No.

Ms. Culebras. Mr. Smith votes no.

Mr. Sensenbrenner.

Mr. Sensenbrenner. No.

Ms. Culebras. Mr. Sensenbrenner votes no.

Mr. Coble.

Mr. Coble. No.

Ms. Culebras. Mr. Coble votes no.

Mr. Gallegly.

Mr. Gallegly. No.

Ms. Culebras. Mr. Gallegly votes no.

Mr. Goodlatte.

Mr. Goodlatte. No.

Ms. Culebras. Mr. Goodlatte votes no.

Mr. Chabot.

Mr. Chabot. No.

Ms. Culebras. Mr. Chabot votes no.

Mr. Lungren.

Mr. Lungren. No.

Ms. Culebras. Mr. Lungren votes no.

Mr. Cannon.

Mr. Cannon. No.

Ms. Culebras. Mr. Cannon votes no.

Mr. Keller.

Mr. Keller. No.

Ms. Culebras. Mr. Keller votes no.

Mr. Issa.

Mr. Issa. No.

Ms. Culebras. Mr. Issa votes no.

Mr. Pence.

Mr. Pence. No.

Ms. Culebras. Mr. Pence votes no.

Mr. Forbes.

Mr. Forbes. No.

Ms. Culebras. Mr. Forbes votes no.

Mr. King.

Mr. King. No.

Ms. Culebras. Mr. King votes no.

Mr. Feeney.

[No response.]

Ms. Culebras. Mr. Franks.

Mr. Franks. No.

Ms. Culebras. Mr. Franks votes no.

Mr. Gohmert.

Mr. Gohmert. No.

Ms. Culebras. Mr. Gohmert votes no.

Mr. Jordan.

Mr. Jordan. No.

Ms. Culebras. Mr. Jordan votes no.

Chairman Conyers. Have all members voted? Mr. Feeney.

Mr. Feeney. Mr. Feeney votes no.

Ms. Culebras. Mr. Feeney votes no.

Chairman Conyers. Any other members? Ms. Culebras

will report.

Ms. Culebras. You have 22 in ayes and 17 nays.

Chairman Conyers. The report is agreed to. Without objections, the staff is directed to make any technical and conforming changes. Members have 2 days to submit additional and other kinds of views which will be incorporated into the report as filed. The Chair now turns to one of a couple other bills. Pursuant to notice The Chair calls up H.R. 1943, the Stop AIDS in Prison Act. For purposes of markup the clerk will report the bill.

Ms. Culebras. H.R. 1943 to provide for an effective HIV/AIDS program in federal prisons.

Chairman Conyers. Without objection the bill will be considered as read and recognize the chairman of the Subcommittee on Crime, the gentleman from Virginia, Bobby Scott.

[The information follows:]

******** INSERT 2-2 ********

Mr. Scott. Thank you, Mr. Chairman. The Subcommittee on Crime, Terrorism and Homeland Security reports favorably the bill H.R. 1943 and moves its favorable recommendation to the full House. Mr. Chairman, I thank you for holding today's markup of this very important bill H.R. 1943. The Stop AIDS in Prison Act was introduced by the gentlelady from California, Ms. Waters, on April 19 of this year. In just over 3 months' time, the bill has garnered support of 43 additional cosponsors, 10 of which sit on this committee. The legislation is designed to create a comprehensive set of HIV/AIDS programs in Federal prisons that would educate, diagnose and treat prisoners who are infected with HIV/AIDS and prevent those who were not infected from becoming infected. A very strong approach established under 1943 education, detection and treatment plays a vital role in preventing the spread of AIDS. Before reentry into the community the HIV-infected prisoners will receive referrals to appropriate health care providers, additional education about protecting their family members and others in the community and a 30-day supply of medications to hold them over until they can reconnect with the services in the community. Mr. Chairman, I thank the gentlelady from California for her hard work on this issue and recommend that the committee report the bill. And I yield to the --

Chairman Conyers. The gentlelady from California.

Mr. Scott. -- gentlelady from California.

