

Americans for
Democratic Action
Policy Brief



Congress As Watchdogs

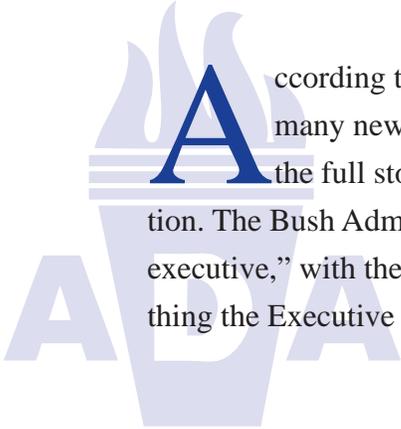
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According to civic classes, what Congress does is pass laws. Surely, if it's not passing many new laws, it must be AWOL. Like much that's taught in civics, that's far from the full story. Congress is also a watchdog – not easy with this secretive Administration. The Bush Administration and its partisan lawyers have concocted the notion of a “unitary executive,” with the corollary that no one has a right to interfere with or inquire about anything the Executive Branch does, a notion not widely espoused outside Bush-Cheney circles.

The 110th Congress, since 2006 controlled by Democrats, in significant part as a result of energetic electoral activities by ADA, has passed some important laws: raising the minimum wage, strengthening Congressional ethics standards, barring employment discrimination on the basis of sexual orientation, raising fuel economy standards for cars and trucks, increasing funding for Pell Grants while decreasing subsidies for companies that provide student loans, and strengthening the Consumer Product Safety Commission. Many more bills strongly lobbied by ADA were passed by the Democratic House of Representatives, but stymied in the Senate by Republican filibustering or the President's veto and threatened veto of such bills as expanding the State Children's Health Insurance Program and applying the Army Field Manual to CIA as well as the armed forces, thus outlawing of torture and extreme interrogation methods.

Savvy observers would point out that that wasn't the most important Congressional activity. As ADA has argued vehemently, for six years the Bush Administration carried on wars in Iraq and Afghanistan with no Congressional oversight of billions of dollars worth of no-bid contracting, no oversight of the decision to go to war in Iraq or the torture of prisoners, care of wounded soldiers, the Vice President's development of our national energy policy behind closed doors,

politicization of the Department of Justice, enforcement of product safety laws, political appointees' overruling of scientific staff findings in many departments, the Department of Housing and Urban Development's mismanagement of housing people whose homes were ruined by Hurricane Katrina.

The Democratic 110th Congress, now a watchdog, instead of a lapdog, has labored to restore the Constitutional framework of checks and balances. By rejuvenating its oversight function, Congress was forced to battle the most secretive Administration in living memory. Leading the way was Congressman Henry A. Waxman (D-CA), chair of the Committee on Oversight and Government Reform, aided by a skilled staff of investigators. He summed up the importance of oversight: “It's almost like having a policeman on the beat. If no one thinks they're being watched and being held accountable, they think they can get away with anything.”¹ Most of the media reported little of the Committee's work, and the public might be excused if it thought the Committee was focused only on whether Roger Clemens used performance-enhancing drugs, a rare moment when all Committee members of both parties showed up for the TV cameras. Yet the Committee's web site is replete with examples of its investigations and reports.²

Chairman Waxman has been busy daily since assuming the chair in Janu-

ary 2007, in fact conducting so many hearings on so many topics that only a sample will be provided here. In the area of health and the environment, a repeated difficulty has been uncovering the decision-making process when executive department actions appear to contradict scientific evidence, such as determining who was responsible for manipulating science on climate change, air pollution, the Endangered Species Act, and the dangers to public

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health presented by greenhouse gases. On September 25, 2007, Rep. Waxman released documents showing the Administration had tried to stir up opposition to California's request to regulate greenhouse gas emissions.³ Those efforts succeeded at least in convincing the Administration it could get away with blocking California's rules, but it persisted in providing as little information as possible, requiring Rep. Waxman to subpoena the Environmental Protection Agency for documents that might shed light on Administrator Stephen L. Johnson's

decisions and what agency scientists had recommended.⁴ Similarly, EPA rejected technical staff's recommended rules on pollution near national park wilderness areas. The Committee also followed up on the continuing failure of the Food and Drug Administration to inspect facilities and enforce sanitary standards for packaged spinach and lettuce that had been contaminated with E-coli.⁵

