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108TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
108–632

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT AND DIRECTING CERTAIN OTHER FEDERAL OFFICIALS TO TRANSMIT TO THE HOUSE OF REPRESENTATIVES NOT LATER THAN 14 DAYS AFTER THE DATE OF THE ADOPTION OF THIS RESOLUTION DOCUMENTS IN THE POSSESSION OF THE PRESIDENT AND THOSE OFFICIALS RELATING TO THE TREATMENT OF PRISONERS OR DETAINEES IN IRAQ, AFGHANISTAN, OR GUANTANAMO BAY

ADVERSE REPORT

OF THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

ON

H. RES. 689

together with

ADDITIONAL AND DISSENTING VIEWS



JULY 22, 2004.—Referred to the House Calendar and ordered to be printed.

U.S. GOVERNMENT PRINTING OFFICE

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JULY 22, 2004.—Referred to the House Calendar and ordered to be printed

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Mr. HUNTER, from the Committee on Armed Services, submitted the following

ADVERSE REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H. Res. 689]

The Committee on Armed Services, to whom was referred the resolution (H. Res. 689) of inquiry requesting the President and directing certain other Federal officials to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the possession of the President and those officials relating to the treatment of prisoners or detainees in Iraq, Afghanistan, or Guantanamo Bay, having considered the same, report unfavorably thereon without amendment and recommend that the resolution not be agreed to.

PURPOSE AND SUMMARY

House Resolution 689, introduced on June 23, 2004, by Representative John Conyers, requests the President and directs certain other Federal officials to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the possession of the President and those officials relating to the treatment of prisoners or detainees in Iraq, Afghanistan, or Guantanamo Bay.

Clause 7 of rule XIII of the Rules of the House of Representatives provides for a committee to report on a qualifying resolution of inquiry, such as H. Res. 689, within 14 legislative days or a privileged motion to discharge the committee is in order. H. Res. 689

was introduced and referred to the Committee on Armed Services on June 23, 2004.

Under the rules and precedents of the House, a resolution of inquiry is one of the means by which the House may request information from the President of the United States or the head of one of the executive departments. It is a simple resolution making a direct request or demand of the President or head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch. It is not used to request opinions or require an investigation on a subject.

BACKGROUND

House Resolution 689 would call for the transmission of documents in the possession of the President, the Secretary of Defense, the Secretary of State, and the Attorney General, which relate to the treatment of prisoners and detainees in Iraq, Afghanistan, and Guantanamo Bay. The resolution would direct these cabinet members to provide documentation of work completed and planned in over 20 comprehensive categories. These categories encompass a broad range of information including reports, memorandums, complaints, chain-of-command charts, contracting receipts, interrogation doctrine, and translation data produced by sources such as the International Committee of the Red Cross, local sub-contractors, and individual military units.

The committee is concerned that House Resolution 689 would impose an exhaustive, unreasonable, and unnecessary burden on the executive branch for information that is already available to Congress, does not exist, or in the case of ongoing investigations, has yet to be completed. The committee believes that the effort to compile and organize the extensive library of documents dictated by this resolution would monopolize entire offices within the Department of Defense (DOD) and complete units within our armed forces, thus diverting valuable time and resources from their important, practical missions in the global war on terrorism. The committee further notes that this task is one that is not limited to the confines of Washington, D.C., but rather encompasses hundreds of military units worldwide.

In addition to consuming limited but valuable resources, the very foundation or basis for utilizing this type of legislative measure is without merit. The purpose of a resolution of inquiry is to compel the executive branch to provide information that has been denied to Congress. Thus far, there is no evidence to suggest the Department has been unresponsive to congressional requests for information. In fact, when scrutinized, the opposite is true. The Department has continually provided Members of Congress with access to full reports on the investigations surrounding the doctrine, practice, training, and contracting aspects of detainee operations. Furthermore, the Department, through its own initiative, has made additional relevant and probative information available. The committee has received voluminous amounts of information regarding the treatment of detainees in Iraq, Afghanistan, and Guantanamo Bay, including three extensive reports conducted by Major General Donald J. Ryder, Major General Geoffrey D. Miller, and Major General Antonio M. Taguba. These reports afford detailed assessments of the detention, intelligence, and corrections operations in Iraq

and Guantanamo Bay. Specifically, the latter investigation, Article 15–6 Investigation of the 800th Military Police Brigade, conducted by Major General Taguba provided the committee members with an extensive administrative investigation of detainee operations at the Abu Ghraib detention center. The accompanying report exceeds 6,000 pages and has been available for Members of the Armed Services Committee to review since May 2004.

