



# Homeland Security: Compendium of Recommendations Relevant to House Committee Organization and Analysis of Considerations for the House, and 109<sup>th</sup> and 110<sup>th</sup> Congresses Epilogue

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## Summary

This report has been updated with an epilogue on the creation of a standing House Committee on Homeland Security in the 109<sup>th</sup> Congress, the election of a new chair September 15, 2005, and the committee's organization in the 110<sup>th</sup> Congress. The original report was not changed; its summary follows:

The 9/11 Commission and other commissions and think tanks studying homeland security recommended congressional committee reorganization to increase Congress's policy and oversight coordination. This report analyzes selected recommendations relevant to House committee reorganization.

In the 108<sup>th</sup> Congress, the House created a Select Committee on Homeland Security, and charged it with studying the rules of the House with respect to the issue of homeland security. The select committee recommended a standing Committee on Homeland Security. This report digests the select committee's recommendations. Before the select committee made its recommendations, one of its subcommittees held four hearings on *Perspectives on House Reform*. To analyze the content of these hearings, this report organizes the testimony into 10 categories.

One consideration in creating a homeland security committee relates to the concentration or dispersal of homeland security jurisdiction. The House at different times has made different decisions about concentrating or dispersing jurisdiction. A second consideration in creating a homeland security committee relates to implications of jurisdictional changes. Proponents of a new committee point to the fragmentation of jurisdiction over homeland security. Others point to the record of Congress as a strong indication that existing committees are capable of action. A third consideration in creating a homeland security committee is whether such a committee is sufficient for policymaking. Even if a new committee is created, other committees will still have jurisdiction over components of homeland security. The House has tended not to change its committee structure after executive branch reorganizations. This report contains a brief history of House committees.

Related CRS reports: CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by (name redacted); CRS Report RS21901, *House Select Committee on Homeland Security: Possible Questions Raised If the Panel Were to Be Reconstituted as a Standing Committee*, by (name redacted); CRS Report RL31835, *Reorganization of the House of Representatives: Modern Reform Efforts*, by (name redacted), (name redacted), and (name redacted); CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by (name redacted); and CRS Report RL33061, *Homeland Security and House Committees: Analysis of 109<sup>th</sup> Congress Jurisdiction Changes and Their Impact on the Referral of Legislation*, by (name redacted) and (name redacted). This report will not be updated.

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As directed by the House,<sup>1</sup> the Select Committee on Homeland Security reported to the House Rules Committee September 30, 2004, its recommendations on “the operation and implementation of the rules of the House, including rule X, with respect to the issue of homeland security.” The select committee recommended the creation of a permanent standing Committee on Homeland Security, with specified jurisdiction.

A number of House committees currently have important roles in homeland security policymaking. The Appropriations Committee’s role related to discretionary spending is clear cut, and the committee reorganized its subcommittees at the start of the 108<sup>th</sup> Congress to create a Homeland Security Subcommittee aligned with the component parts of the Department of Homeland Security (DHS).

Legislative authority over policy areas and federal agencies included in DHS are principally within the jurisdiction of several standing House committees: Agriculture, Armed Services, Energy and Commerce, Financial Services, Government Reform, International Relations, Judiciary, Science, Transportation and Infrastructure, and Ways and Means, and the Permanent Select Committee on Intelligence. Some of these committees also have jurisdiction over federal agencies and components of federal programs included in the department that have non-homeland-security-related purposes. In the 108<sup>th</sup> Congress, the Select Committee on Homeland Security also had jurisdiction over legislation affecting DHS.

In addition, some committees have key roles to play in overseeing homeland-security-related policy areas and federal agencies not incorporated in the department. These committees are Armed Services, Energy and Commerce, Financial Services, International Relations, and Judiciary Committees, and the Permanent Select Committee on Intelligence.

On July 22, 2004, the 9/11 Commission<sup>2</sup> became the latest of a number of commissions, think tanks, and other entities to weigh in on congressional oversight of the issue of homeland security. Some of these entities issued reports before the creation of DHS, some before the terrorist attacks of September 11, 2001, and some more recently. In addition, witnesses at House committee hearings in the 108<sup>th</sup> Congress held by subcommittees of the Select Committee on Homeland Security and the Committee on Rules provided additional ideas related to House oversight of homeland security. These entities’ and witnesses’ recommendations varied, but their variety offers the House a wealth of perspectives to draw on related to congressional-executive relations, building knowledge of homeland security policy issues among Members, and other aspects of congressional handling of the issue of homeland security.

A specific recommendation of the 9/11 Commission and other entities was creation of a homeland security committee in each chamber. In addition, a number of witnesses at the House subcommittee hearings recommended a homeland security committee in the House, and made recommendations related to jurisdiction, membership, and other factors.

It is a complex question, however, to take the recommendations of the 9/11 Commission and other entities and of witnesses at the House subcommittee hearings and determine the potential

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<sup>1</sup> H.Res. 5, §4(b)(3). H.Res. 5 was agreed to in the House January 7, 2003.