Ms. Waters. Thank you very much. I would like to thank Chairman John Conyers and Ranking Member Lamar Smith for including my legislation H.R. 1943, the Stop AIDS in Prison Act in today's markup. I would also like to thank both of them, as well as Crime Subcommittee chairman Bobby Scott and ranking member Randy Forbes for all of their recommendations and assistance in drafting this bill. 25 years after AIDS was discovered the AIDS virus continues to spread. About 1.7 million Americans have been infected by HIV since the beginning of the epidemic. And there are 1.2 million Americans living with HIV/AIDS today. Every year there are 40,000 new HIV infections and 17,000 new AIDS related deaths in the United States. HIV/AIDS is also spreading in our nation'S jails and prisons. In 2005, the Department of Justice reported that the rate of confirmed AIDS cases in prisons was three times higher than in the general population.

The Department of Justice also reported that 2.0 percent of State prison inmates and 1.1 percent of Federal prison inmates were known to be living with HIV/AIDS in 2003. However, the actual rate of HIV infection in our nation's prisons is unknown because prison officials do not consistently test prisoners for HIV. There is little

knowledge about the lifestyle of those who enter our Nation's prisons and there is usually no official acknowledgement that sexual activity, whether consensual or otherwise is taking place in prisons. The only way to determine whether HIV is being spread among prisoners is to begin routine testing.

Furthermore, if prison inmates are exposed to HIV in prison and then complete their sentences and returned to society without knowing their HIV status, they could infect their spouse or other persons in the community. The Stop AIDS in Prison Act would require the Federal Bureau of Prisons to develop a comprehensive policy to provide HIV testing, treatment and prevention for inmates in federal prisons. This bill requires the Federal Bureau of Prisons to test all Federal prison inmates for HIV upon entering prison and again prior to release from prison, unless the inmate opts out of taking the test.

The bill also requires HIV/AIDS prevention education for treatment for those inmates who test positive. Finally, the bill requires the Bureau of Prisons to implement procedures to protect the confidentiality of inmate tests, diagnosis and treatment and to ensure that correctional staff receive regular training on the implementation of these procedures. This bill has been vetted by a variety of stakeholders in the AIDS community. The language was added

to the bill at the suggestion of various AIDS prevention and treatment advocates who met with my staff while the bill was being drafted. For example, language was added to require that inmates receive pretest and posttest counseling so that they will understand the meaning of HIV test results. Many HIV/AIDS advocates consider pretest and posttest counseling to be a critical part of the HIV/AIDS prevention education.

RPTS JOHNSON

DCMN BURRELL

[12:20 p.m.]

Ms. Waters. Many HIV/AIDS activists consider pre-test and post-test counseling to be a critical part of the HIV/AIDS prevention education. I am honored to have the support of several prominent HIV/AIDs advocacy organizations for the Stop AIDS in Prison Act. This includes AIDS Action, the AIDS Institute, the National Minority AIDS Council, the AIDS Health Care Foundation, the HIV/AIDS Medicine Association, and Benestar. The bill also has been endorsed by the Los Angeles County Board of Supervisors and the Los Angeles Times. I firmly believe that the Stop AIDS in Prison Act would help stop the spread of HIV/AIDS among prison inmates --

Chairman Conyers. The gentlelady's time has almost expired.

Ms. Waters. -- and encourage them to take personal responsibility for their health, and reduce the risk that they will transmit HIV/AIDS to other persons in the community following their release from prison. If all of my colleagues would support this important --

Chairman Conyers. The gentlelady's time has expired.

Ms. Waters. I need to add co-sponsors. I have been

asked by Sheila Jackson Lee to be added as a co-sponsor. There are 43 other co-sponsors.

I yield back the balance of my time.

Chairman Conyers. Thank you.

Mr. Gohmert. Mr. Chairman, could I have just 30 seconds?

Chairman Conyers. The ranking member will include you. He is going to recognize himself, the ranking member on the subcommittee and you, Judge Gohmert. The gentleman is recognized -- oh, by the way, in an earlier Congress, Lamar Smith and Maxine Waters were on this same bill. And I think it is important that we include the ranking member having been on this for quite a while. And he is recognized now.

Mr. Smith. Thank you, Mr. Chairman. And I am going to ask unanimous consent to have my opening statement be made a part of the record.

Chairman Conyers. Without objection.