Pursuing energy issues, after six years of efforts by nongovernmental groups, on July 18, Rep. Waxman received documents on the predominant role of big campaign contributors from the energy industry in Vice President Cheney's task force that shaped Bush Administration energy legislation.⁶ Disturbing in a different way were revelations that summer by the Energy Department's Inspector General, Gregory Friedman, that the Wackenhut Company provided poor security at nuclear sites, in violation of its obligations under a lucrative contract. Despite the department's knowledge that at Oak Ridge the company permitted its security personnel to work shifts of

more than 60 hours a week, misled the government about worker training, and allowed employees to cheat by warning other workers of impending tests of their vigilance, Wackenhut kept its contract.⁷

Mismanagement by the Bush Administration's Department of Homeland Security following Hurricanes Katrina and Rita received considerable notoriety. Chairman Waxman held multiple hearings on waste, fraud, and abuse in contracting to repair damage of the hurricanes, raising the issue of toxic formaldehyde in trailers to house people who lost their homes, information the Federal Emergency Management Agency had suppressed. Largely because the Republican-controlled Congress devoted insufficient attention to the matter, the Administration took almost three years -- till March 2008 -- to take some appropriate action to find alternative housing.

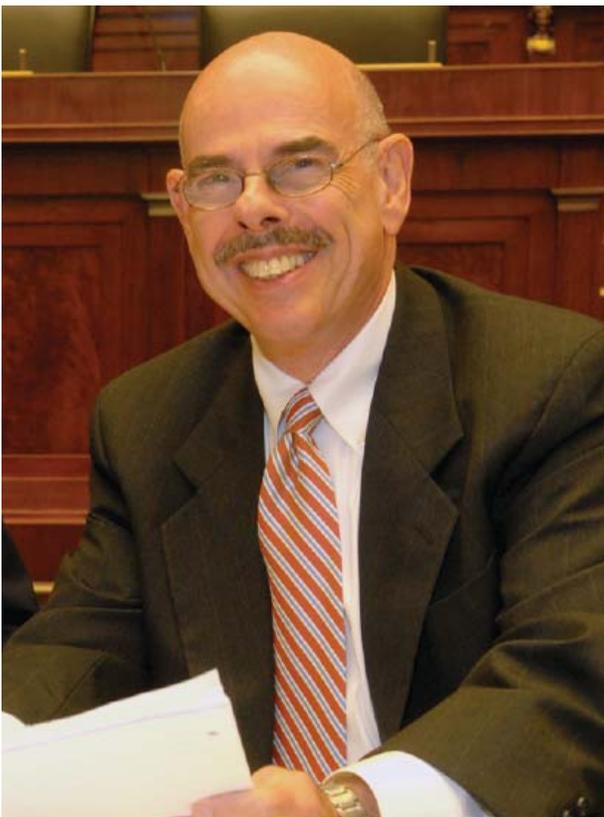
Piercing the veil of secrecy on the Iraq war would have daunted a less tenacious legislator.⁸ Concerning the lead-up to the Iraq war, Chairman Waxman tried to determine why the Administration had covered up the fact that they knew documents alleging that Iraq tried to obtain yellowcake uranium from Niger were forgeries -- information then-Secretary of State Colin Powell presented to the United Nations -- and to determine who leaked covert CIA employee Valerie Plame's identity as part of an effort to discredit her husband's report that the yellowcake information was false.

On the conduct of the occupation of Iraq, Mr. Waxman tried to elicit from former Coalition Provisional Authority chief L. Paul Bremer how billions of dollars of American taxpayers'

money disappeared in Baghdad and later how a billion dollars for training Iraqi police had been wasted. The State Department spent \$400 billion on contracts for its work in Iraq -- for security and for building the largest American embassy in the world -- with \$200 billion handed out in no-bid contracts.⁹ Instead of assigning government contract officers to monitor contracts, other private companies were awarded contracts to do the government's work. Still other private contractors advised the government on what contracts were necessary, then turned around and bid on the contracts. Additionally, Chairman Waxman queried Defense Department officials, trying to learn who authorized the military to lie to the family of Pat Tillman that their son had died heroically in Iraq. (He died a victim of "friendly fire.")¹⁰

Rep. Waxman probed evidence that the State Department had not monitored its no-bid contract with Blackwater Worldwide to provide security for State Department employees, to train Iraqi police, and other purposes. Moreover, the company evaded paying Social Security and Medicare payroll taxes by improperly designating its employees "independent contractor." Billions of dollars doled out by Blackwater were unaccounted for, wasted, with no effort by the State Department to hold the company accountable. Interviewed on public television by Bill Moyers, Chairman Waxman asked rhetorically why we are contracting out military services. As he noted, our American armed forces are answerable to the American people and the U.S. Constitution; Blackwater is accountable to its stockholders. Among Blackwater's misdeeds, its contract employees killed 17 Iraqi civilians -- a fact the company tried hard to cover up.