<sup>2</sup> Among the purposes spelled out in the law creating the commission, the commission was to “make a full and complete accounting of the circumstances surrounding the attacks of September 11, 2001,” the source of the commission’s popular name. The commission’s official name was the National Commission on Terrorist Attacks Upon the United States.

meaning and scope of *homeland security* in considering committee jurisdictions. One difficulty lies in trying to narrow the term to focus solely on the homeland—within the United States—as reflected in this statement from the 9/11 Commission report:

America [in the post-Cold War world] stood out as an object for admiration, envy, and blame. This created a kind of cultural asymmetry. To us Afghanistan seemed very far away. To members of al Qaeda, America seemed very close. In a sense, they were more globalized than we were.<sup>3</sup>

Homeland security begins with counterterrorism and other initiatives overseas, and it includes intelligence activities at home and abroad that can help prevent terrorist attacks. In the 9/11 Commission recommendations, those of other entities, and those of some hearings witnesses, *homeland security* is a continuum of international and domestic initiatives and activities, all of which are essential to reducing the likelihood and potential impact of terrorist attacks against the United States.

Another difficulty lies in the connectedness of homeland security to other policy areas. For transportation policy, agricultural policy, public health policy, trade policy, and so on, homeland security is one component of the policy area. Even if homeland security is now recognized as a critical component, some policymakers see the need for homeland security policy to mesh with the specific policy area and to be made within the context of the specific policy area.

This report presents and discusses the recommendations of the Select Committee on Homeland Security, the 9/11 Commission, and five other entities relevant to *House committee organization and the issue of homeland security*. (Related text from the select committee's, the 9/11 Commission's, and other entities' reports appear in the appendices.) The report also synthesizes hearings testimony on House committee organization related to homeland security before the select committee and a subcommittee of the House Rules Committee. Finally, it analyzes the options and implications of this body of recommendations for House committee organization. The report is intended to support the House in evaluating potential changes to its oversight of homeland security as it makes and implements decisions on committee organization in the 109<sup>th</sup> Congress.

## Homeland Security and House Committees in the 107<sup>th</sup> and 108<sup>th</sup> Congresses

### 107<sup>th</sup> Congress

Shortly after the convening of the 107<sup>th</sup> Congress, Speaker Hastert initiated a Working Group on Terrorism and Homeland Security as a unit of the House Permanent Select Committee on Intelligence.<sup>4</sup> Following the terrorist attacks of September 11, 2001, the Speaker and Minority

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<sup>3</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington: GPO, July 22, 2004), p. 340. (Available online at <http://www.gpoaccess.gov/911/index.html>, visited December 10, 2004.)

<sup>4</sup> Rep. Porter Goss, remarks in the House, "Publication of the Rules of the Permanent Select Committee on Intelligence, 107<sup>th</sup> Congress," *Congressional Record*, daily edition, vol. 147, March 20, 2001, pp. H990-H994; and Niels C. Sorrells, (continued...)

Leader Gephardt announced the elevation of the working group to a subcommittee.<sup>5</sup> The subcommittee was to “coordinate the efforts of various [House] committees” with a claim to jurisdiction over various aspects of terrorism and to “provide a clearinghouse for legislative proposals.”<sup>6</sup>

Subsequently, the jurisdictional complexity of the subject matter of homeland security was demonstrated by the referral of the House measure to create DHS. That bill, H.R. 5005, was referred to 12 committees. A thirteenth committee, the Select Committee on Homeland Security, was created for the 107<sup>th</sup> Congress to receive these committees’ recommendations and to mark up and report a bill.<sup>7</sup> Additional committees had narrower jurisdictional claims to H.R. 5005, but the bill was not referred to them.<sup>8</sup>

Congress also included the following provision related to House and Senate committee organization in the Homeland Security Act:

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.<sup>9</sup>

## 108<sup>th</sup> Congress

The sense-of-the-Congress provision on review of committee structure included in the Homeland Security Act did not require either chamber to take action related to committee organization. The House, however, responded in adopting its rules for the 108<sup>th</sup> Congress by creating a Select Committee on Homeland Security for the duration of the 108<sup>th</sup> Congress.<sup>10</sup> The House vested the select committee with the following jurisdiction:

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(...continued)

“Chambliss Claims Intelligence Seat Surrendered by Bass,” *CQ Daily Monitor*, vol. 37, February 16, 2001, p. 9.

<sup>5</sup> “Terrorism Working Group Now An Intelligence Subcommittee,” *CQ Daily Monitor*, vol. 37, September 21, 2001, p. 11.

<sup>6</sup> House Permanent Select Committee on Intelligence, Subcommittee on Terrorism and Homeland Security, archived home page (available online at <http://web.archive.org/web/20011011082741/intelligence.house.gov/terrorism.htm>, visited December 10, 2004).

<sup>7</sup> H.Res. 449 was agreed to in the House June 19, 2002.

<sup>8</sup> See CRS Report RL31449, *House and Senate Committee Organization and Jurisdiction: Considerations Related to Proposed Department of Homeland Security*, by (name redacted).

<sup>9</sup> P.L. 107-296, §1503; 116 Stat. 2135, 2309.