Additionally, between May 5, 2004, and July 9, 2004, senior DOD officials have participated in 16 congressional hearings, 15 Member briefings, 25 staff briefings, and 15 office calls with Members. Secretary of Defense Donald H. Rumsfeld also discussed detainee issues at several all-chamber operations and intelligence briefings in the House and Senate, involving 55 Senators and over 230 Members of the House of Representatives. The Department is still conducting seven separate administrative investigations or reviews of detainee policy and abuses and will release their respective reports upon conclusion. Additionally, on May 12, 2004, Secretary Rumsfeld appointed the Honorable James R. Schlesinger to chair an independent panel to address, among other matters, the cause of the detainee abuse problems, and to recommend steps to correct these problems. This independent report is scheduled for completion in the next month, and will be provided to the Committees on Armed Services of the Senate and the House of Representatives.

In summary, this committee has been provided relevant investigatory materials to date and will be provided over the next several months with the results of additional comprehensive investigations that encompass virtually all aspects of the issues raised in this resolution of inquiry. These investigations and associated documentation has been and will continue to be provided voluntarily and without the need to resort to a resolution of inquiry. Based upon an analysis of the directives detailed in House Resolution 689 and the information the Department of Defense has provided to the Congress, the committee concludes that a call for the transmission of the requested documents would prove unwarranted, overly burdensome, and in some cases, redundant. Therefore, the committee ordered the resolution to be reported adversely.

EXECUTIVE COMMUNICATION

DEPARTMENT OF DEFENSE,
SECRETARY OF DEFENSE,
Washington, DC, July 15, 2004.

Hon. DUNCAN HUNTER,
Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.

DEAR CHAIRMAN HUNTER: Thank you for the opportunity to respond to House Resolution 689. The Department of Defense has presented, or is preparing to present as they become available, the following reports and information to the Congress:

1. Reports received by the Department of Defense from the International Committee of the Red Cross (ICRC) concerning the treatment of detainees.

2. Briefings and reports on at least six major investigations ongoing within the Department of Defense, including:

(a) Major General Fay's review of military intelligence and contractor interrogation procedures;

(b) The assessment by the Army Inspector General on overall doctrine and training of detention operations;

(c) Brigadier General Jacoby's review of detainee operations and facilities in Afghanistan;

(d) Vice Admiral Church's investigation into detention operations and detainee interrogation techniques;

(e) The Army Reserve Command assessment of reserve training, with a special focus on Military Intelligence and Military Police functions;

(f) The Schlesinger Panel independent review into the pace, breadth, and thoroughness of the investigations and whether additional investigations need to be initiated.

3. The Department will also continue its practice of periodically updating Members on the status of relevant criminal investigations.

Over the last 34 legislative days, Department witnesses, including the Deputy Secretary and me, have testified at 15 hearings, conducted 31 Member briefings, and 25 staff briefings. Additionally, the Department has forwarded to Congress 75 documents, comprising several thousand pages, and has declassified several interrogation memorandums for the record. We have briefed or met with 285 Members regarding the treatment and detention of persons under the control of the Department of Defense.

It is almost certain additional information will come to light that we have not anticipated and which will call for further investigation. However, we have tried to be expansive in the investigations we have initiated, and are ready to initiate others should the facts suggest the need to do so. Further, we have tried to be forthcoming with the Congress and, where appropriate, the media and general public with respect to our activities and initial findings.

Sincerely,

DONALD RUMSFELD,
Secretary of Defense.