When the facts came out, the company and its employees were deemed immune to punishment under either Iraqi or American law, and it refused to compensate the Iraqi civilians' fami-



Rep. Henry Waxman

lies.¹¹ Widows of four Blackwater employees killed in Iraq testified before the Committee that the State Department has been unwilling to provide adequate information on the employees' deaths, and the widows have been denied a right to sue for that information. Rep. Waxman then revealed that one likely reason the State Department failed to hold Blackwater accountable might have been that the brother of the Department's Inspector General, the official charged with uncovering waste, mismanagement, and corruption, was on the Board of Directors of Blackwater.¹²

Blackwater was not the only State Department contractor that Rep. Waxman found to be out of control. Another was First Kuwaiti. Although the State Department knew or should have known that the company kidnaps and underpays unsuspecting employees, assuring them they would be employed somewhere safe and at higher wages, the Department persisted in allowing the company to spend \$144 million over its budget and to endanger its employees by failing to provide them with proper safety equipment. Mr. Waxman has also questioned why the Bush Administration refuses to talk publicly about corruption in the Iraqi government, which is undermining reconciliation. Secretary of State Condoleezza Rice said her staff would only be available to the Committee in closed session, which Chairman Waxman said undermined the right of the American people to learn how their tax dollars are being spent and how their government is conducting the people's business.

Health care has been another focus. In May 2007 Chairman Waxman investigated the failure of private insurance companies to control the prices of prescription drugs, followed in June by exposing the inadequacy of post-marketing studies of FDA-approved prescription drugs, such as the diabetes medication Avandia. The Committee also heard former Surgeon

General Richard H. Cremona – a Bush appointee – complain that the White House had interfered with his independence on public health matters. And in September Chairman Waxman was scrutinizing the failure of Medicaid to provide required dental care to children, which had led to the death of a child in Prince George's County, Maryland. Along with other Congressional Committees, Chairman Waxman contributed to the airing of the poor health care for grievously injured members of our armed forces, and the failure to take sufficiently expeditious remedial action.

The Oversight Committee has been most frustrated in its attempt to learn all the ways that politics trumped good government, such as the Administration's failure to abide by the law requiring that all White House email messages be preserved. The White House scrapped the Clinton Administration's archival system, but failed to develop a new one that functioned. Testimony before the Committee conflicted with testimony provided to a U.S. district court on whether substantially all of the Vice President's email from 2003 to 2005 had been preserved. Throughout 2007 the Committee tried to find out why the White House violated its legal obligation by permitting about 88 White House officials to conduct official business using Republican National Committee email accounts, rather than official channels, in violation of the Presidential Records Act. Those RNC records appear to have been destroyed.¹³ Why did General Services Administration chief Lurita Alexis Doan, prior to the 2006 election, apparently violate the Hatch Act by asking political appointees to think of ways to help Republican candidates? Why did Administration appointees, such as Karl Rove, selectively reveal classified information to the press for political gain? Rep. Waxman also discovered that files of the Office of Special Counsel -- an office that exists to protect all government

whistleblowers – had destroyed files and been accused of retaliating against whistleblowers in his own office.¹⁴

Although Rep. Waxman's Committee on Oversight and Government Reform has primary responsibility in the House of Representatives, other Committees of the House and Senate have also been on the job. Several sub-Committees of the House Committee on Veterans Affairs, chaired by Rep. Bob Filner (D-CA), have inquired into flawed diagnosis, treatment, and disability claims processes, especially for veterans of the wars in Iraq and Afghanistan with post-traumatic stress disorders and traumatic brain injury. The Committee pressed the Departments of Defense and Veterans Affairs to share medical information and coordinate care, so disabled veterans aren't abandoned as they transition into civilian life. Other sub-Committees have shed light on the inadequacy of employment and educational benefits for recently-discharged veterans, including those in the Reserve and National Guard.¹⁵

Both the House and Senate Judiciary Committees have devoted hearings to the politicization of the Bush Department of Justice, a department that has traditionally been composed of some of the nation's brightest lawyers, who pursued justice under the law without partisanship. These investigations have encompassed politicization of the voting rights section of the civil rights division, and of the removal of nine U.S. Attorneys. These attorneys are traditionally appointed at the beginning a President's term from among able attorneys of their own political party. Once appointed, U.S. Attorneys act as U.S. government prosecutors who enforce the law impartially. This Administration in 2006, in an unusual move, fired nine U.S. Attorneys, replacing them with less experienced Republican Party loyalists. The Committees heard from many people in the Department of Justice who opined that the motive for the firing was not