<sup>10</sup> In the Senate for the 108<sup>th</sup> Congress, jurisdiction over DHS resided in the Governmental Affairs Committee, which had marked up and reported legislation in the 107<sup>th</sup> Congress to create the department. Jurisdiction over various agencies and programs incorporated into the department was to be shared with other committees based on their jurisdictions. See Sen. Bill Frist, remarks in the Senate, *Congressional Record*, daily edition, vol. 149, January 7, 2003, p. S26; and Mary Dalrymple, “Homeland Security Oversight Lands at Governmental Affairs,” *CQ Daily Monitor*, vol. 39, January 8, 2003, p. 5.

Subsequently, on October 9, 2004, the Senate agreed to S.Res. 445, which renamed the Governmental Affairs Committee as the Homeland Security and Governmental Affairs Committee and made jurisdictional changes in this and other Senate committees, effective in the 109<sup>th</sup> Congress. See Andrew Taylor, “Senators Fight over Turf in Revamp of Homeland Security Oversight,” *CQ Weekly*, vol. 62, no. 40, October 16, 2004, p. 2460.

(1) LEGISLATIVE JURISDICTION—The select committee may develop recommendations and report to the House by bill or otherwise on such matters that relate to the Homeland Security Act of 2002 (Public Law 107-296) as may be referred to it by the Speaker.

(2) OVERSIGHT FUNCTION—The select committee shall review and study on a continuing basis laws, programs, and Government activities relating to homeland security.<sup>11</sup>

Speaker Hastert explained the purpose of the select committee in remarks to the House following his reelection as Speaker:

Later on today, we will vote to create a Select Committee on Homeland Security. Members of this select committee will oversee the creation of the Department of Homeland Security to make certain that the executive branch is carrying out the will of the Congress. This select committee will be our eyes and our ears as this critical department is organized. The standing committees of the House will maintain their jurisdictions and will still have authorization and oversight responsibilities. This House needs to adapt to the largest reorganization of our executive branch in 50 years, and this select committee will help us make this transition.<sup>12</sup>

In its 108<sup>th</sup> Congress rules changes, the House also amended Rule XII, cl. 2(c)(1) to add the phrase shown here in italic:

(c) In carrying out paragraphs (a) and (b) with respect to the referral of a matter, the Speaker—

(1) shall designate a committee of primary jurisdiction (*except where he determines that extraordinary circumstances justify review by more than one committee as though primary*);<sup>13</sup>

The jurisdiction of the select committee provided the House with a focus for homeland security legislation and oversight, without immediately changing the jurisdictions of the standing committees that held jurisdiction over aspects of homeland security.<sup>14</sup> The addition to the Speaker's referral authority provided him with increased flexibility in referring homeland security legislation in this context, if needed, and with increased flexibility in referring other legislation where he deemed it an appropriate form of referral.<sup>15</sup>

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<sup>11</sup> H.Res. 5, §4(b)(1) and (2); H.Res. 5 was agreed to in the House January 7, 2003.

<sup>12</sup> Speaker Hastert, remarks in the House, *Congressional Record*, daily edition, vol. 149, January 7, 2003, p. H5.

<sup>13</sup> H.Res. 5, §2(i).

<sup>14</sup> During debate on the rules changes proposed to the House, Rep. Oberstar, the ranking member of the House Transportation and Infrastructure Committee, observed: "Mr. Speaker, the proposal to create a new Select Committee on Homeland Security interestingly does not make any changes in the legislative jurisdiction of the committees outlined in rule 10 of the rules of the House." He ended his remarks by asking a question of House Rules Committee Chairman Dreier about referral in the 108<sup>th</sup> Congress of a bill covering subject matter that, in the 107<sup>th</sup> Congress, had been reported by the Transportation and Infrastructure Committee. Chairman Dreier responded: "Mr. Speaker, let me just say that it is very clear that the Speaker does have authority to refer legislation, and it is his intent to ensure that we maintain the jurisdiction of those committees." Rep. James L. Oberstar and Rep. David Dreier, remarks in the House, *Congressional Record*, daily edition, vol. 149, January 7, 2003, p. H15.

<sup>15</sup> In explaining the package of rules changes proposed to the House, Rules Committee Chairman Dreier said about this change: "Section 2(1) permits the joint referral of measures without designation of primary jurisdiction. This change is meant only as a minor deviation from the normal requirement under the rules for the designation of one committee of primary jurisdiction and should be exercised only in extraordinary jurisdictionally deserving instances." Rep. David Dreier, remarks in House, *Congressional Record*, daily edition, vol. 149, January 7, 2003, p. H11.