Mr. Smith. I will say it includes several very complimentary references to the gentlewoman from California, Ms. Waters, but members will have to read it to see what I said. And as the chairman mentioned, Ms. Waters and I introduced this bill in the last Congress, where I was lead sponsor. And in this Congress she is the lead sponsor. And I want to thank her for her energetic efforts on behalf of this legislation. She has been a great advocate of it.

I will yield to the gentleman from Virginia, the ranking member of the Crime Subcommittee, for his comments on this bill as well.

[The statement of Mr. Smith follows:]

******** COMMITTEE INSERT ********

Mr. Forbes. Mr. Chairman, I also will just ask for unanimous consent to put my comments in the record. But I also want to compliment Congresswoman Waters and also Congressman Smith for their hard work and leadership on this bill.

Chairman Conyers. Without objection.

[The statement of Mr. Forbes follows:]

******** COMMITTEE INSERT ********

Mr. Smith. And Mr. Chairman, I will now yield to the gentleman from Texas, Mr. Gohmert.

Mr. Gohmert. Thank you. And I will be brief. And I also applaud the efforts of my friend across the aisle from California. This is a meritorious and a worthy effort. And I will support the bill, and am pleased you are moving forward with it. There were references, though, to the need for confidentiality. My concern is that this bill actually could go farther. I know some want to keep confidentiality, but the reason people are in prison is for protection of society. And they should be able to know in those kind of environments who has AIDS, who could potentially kill them, and who is not a threat to kill others in the prison. And so I would think that since you waived most all rights, including the right to assemble, the right to communicate with whom you wish, all those rights are given up to go into prison, that it wouldn't be so much to give up the right of confidentiality to go even if further to try to save lives.

But once again, I do appreciate the woman's efforts on this part, and I thank you. I believe it is a good start. Mr. Chairman, I yield back.

Chairman Conyers. If there are no amendments, a reporting quorum is present to report the bill favorably to the House. Those in favor by signify by saying aye. Those

opposed signify by saying no. The ayes have it, and the bill will be reported favorably to the House, and all members will be given 2 days, as provided by the House rules, to submit additional dissenting supplementary or minority views. And the staff is directed to make any technical and conforming changes. And so we will report this bill to the House, H.R. 1943.

The Chair recognizes the gentleman from Virginia.

Mr. Scott. Thank you, Mr. Chair. The subcommittee --

Chairman Conyers. Just a moment. I want to call up the bill, H.R. 1199, the Drug Endangered Children Act, pursuant to notice. The Clerk will report the bill.

THE CLERK: H.R. 1199, to extend the grant program for drug-endangered --

[The information follows:]

******** INSERT 3-1 ********

Chairman Conyers. Without objection, the bill will be considered as read, and open for amendment at any point. And I recognize Chairman Bobby Scott.

Mr. Scott. Thank you, Mr. Chairman. This measure is simple and straightforward. It extends the funding for the Drug Endangered Children Grant Program through fiscal year 2009. One of the troubling aspects of drug use is its impact on children. And this bill will protect children from the ravages of drug use. We should do that by reauthorizing H.R. 1199. And I yield back the balance of my time.

Chairman Conyers. Thank you. The Chair recognizes the ranking member, Lamar Smith.

Mr. Smith. Mr. Chairman, I support this legislation and ask unanimous consent that my opening statement be made a part of the record. And I yield to Mr. Forbes, the ranking member of the Crime Subcommittee.

[The statement of Mr. Smith follows:]

******** COMMITTEE INSERT ********

Mr. Forbes. Mr. Chairman, I also just request unanimous consent for my remarks.

Chairman Conyers. Without objection, so ordered.

[The statement of Mr. Forbes follows:]

******** COMMITTEE INSERT ********

Mr. Smith. And I will yield back, Mr. Chairman.

Chairman Conyers. Thank the gentleman. If there are no amendments, and a reporting quorum is present, the question is on reporting the bill favorably to the House. All those in favor signify by saying aye. Those opposed signify by saying no. The ayes have it. And the bill is reported to the House. Without objection, the staff is directed to make any technical and conforming changes, and members have 2 days to submit additional and other kinds of views.

I thank the committee very sincerely for their cooperation, and this concludes the hearing for today, and the meeting for today. The committee stands adjourned.

[Whereupon, at 12:26 p.m., the committee was adjourned.]