incompetence, but probably because they declined to pursue partisan investigations of alleged Democratic misdeeds, or so the jobs could go to more partisan Republican friends. The primary issue is whether orders had come from the White House, which had no business interfering with the Administration of justice. However, the White House has stone-walled, refusing to allow chief of staff Joshua B. Bolten and former White House counsel Harriet E. Miers to testify, claiming “executive privilege,” even though the testimony sought did not require their revealing advice they provided to the President, a legitimate ground for invoking executive privilege. The House of Representatives, therefore, cited Mr. Bolten and Ms. Miers for contempt of Congress and filed a lawsuit to enforce subpoenas ordering them to testify, a rare, if not unprecedented, occurrence. The Administration has said its officials could only testify in secret without a transcript, even when no classified secrets were involved, only politically embarrassing secrets, thwarting Congress’s exercise of its powers as a co-equal branch of the federal government and depriving the American people of information the Committee considered the people’s business.¹⁶

While most of the media have not helped constituents learn about Committee work, House and Senate Judiciary Committees have questioned many actions of the Administration that may have infringed Constitutional rights and violated the law of the land. They have delved into interrogation techniques used on prisoners in Iraq and at the US base at Guantanamo Bay, Cuba; the destruction of tapes of CIA “enhanced interrogation” (torture); and the Bush Administration’s use of “signing statements” to disavow portions of laws passed by Congress and signed by the President. They have held hearings on implementation of the Bankruptcy Reform of 2005; the treatment of worker victims of Chap-

ter 11 bankruptcies; the implementation of mandatory minimum sentencing rules; war profiteering and other contractor crimes overseas, immigration issues; the causes, consequences, and solutions for delays in processing immigrants’ naturalization papers; minority vote suppression and other irregularities; criminal laws to protect Americans working for U.S. companies in Iraq; lack of federal oversight of state-run “boot camps” for juveniles; successful programs for rehabilitation of and release of prisoners; and the lack of accountability of foreign manufacturers for the safety of imported toys. The Senate Committee has focused on threats to civil liberties under intelligence surveillance laws, including the misuse of National Security Letters by the FBI, instruments intended for use against foreigners in espionage and counter-terrorism cases. Director Mueller testified that they had been used instead to get personal information on Americans, at least once in violation of a Foreign Intelligence Surveillance Act (FISA) court ruling that that use violated the First Amendment.

Former ADA president Rep. Barney Frank (D-MA), Chairman of the Financial Service Committee has energetically conducted oversight hearings on the Department of Housing and Urban Development, including the federal housing response to Hurricane Katrina and the affordable housing crisis in the Gulf area. Hearings also led to the drafting of remedial legislation that passed the House of Representatives on March 21, 2007. Additional hearings examined the neglected housing needs of low-income veterans, foreclosure prevention, diversity in financial services, the need for insurance regulatory reform, and the role of public investment in promoting



Blackwater’s Erik Prince testifies during a House Oversight and Government Reform Committee hearing in Washington DC on October 2. (AFP: Mark Wilson/Getty Images)

economic growth. Long before the epidemic of foreclosures and economic meltdown, Rep. Frank raised the issue of predatory sub-prime lending which may be enough to spur Republicans to support remedial legislation drafted by Rep. Frank and Senator Christopher Dodd (D-CT), Chairman of the Senate Banking, Housing, and Urban Affairs Committee.¹⁷

Senator Dodd also conducted hearings to expose HUD Secretary Alphonso Jackson’s awarding HUD contracts to friends and retaliating against Philadelphia’s public housing authority director Carl Greene for not transferring land to Jackson’s friend. Earlier the Committee revealed that Jackson violated federal rules by targeting HUD contracts for housing Hurricane Katrina victims to Bush supporters. On March 21, 2008, Senators Dodd and Patty Murray (D-WA) called for Secretary Jackson’s resignation, alleging cronyism and other improprieties in awarding contracts,¹⁸ so the long-time Bush pal finally resigned effective April 18th.