In the 108<sup>th</sup> Congress, measures related to *homeland security* were referred to the Select Committee on Homeland Security and in addition to other committees, with the select committee designated by the Speaker as the primary committee. Other measures related to homeland security were referred in addition to the select committee and other committees, with a committee other than the select committee designated by the Speaker as the primary committee. Some measures related to homeland security were not referred to the select committee.<sup>16</sup>

The House Appropriations Committee responded to the creation of DHS with a reorganization of its subcommittees. On January 29, 2003, House Appropriations Committee Chairman Bill Young announced the creation of the Homeland Security Subcommittee to correspond to the agencies and programs incorporated in the new Department of Homeland Security. The jurisdictions of the other subcommittees were realigned in order to retain 13 appropriations subcommittees, including the new subcommittee.<sup>17</sup>

In addition, five House authorizing committees renamed or reorganized subcommittees to create homeland security or terrorism subcommittees:

- Subcommittee on Terrorism, Unconventional Threats, and Capabilities, Committee on Armed Services;
- Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform;
- Subcommittee on International Terrorism, Nonproliferation, and Human Rights, Committee on International Relations;
- Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary (created in 107<sup>th</sup> Congress);<sup>18</sup> and
- as mentioned above concerning the 107<sup>th</sup> Congress, Subcommittee on Terrorism and Homeland Security, Permanent Select Committee on Intelligence.

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<sup>16</sup> See, for example, *Homeland Security: Bill Referrals in the House, 108<sup>th</sup> Congress*, by (name redacted), CRS congressional distribution memorandum, April 9, 2003.

<sup>17</sup> House Committee on Appropriations, "Chairman Young Announces Homeland Security Reorganization," news release, January 29, 2003. (Available online at [http://appropriations.house.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease\\_id=210&Month=1&Year=2003](http://appropriations.house.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=210&Month=1&Year=2003), visited December 10, 2004.) Jurisdictions of the Appropriations Committee's subcommittees are available on the committee's website; see, for example, that of the Subcommittee on Homeland Security, <http://appropriations.house.gov/index.cfm?FuseAction=AboutTheCommittee.Jurisdiction&SubcommitteeId=14>, visited December 10, 2004. See also CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by (name redacted).

On March 4, 2003, Senate Appropriations Committee Chairman Stevens and Ranking Member Byrd announced the committee's reorganization, which mirrored the House committee's changes. Senate Committee on Appropriations, "Appropriations Committee Sets Subcommittee Assignments," news release, March 4, 2003. (Available online at <http://appropriations.senate.gov/releases/record.cfm?id=190975>, visited December 10, 2004.) A crosswalk of federal agencies and programs to the Senate Appropriations subcommittee with jurisdiction is available at <http://appropriations.senate.gov/jurisdiction/jurisdiction.pdf>, visited December 10, 2004.

In addition, the Senate approved S.Res. 445 on October 9, 2004, which in sec. 402 created an intelligence appropriations subcommittee of the Appropriations Committee, but allowed the committee to determine the changes to be made in other appropriations subcommittees in order to retain 13 subcommittees. See "Amendment No. 4015 to Amendment No. 3981" and "Amendment No. 4042 to Amendment No. 4015," *Congressional Record*, daily edition, vol. 150, October 9, 2004, pp. S10908-S10909, S10917-S10918.

<sup>18</sup> Pamela Barnett, "Subcommittee Name Change Reflects Homeland Security Issues," *CongressDaily AM*, March 21, 2002, p. 12.

Finally, the Select Committee on Homeland Security was given another function in the House rules resolution—to assist the House in determining how it might organize itself in the future vis-à-vis the issue of homeland security:

(3) RULES STUDY—The select committee is authorized and directed to conduct a thorough and complete study of the operation and implementation of the rules of the House, including rule X, with respect to the issue of homeland security. The select committee shall submit its recommendations regarding any changes in the rules of the House to the Committee on Rules not later than September 30, 2004.<sup>19</sup>

The next section synthesizes testimony received at hearings conducted by a subcommittee of the select committee on the operation and implementation of the rules of the House, including Rule X. The section following it explains the recommendation of the select committee to the Rules Committee, and lists developments in the 108<sup>th</sup> Congress after the release of the select committee's recommendations.

## 108<sup>th</sup> Congress Hearings on Homeland Security and Committee Organization

When the Select Committee on Homeland Security organized, it created a Subcommittee on Rules under the chairmanship of Representative Lincoln Diaz-Balart to carry out the study of House rules. The subcommittee conducted four hearings to support the select committee in fulfilling the House's mandate.<sup>20</sup>

Witnesses at three of the Rules Subcommittee hearings in 2003 unanimously endorsed the existence of a House committee with legislative and oversight jurisdiction over DHS and the policy area of homeland security, although there were variations in specific recommendations in these witnesses' testimony and responses to subcommittee members' questions. These public witnesses—academic experts on Congress, former Speakers Foley and Gingrich, former Members Robert Walker and Lee Hamilton, and former Departments of Defense and Energy Secretary James Schlesinger—testified on the importance and uniqueness of homeland security in explaining their support for a separate legislative committee. The then-House parliamentarian also testified on May 19, 2003, providing a context for previous House committee reorganizations and attempted reorganizations.

Witnesses at the Rules Subcommittee's fourth hearing on March 24, 2004, and at a hearing held by another subcommittee, the Subcommittee on Technology and the House, on June 16-17, 2004,<sup>21</sup> comprised almost exclusively chairs and ranking members of House committees. The

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<sup>19</sup> H.Res. 5, §4(b)(3).