LEGISLATIVE HISTORY

As noted above, H. Res. 689 was introduced on June 23, 2004, and referred to the Committee on Armed Services. On July 15, 2004, the Committee on Armed Services held a mark-up session to consider H. Res. 689. The committee reported adversely the resolution by a record vote of 31 ayes to 27 noes, with 1 voting present.

COMMITTEE POSITION

On July 15, 2004, the Committee on Armed Services met in open session, a quorum being present, and reported adversely the resolution H. Res. 689 to the House by a record vote of 31 ayes to 23 noes, with 1 voting present.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the committee estimates the costs of implementing the resolution would be minimal. The Congressional Budget Office did not provide a cost estimate for the resolution.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities pursuant to clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

With respect to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974, this legislation does not include any new spending or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, performance goals and objectives can not be explained, because the resolution does not require any new funding.

CONSTITUTIONAL AUTHORITY STATEMENT

The committee finds that clause 3(d)(1) of rule XIII of the Rules of the House of Representatives does not apply because H. Res. 689 is not a bill or joint resolution that may be enacted into law.

STATEMENT OF FEDERAL MANDATES

Pursuant to section 423 of Public Law 104–4, this legislation contains no federal mandates with respect to state, local, and tribal governments, nor with respect to the private sector. Similarly, the resolution provides no unfunded federal intergovernmental mandates.

RECORD VOTES

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the committee sets forth the following record vote that occurred during the committee's consideration of H. Res. 689.

COMMITTEE ON ARMED SERVICES
108TH CONGRESS
ROLL CALL

Motion to Report Adversely **Date: 07/15/04**
H. Res. 689 **Offered by: Weldon**

Voice Vote **Ayes** **Nays**

Rep.	Aye	Nay	Present	Rep.	Aye	Nay	Present
Mr. Hunter	X			Mr. Skelton		X	
Mr. Weldon	X			Mr. Spratt		X	
Mr. Hefley	X			Mr. Ortiz		X	
Mr. Saxton	X			Mr. Evans		X	
Mr. McHugh	X			Mr. Taylor		X	
Mr. Everett	X			Mr. Abercrombie		X	
Mr. Bartlett	X			Mr. Meehan		X	
Mr. McKeon	X			Mr. Reyes		X	
Mr. Thornberry				Dr. Snyder		X	
Mr. Hostettler	X			Mr. Turner (TX)		X	
Mr. Jones	X			Mr. Smith		X	
Mr. Ryun (KS)	X			Ms. Sanchez		X	
Mr. Gibbons	X			Mr. McIntyre		X	
Mr. Hayes	X			Mr. Rodriguez		X	
Mrs. Wilson (NM)			X	Ms. Tauscher		X	
Mr. Calvert	X			Mr. Brady		X	
Mr. Simmons	X			Mr. Hill		X	
Mrs. Davis (VA)	X			Mr. Larson (CT)		X	
Mr. Schrock	X			Ms. Davis (CA)		X	
Mr. Akin	X			Mr. Langevin		X	
Mr. Forbes	X			Mr. Israel		X	
Mr. Miller (FL)	X			Mr. Larsen (WA)		X	
Mr. Wilson (SC)	X			Mr. Cooper		X	
Mr. LoBiondo	X			Mr. Marshall			
Mr. Cole	X			Mr. Meek		X	
Mr. Bradley	X			Ms. Bordallo		X	
Mr. Bishop	X			Mr. Alexander		X	
Mr. Turner (OH)	X			Mr. Ryan (OH)		X	
Mr. Kline	X						
Mrs. Miller (MI)	X						
Dr. Gingrey	X						
Mr. Rogers	X						
Mr. Franks	X						

Roll Call Vote Total:

31 Aye 27 Nay 1 Present

DISSENTING VIEWS

I am disappointed with the House Armed Services Committee vote last week to report H. Res. 689 to the whole House unfavorably and I respectfully dissent. This resolution would require the Secretary of Defense, the Secretary of State, and the Attorney General to transmit to the House information produced in connection with the investigations into allegations of abuse against prisoners and detainees in Iraq, Afghanistan, and at the U.S. base at Guantanamo Bay, Cuba.