The Senate Rules Committee under Senator Dianne Feinstein (D-CA) has focused on partisan vote suppression promoted by Karl Rove when he worked in the White House. One method uncovered was “caging,” a stratagem by which state and local Republican parties send “do not forward” letters to Democrats, particularly those

living in minority neighborhoods. If the letters are not returned – even if the registered voter is absent in the armed forces -- the voter is challenged. A protégé of Rove, Tim Griffin, had promoted caging as research director of the Republican National Committee. He was a lawyer the White House sought to install as US Attorney in Arkansas to replace one who was fired. Senator Whitehouse (D-RI) and Congressman Conyers (D-MI) have therefore sponsored legislation to outlaw caging.¹⁹

Appropriations Committees also offer legislators a chance for oversight. Senator Byron Dorgan (D-ND), for example, has held hearings on contract abuses in Iraq, such as KBR's providing faulty water systems that have led to sickening our soldiers and Iraqis in Ramadi, providing untreated water from the Euphrates. Like Blackwater, KBR evaded paying Social Security and Medicare payroll taxes, but used a different scheme; it set up shell companies.²⁰

Congressional oversight has an honorable history and need not be tarred

by unseemly partisanship. While Congressional oversight during the Civil War earned a poor reputation, that during World War II was stellar. Before the U.S. was attacked at Pearl Harbor, as the country hurried to refurbish its military, Senator Harry S Truman (D-MO) traveled around the country, where he found cost-plus contracts

“We will not allow the Administration to steamroll Congress.”

had been awarded at military bases, with a handful of companies awarded a disproportionate share of the contracts. He, therefore, recommended the establishment of a Congressional investigative Committee. Thanks to that Special Senate Committee to Investigate the National Defense Program, commonly known as the Truman Committee, created March 1, 1941, the gravy train didn't last. A stalwart Democrat, Harry Truman led an investigation of contracting of the Democratic Roosevelt Administration, earning Truman the

nomination as FDR's Vice President.²¹

The American people would have been better served had the Republican-controlled Congress exercised its oversight responsibilities during the first six years of the Bush Administration. The people deserved a vigilant Congress at that time to question the conduct of the war in Afghanistan, the intelligence leading up to the war in Iraq, and the conduct of every government department and agency. Although much of the damage may be irreparable, the 110th Congress has served our people honorably in seeking to let sunlight shine on the conduct of the Executive Branch.

House Judiciary Committee chairman John Conyers, Jr. (D-MI) summed up the critical importance of searching Congressional oversight: “We will not allow the Administration to steamroll Congress. The Administration's extreme claims to be immune from the oversight process are at odds with our Constitutional principles on which this country was founded.”²²

¹ <http://pbs.org/moyers/journal/03142008>

² Unless other sources are cited, information is from the Committee's web site, <http://oversight.house.gov>

³ Jonathan Weisman, “White House Feels Waxman's Oversight Gaze,” Washington Post, Oct. 25, 2007. This article provides a comprehensive look at issues Waxman has investigated.

⁴ “EPA Subpoenaed Over Calif. Emissions Law,” Washington Post, Feb. 9, 2008.

⁵ Christopher Lee, “Report Criticizes FDA Over Spinach Packers,” Washington Post, March 13, 2008.

⁶ Weisman, op. cit., Oct. 25, 2007.

⁷ Washington Post, January 4, 2008.

⁸ The previous Congress had acted like pussycats, even as a KPMG audit for the UN found that “financial controls were insufficient to provide reasonable assurance” that oil funds had been spent properly. Colum Lynch, “U.S. Won't Turn Over Data for Iraq Audits,” Washington Post, July 16, 2004.

⁹ “Bill Moyers Journal” on public television, interview with Chairman Waxman, March 14, 2008. Unless otherwise indicated, much of the following information is derived from this program. See <http://www.pbs.org/moyers/journal/03142008>

¹⁰ Weisman, op .cit., Oct. 25, 2007.

¹¹ See Bruce Falconer and Daniel Schulman, “Blackwater's World of Warcraft,” Mother Jones, March-April 2008, pp. 71-75, 97, for a revealing report on Erik Prince and Blackwater. Two of the families of the deceased turned down an offer of \$20,000 a piece. Washington Post, March 21, 2008.

¹² For a fuller discussion of Blackwater, see Bruce Falconer and Daniel Schulman, “Blackwater's World of Warcraft,” Mother Jones, March-April, 2008, pp.71-75, 97.

¹³ Dan Eggen, “GOP Halts Effort to Retrieve White House E-Mails,” Washington Post, Feb. 27, 2008.

¹⁴ “Panel to Inquire Into Counsel's Erased Files,” Washington Post, Dec. 7, 2007.

¹⁵ <http://veterans.house.gov>

¹⁶ <http://judiciary.house.gov> and <http://judiciary.senate.gov>

¹⁷ <http://financialservices.house.gov>

¹⁸ Washington Post, March 22, 2008.

¹⁹ Think Progress, March 4, 2008.

²⁰ <http://appropriations.senate.gov>

²¹ http://www.senate.gov/artandhistory/history/minute/The_Truman_Committee

²² William Branigin, “House Panel Sues to Force Bush Aides to Table,” Washington Post, March 11, 2008.