<sup>20</sup> House Select Committee on Homeland Security, Subcommittee on Rules, *Perspectives on House Reform: Lessons from the Past*, hearings, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., May 19, 2003 (Washington: GPO, 2004); *Perspectives on House Reform: Committees and the Executive Branch*, hearings, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., July 10, 2003 (Washington: GPO, 2004); *Perspectives on House Reform: Former House Leaders*, hearings, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., September 9, 2003 (Washington: GPO, 2004); and *Homeland Security Jurisdiction: The Perspective of Committee Leaders*, hearings, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 24, 2004 (Washington: GPO, 2004).

<sup>21</sup> A subcommittee of the House Rules Committee. House Rules Committee, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, hearings, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 16-17, 2004 (unprinted) (available online at [http://www.house.gov/rules/108\\_hear\\_ruleX.htm](http://www.house.gov/rules/108_hear_ruleX.htm), visited December 10, 2004).

Members made a variety of suggestions regarding creation of a House committee on homeland security with legislative and oversight jurisdiction, and raised a number of issues to be considered by the House in deciding whether to create a committee and what kind of committee to create, including the impact on existing committees.

The remainder of this section categorizes key considerations developed in the four Rules Subcommittee hearings, and synthesizes the testimony from witnesses at those hearings. Committee chairs and ranking members who testified at the hearing held by the Subcommittee on Technology and the House presented similar considerations. Cross references to the hearing of the Subcommittee on Technology and the House are provided in the footnotes in the balance of this section.<sup>22</sup>

Most quotations in this section are from oral testimony at the Rules Subcommittee hearings. In those instances where an excerpt from a prepared statement is used, that is noted.

### *Importance of Homeland Security*

In his oral and written statements, former Speaker Gingrich explained the depth and breadth of the terrorist threat and the potential loss of life that could result from some forms of terrorist attack.<sup>23</sup> In his prepared statement, Speaker Gingrich introduced this explanation by stating:

The risk of potentially losing millions of Americans and even having the very fabric of our society torn apart is why there is no issue or problem for which Congress must organize and allocate time and resources which is more important than creating an effective system of Homeland Security.<sup>24</sup>

Former Secretary Schlesinger also addressed the threat of terrorist attacks to American democracy and society.<sup>25</sup> Witnesses such as Donald Wolfensberger<sup>26</sup> testified on the duration and seriousness of the terrorist threat as reasons for a “concentrated effort by both the executive and Congress.”<sup>27</sup>

Aviation Subcommittee<sup>28</sup> Chairman Mica explained the congressional environment:

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<sup>22</sup> For a range of information on committee organization (e.g., options for House committee organization and testimony by Members), see U.S. Senate, Joint Committee on the Organization of Congress, *Background Materials: Supplemental Information Provided to Members of the Joint Committee on the Organization of Congress*, Senate print 103-55, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1993).

<sup>23</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, pp. 9-16.

<sup>24</sup> *Ibid.*, p. 13.

<sup>25</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, pp. 21, 23. For additional perspectives on the importance of homeland security, see Select Committee on Homeland Security, *Freedom Defended: Implementing America's Strategy for Homeland Security*, committee white paper, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: Select Committee on Homeland Security, October 5, 2004), available online at [http://hsc.house.gov/files/freedom\\_defended.pdf](http://hsc.house.gov/files/freedom_defended.pdf), visited December 10, 2004; and Rep. Jim Turner, *Winning the War on Terror* (Washington: Select Committee on Homeland Security/Democratic Office, April 27, 2004), available online at [http://www.house.gov/hsc/democrats/issues\\_winning\\_war\\_terror.shtml](http://www.house.gov/hsc/democrats/issues_winning_war_terror.shtml), visited December 10, 2004).

<sup>26</sup> Mr. Wolfensberger was formerly chief of staff of the House Committee on Rules. He serves as director of the Congress Project at the Woodrow Wilson Center for International Scholars.

<sup>27</sup> *Ibid.*, pp. 32-33, 35.

<sup>28</sup> A subcommittee of the Transportation and Infrastructure Committee.

The problem has never been a lack of focus or interest by the standing committees. Rather, the missing ingredient was a national consensus that terrorism should be a top priority. Congress as a whole reflected the national will and has been unable to make the tough choices terrorism required. And that, we know, is a part of our history, unfortunately, today.

9/11 changed that, and within days or a few weeks the standing committees had legislation ready.<sup>29</sup>

### *Future Development of the Department of Homeland Security*

Witnesses testified on the importance of the new Department of Homeland Security developing organizationally so that it could successfully carry out its mission. This point was often coupled with a witness's perspective on whether a single House homeland security committee was needed. For example, at the Rules Subcommittee's July 10 hearing, former Secretary Schlesinger was asked to summarize the points he had made on why it was important for the House to have a permanent committee on homeland security:

It is quite simple: It means that you will not be helping this new department to become more unified on the mission of homeland security, that the agencies that go into that department will continue more than is necessary to focus on their historic function, and it will tend to preserve the existing cultures of those agencies.