Congress has a critical oversight role of the executive branch and, in exercising this duty, we serve as a check and a balance. This is not a partisan role, it is one rooted in the need to ensure that no one branch of government becomes too powerful. It is also an essential part of shining light on government activities so that the public has all the information they need and deserve.

The importance of this oversight role cannot be overestimated regarding the investigation of the detention abuses that have occurred in Iraq, Guantanamo, and Afghanistan. This issue not only threatens our nation's credibility abroad but also undermines our effort to fight terrorism and ensure security in Iraq. The scandal has also undercut our efforts to advance peace in the Middle East.

In order to restore credibility and begin remedying the damage that has been done, a full, independent investigation—that is perceived as thorough and relentless and goes up the chain of command to the highest levels—is essential. The bottom line is that we need accountability within the chain of command. It's not enough to simply prosecute junior level enlisted personnel and suggest that that is a full response to dealing with the prisoner abuse scandal. We cannot back away from this responsibility.

Finally, I do not believe that the recent "document dump" of the 2,000 Taguba report is adequate. I would hope the Department of Defense understands they have a shared interest in getting to the bottom of the prison abuse matter. The adversarial relationship that has, frankly, been instigated by this Administration does not serve the country well. As Members of the Committee, I believe strongly that we should be able to obtain specific information in response to specific inquiries. Burying details in thousands of pages of data is perilously close to obfuscation.

The abuse of prisoners was completely counter to the character of our nation and of our military. It has embarrassed our government, our brave and dedicated troops in the field, and the American people. The process recently undertaken by the House Armed Services Committee was not only aimed at getting all the appropriate information out in the public sphere, but also to gain a better understanding of how this abuse was allowed to occur and to determine where breakdowns occurred in the chain of command.

The goal is to have the information necessary to take concrete steps aimed to prevent any such abuse from happening again.

It is my sincere hope—for the credibility and security of our nation—that the Department and the Administration will work constructively with Congress to conduct a thorough investigation and work to put this matter behind our nation. I urge the Congress to reject the majority opinion on H. Res. 689 and instead require the Administration to supply all the documents and data we need to fulfill our oversight role.

ADAM SMITH.

DISSENTING VIEWS

House Resolution 689 would require the Secretary of Defense, the Secretary of State, and the Attorney General to transmit to the House information produced in connection with the investigations into allegations of abuse against prisoners and detainees in Iraq, Afghanistan, and at the U.S. base at Guantanamo Bay, Cuba. The committee ordered this resolution reported to the House with an adverse recommendation. Consideration of this resolution marks the second time this year that the Armed Services Committee has declined to order the production of documents that could have assisted the committee in getting to the bottom of the prisoner abuse scandal. In June, the committee adversely reported House Resolution 640, a bill that sought documents associated with the investigation by Army Major General Antonio Taguba into prisoner abuses at Abu Ghraib prison in Iraq. We believe the committee should have acted favorably upon H. Res. 689 for several reasons.

In our view, the Armed Services Committee has a constitutional duty under Article 1, section 8 of the Constitution to provide for our military and to oversee how the Department executes the programs and activities Congress authorizes. This duty doesn't end just because we're at war or because the task may be unpleasant. We have a constitutional obligation to look into this matter—to ask tough questions and to probe for answers, and we should not shrink from that responsibility. We had hoped that the committee would hold a series of open and bipartisan hearings on this subject to show the American people, our troops, the international community and the Iraqis that Congress is committed to a thorough and public investigation of this matter. When that avenue was foreclosed, we were forced to consider options like this resolution. The failure to report it favorably is a disappointing abdication of our responsibility.

Although several Department of Defense-sponsored inquiries or reviews are ongoing and may assist in assessing systemic deficiencies and in identifying wrongdoers, there are real questions about ultimate accountability up the chain of command, particularly where the upper echelons of that chain are concerned. For example, it is a disturbing signal to send to the world that the first individuals prosecuted for abusing prisoners at Abu Ghraib prison are junior enlisted personnel rather than officers. Congress is in the best position to ensure accountability and justice because we are not constrained by the internal pressures that exist in the military's rank-sensitive culture.

The nations of the world are watching to see how we as a nation handle the prisoner abuse scandal. Unfortunately, the image of the United States has been tarnished by the reprehensible pictures of prisoner abuse we have all seen. America needs to reestablish its credibility. We have to prove to other nations—particularly to our

allies and the Arab world whose support we will ultimately need to succeed in Iraq—that the events at Abu Ghraib and elsewhere were an aberration. We must prove that cruelty and maltreatment are not the standard operating procedure for our military and don't reflect our national values. Only a comprehensive, transparent and public investigation will permit us to show the world that we have higher standards—that we are a nation of laws, not of men, and that we are dedicated to freedom, truth and justice. H. Res. 689 is an instrument that would have helped us do that. The Armed Services Committee's adverse report on this bill again forfeits the opportunity to demonstrate Congress' commitment to accountability and to ensuring that these abuses cannot recur. We can only hope that this failure will not further contribute to a loss of trust of the Iraqi people, goodwill of the Arab world or among our allies in the war against terrorism.

IKE SKELTON.
LANE EVANS.
SOLOMON P. ORTIZ.
MARTIN T. MEEHAN.
SILVESTRE REYES.
JIM COOPER.
NEIL ABERCROMBIE.
CIRO D. RODRIGUEZ.
RICK LARSEN.
VIC SNYDER.
LORETTA SANCHEZ.
JOHN B. LARSON.
ELLEN O. TAUSCHER.
KENDRICK B. MEEK.
STEVE ISRAEL.
ADAM SMITH.
TIM RYAN.
JOHN SPRATT.

ADDITIONAL VIEWS OF REPRESENTATIVE JEFF MILLER

It was in accordance with our jurisdictional purview that we considered, marked-up, and now report this "Resolution of Inquiry" by Rep. John Conyers. The resolution requests the President, and directs Secretaries Powell and Rumsfeld and Attorney General Ashcroft, to transmit all unprotected documents relating to the treatment of prisoners or detainees in Iraq, Afghanistan, or Guantanamo Bay.

While these issues are of continuing importance to the Committee, there are several reasons that this resolution is fatally flawed and is an inappropriate mechanism.

A Resolution of Inquiry is an extraordinary device used by the Congress to obtain information that has previously been denied. It is to be used as the exception, not the rule. The resolution functions similarly to a subpoena, to be reserved for instances when an Administration has demonstrated a reluctance or refusal to provide information.

These conditions simply do not exist in this instance. Most of what is "directed" in this resolution has not been previously requested, and therefore claims of reluctance or denial are at this time not only premature, but unsubstantiated.

This is, however, about something much larger than the chosen mechanism. It is about the fact that we are a humane nation, and when we find aberrant behavior, we deal with it.

In its quest to root out such behavior, this Committee—and the Congress on the whole—has in no way been strong-armed by the Administration. We have had several opportunities to view the photographic evidence of the Abu Ghraib prison abuses. We have held an open hearing and closed briefings on Abu Ghraib, and a closed briefing on the treatment of detainees at Guantanamo Bay. The Department of Defense has assured additional briefings, and has provided them, as the situation has developed. The Administration has cooperated fully with the Committee, and every indication is that it will continue to do so.

As a Congress and as a nation, we must set priorities. As a Committee, our priorities are ensuring that we win this war on terror, properly equipping our troops to carry out their difficult and dangerous campaigns, and making the American people as safe as we are able. Duplicating ongoing investigations into prison mistreatment will only distract us from our principal goals.

What has happened with regard to prisoner mistreatment and abuse is indeed important and worthy of our attention. The Committee has discharged its responsibilities conscientiously. We are doing oversight of substance and it will make a difference. The

Conyers resolution does not advance our goal of ensuring that these kinds of abuses do not happen again.

JEFF MILLER.

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