And on the other hand, all of us have a responsibility for homeland security. Any failure on the part of the United States to bring these agencies into an effective whole [is] going to be noticed and exploited by those who wish the country harm.<sup>30</sup>

Secretary Schlesinger<sup>31</sup> and congressional scholar Norman Ornstein testified that fragmentation of committee jurisdiction over homeland security harmed development of the department. Dr. Ornstein suggested a cause and effect relationship:

The problem with fragmentation otherwise is, once again, just exactly what we had before we ended up with a Department of Homeland Security, which is all these other committees have a longtime interest in their own cultures built around the old functions of these agencies, and they are going to use their resources and their pressure to push those functions, which are appropriate functions. But if we don't have a counterweight to make sure that the Homeland Security culture takes over, then they are going to have even greater problems inside the Department making things work.<sup>32</sup>

Government Reform Committee Chairman Tom Davis testified on the importance of Congress's work related to DHS:

Because the success of the Department is vital to the continuing economic recovery and winning the war on terrorism, we all want it to succeed. Congress must provide the Department with the proper resources while at the same time maintaining aggressive oversight to ensure that this massive reorganization and commitment of resources succeeds.<sup>33</sup>

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<sup>29</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, p. 77.

<sup>30</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 18.

<sup>31</sup> *Ibid.*, p. 24.

<sup>32</sup> *Hearing on Perspectives on House Reform: Lessons from the Past*, May 19, 2003, p. 40.

<sup>33</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, p. 64.

## *Conduct of Oversight*

Public witnesses regularly mentioned the number of committees and subcommittees with legislative and oversight jurisdiction over DHS and the policy area of homeland security as a challenge to the development of a coherent homeland security policy. The chairs and ranking members drew on their experience in Congress to speak favorably about the work that had been done on homeland security by the existing committees.

Former Secretary Schlesinger, drawing on his time as the secretary of the then-new Department of Energy as well as his time as the top official in other government agencies, pointed out the problems of duplication by House committees while acknowledging the proper role of oversight.<sup>34</sup> Former Speaker Foley pointed out the inclination of committees and subcommittees to use the dispersed jurisdiction they have when focused oversight is what the new department needs.<sup>35</sup> Former Representative Lee Hamilton addressed the blurring of priorities that occurs with many committees engaged in oversight.<sup>36</sup> Former Representative Robert Walker discussed one committee's priorities pushing aside another committee's.<sup>37</sup>

A number of committee chairs and ranking members addressed the effectiveness of oversight under the current House committee system. Ranking Member Dingell of the Energy and Commerce Committee indicated that his experience with committees sharing oversight from their individual perspectives was positive and that agreements were able to be worked out when several committees had jurisdiction over a piece of legislation. He also expressed his concern over having a single committee conduct oversight over DHS, where the relationship might become comfortable rather than disinterested.<sup>38</sup>

Judiciary Committee Chairman Sensenbrenner testified that agencies report to more than one committee and function effectively.<sup>39</sup> Like Representative Dingell, Ranking Member Waxman of the Government Reform Committee expressed the view that oversight by multiple committees with different perspectives is effective.<sup>40</sup>

## *Department's Time*

Public witnesses also expressed their concern with the amount of time that DHS officials might spend in responding to hearings and requests from the numerous committees and subcommittees with jurisdiction over the department and the policy area of homeland security. Some committee chairs and ranking members addressed this concern in different ways.

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<sup>34</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 13, 14, 24.

<sup>35</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, pp.7-8, 17. Mr. Foley's Speakership included the 102<sup>nd</sup> and 103<sup>rd</sup> Congresses, during which the Joint Committee on the Organization of Congress was created and worked.

<sup>36</sup> *Ibid.*, pp. 41, 43. Mr. Hamilton was co-chair of the Joint Committee on the Organization of Congress in the 102<sup>nd</sup> and 103<sup>rd</sup> Congresses.

<sup>37</sup> *Ibid.*, p. 45.

<sup>38</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, pp. 49-50, 53-54.

<sup>39</sup> *Ibid.*, pp. 95, 110.

<sup>40</sup> *Ibid.*, p. 73.

Former Secretary Schlesinger reported spending half of his time as secretary of energy on Capitol Hill, “dealing with one problem or another.” He indicated the number of committees and subcommittees with jurisdiction over DHS would be a burden to a new department, and that staffs of those committees would add to the department’s workload by requesting individual briefings.<sup>41</sup> Congressional scholar James Thurber commented on the lack of effectiveness for both Members and departmental officials in having multiple hearings scheduled at the same time.<sup>42</sup> Former Representative Hamilton noted: “Congress can make a significant contribution to the implementation of the Department of Homeland Security simply by simplifying these overlapping committee structures.”<sup>43</sup>

Representative Dingell drew on his experience as a Member during the energy shortages of the 1970s to present another perspective:

I went through the energy crisis, in the 1970s, and I have gone through a number of other problems of similar character, and I never found that there was anything other than benefit to be achieved by having a large number of committees viewing these questions from the standpoint of their own experience and expertise. And I would say that this happened very much during the time of the 1970s when the Energy Administrator or the chairmen of the regulatory bodies or later the head of the Department of Energy would come up to report to different committees about how they were conducting their business.<sup>44</sup>

### *Executive-Legislative Balance*

Several public witnesses discussed a standing homeland security committee in terms of Congress being able to perform its legislative and oversight role effectively following the reorganization of the executive branch to create DHS. For example, congressional scholar David King testified:

[N]ow it is a fact that we have [DHS], and it is a fact that there is now a tremendous imbalance between the executive branch and the legislative branch. And the Congress must catch up.

I am afraid that some of the people who will oppose the single standing committee of jurisdiction here are still in their minds back in the days before there was a Department of Homeland Security, trying to keep those clientalistic relationships that existed before. The fragmentation is tremendously debilitating. And Congress, as an institution must step up to the plate....

And far too many [M]embers of Congress, and certainly people in the executive branch, forget that Article I is about Congress, the most important branch as far as I am concerned, in the government. And it needs to be on equal footing with the Department of Homeland Security through a single permanent committee.<sup>45</sup>

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<sup>41</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, pp. 9, 11, 12.

<sup>42</sup> *Ibid.*, p. 45.

<sup>43</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, pp. 41, 43.

<sup>44</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, p. 49.

<sup>45</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 45.

Energy and Commerce Committee Chairman Barton explained a different perspective on committee organization that was also expressed by several other committee chairs and ranking members:

Health and Human Services, whose Cabinet Secretary has already testified before my committee on budget priorities and policy issues, also is subject to the Budget Committee, the Ways and Means Committee, obviously the Appropriations Committee, the Government Reform Committee. So they are going to multiple committees. The Environmental Protection Agency, which is one of the major agencies that we have jurisdiction over, they also have to report to the Transportation Committee, again the Appropriations Committee, [Agriculture] Committee, the Government Reform Committee, and the Science Committee. [The] Department of Energy, in addition to being responsible to the Energy and Commerce Committee[,] has issues for Armed Services, Government Reform, Science, [Appropriations], Resources. So most of the Cabinet agencies do report to multiple congressional committees, and I don't see why Homeland Security should be any different, especially if we are doing our job.<sup>46</sup>

### *Committee Overlap vs. Committee Expertise*

In indicating his support for a new homeland security committee, former Speaker Foley expressed a view that was made by the public witnesses:

I think there is the problem that otherwise [than having a new committee], with this diverse universe of subcommittees and committees, 13 committees, 88 subcommittees, a majority of the committees of the House, a majority of the subcommittees of the House, I am told almost rather clear the majority of the Members of the House have some connection with one of these subcommittees or committees that would otherwise have jurisdiction. So there is not only a need to bring some focus and scope to the oversight function, but there is a critical need to avoid the [distraction] of members of this new Department from having to respond day by day to dozens and dozens of different requests for testimony, and that is predictable.<sup>47</sup>

Former Representative Walker provided an example from his experience as a member and chair of the Science Committee, where jurisdiction over the energy policy area was shared with the Energy and Commerce Committee. He stated: "Those jurisdictional arguments often ended up with a nonaction in that area..."<sup>48</sup> Former Secretary Schlesinger commented: "My problem is that there is so much duplication when a senior official comes to Capitol Hill and has to deal with five, six or eight committees. That does not help the House. That does not help the process."<sup>49</sup>

In contrast, Agriculture Chairman Goodlatte and Ranking Member Stenholm asked how such a large department as Homeland Security, with such a diverse portfolio in support of its mission, could be overseen by one committee. They stated that the Agriculture Committee was concerned

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<sup>46</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, p. 54.

<sup>47</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 7. See also the testimony of Select Committee on Homeland Security Chairman Cox, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 16, 2004.

<sup>48</sup> *Ibid.*, p. 45.

<sup>49</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 13. Select Committee Chairman Cox noted during the hearings a coordination role for DHS testimony played by the select committee: *Hearing on Perspectives on House Reform: Lessons from the Past*, May 19, 2003, p. 48; and *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 30.

with “both intentional and unintentional threats” to U.S. agriculture, and provided an example of oversight in working with DHS to overturn a decision to eliminate agricultural inspectors and assign their duties to Customs and Border Protection officers, who would lack needed expertise to protect against agricultural threats.<sup>50</sup> Aviation Subcommittee Chairman Mica and Transportation and Infrastructure Committee Ranking Member Oberstar discussed the importance of the expertise resident in their committee in policymaking. For example, Representative Mica stated:

It should be no surprise that a thorough understanding of the aviation system is required to produce effective aviation security legislation. The aviation system is based on a careful balance of highly complex regulations, procedures, infrastructure, engineering. And this system in fact has produced the world’s safest aviation industry. Preserving that balance is impossible without the expertise that comes from working on these issues for years.<sup>51</sup>

### ***Competing Interests***

Congressional scholar Norman Ornstein<sup>52</sup> and former Representative Hamilton supported their recommendations for a homeland security committee by pointing out the need for congressional leadership in helping a culture of homeland security to take root in the new department. Representative Hamilton’s prepared statement explained:

DHS was created so that 22 agencies of the Federal Government would reorient their purpose and organization towards the mission of protecting the homeland. DHS is intended to embody a common mission and culture—indeed, the vital goal of implementation is to overcome bureaucratic resistance to forging that common culture.<sup>53</sup>

Former Secretary Schlesinger also discussed cultural change inside the department in stating his support for a homeland security committee:

We talk about the cultural problems of bringing together agencies that have had a disparate past and integrating them into a new department. There are the cultural problems up here on the Hill of these different standing committees that have their traditions and their powers. And unless we effectively deal with that, the components of the department will not be able to focus on the newer problems of homeland security[;] those components will continue to respond to the older standing committees and their interests.<sup>54</sup>

In their testimony, committee chairs and ranking members identified their concerns with changes to the committee system that might sever components of existing jurisdiction. For example, Judiciary Committee Chairman Sensenbrenner discussed law enforcement and civil liberties as related policy concerns in his committee:

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<sup>50</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, pp. 30, 32, 35, 36-37, 38, 41. See also the testimony of Chairman Goodlatte and Ranking Member Stenholm, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 17, 2004.

<sup>51</sup> *Ibid.*, pp. 76, 80-81, 82-83. See also the testimony of Transportation and Infrastructure Committee Ranking Member Oberstar, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 17, 2004.

<sup>52</sup> *Hearing on Perspectives on House Reform: Lessons from the Past*, May 19, 2003, p. 40.

<sup>53</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 43. See also the testimony of Select Committee on Homeland Security Ranking Member Jim Turner, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 16, 2004.

<sup>54</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 17.



There is more to law enforcement and training than just security. There is an important balancing to be done between security and civil liberties. It is dangerous to put that balancing task in a committee, the primary focus of which is security. I fear that civil liberties interest will be sacrificed.<sup>55</sup>

With regard to the committee's jurisdiction over immigration, Chairman Sensenbrenner pointed out that immigration is within the jurisdiction of four departments, and stated:

Although countering the terrorist threat is of significant importance in implementing our immigration laws, it is certainly not the only issue. Rather, immigration involves much more than homeland security[:] reuniting families, providing needed workers for American businesses, offering havens to refugees, and deporting those aliens who have broken our laws.<sup>56</sup>

Ways and Means Committee Chairman Bill Thomas discussed the conflict between security and commerce:

What has occurred in terms of the coordination of activities at the border I think was overdue, and it probably took a crisis such as this to require the rethinking and the integration of those border duties.

I just have to tell you that the period in which we have negotiated with the homeland security structure has been one that I fully anticipated. That is, when your primary title is security, you make decisions differently than beings who are in the process of attempting to facilitate commercial intercourse and have been doing it for several hundred years. The question of whether or not a potential threat to, say, a port or an airport would require it to be shut down oftentimes is on the teeter-totter between public security and freedom. Those people who have security in their title hastily move to make sure that the place is secure.<sup>57</sup>

### *The Committees' Records*

Several committee chairs and ranking members discussed the records of their committees in holding hearings and reporting legislation related to homeland security. For example, Energy and Commerce Committee Chairman Barton submitted a list of "homeland security accomplishments" with his prepared statement. In oral testimony, he gave examples of the committee's work, for example:

The Energy and Commerce Committee has jurisdiction for security at commercial nuclear power plants. Everybody, regardless of where your committee is, agrees that securing these facilities from a terrorist attack or any kind of attack is a very good idea. The conference report on H.R. 6, the comprehensive energy bill, contains very strong new requirements in that respect. These requirements were developed in our committee on a bipartisan basis.<sup>58</sup>

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<sup>55</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, p. 94, 108.

<sup>56</sup> *Ibid.*, p. 94, 103. See also the testimony of Chairman Sensenbrenner, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 17, 2004.

<sup>57</sup> *Ibid.*, p. 114. See also the testimony of Chairman Thomas, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 16, 2004, and the testimony of Transportation and Infrastructure Committee Chairman Don Young, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 17, 2004.

<sup>58</sup> *Ibid.*, p. 45, 46-47.

Representative Mica, chairman of the Aviation Subcommittee, provided the Rules Subcommittee with a statement by Transportation and Infrastructure Committee Chairman Young, which listed that committee's counterterrorism and homeland security legislation beginning in 1989. Representative Mica testified:

Back in 1990, we mandated background checks for aviation personnel, began deploying bomb detection devices at our [airports]; we built FEMA, which helped New York and Washington respond to 9/11 and much of the rest of the country. We created TSA, fortified cockpit doors, armed pilots, put marshals back in the sky, developed a whole host of comprehensive approaches not only to aviation, but also to transportation security. We established the aviation industry, passed the Maritime Security Act, and created port security grants.<sup>59</sup>

Government Reform Committee Chairman Davis stated his committee "maintain[ed] an aggressive posture when it comes to overseeing DHS." He testified:

For example, the committee held oversight hearings on topics related to FEMA, TSA, first responders, critical infrastructure, visa policy, preparedness standards, DHS financial accountability, border management, port security and product litigation management, to name just a few. We held markups on Project BioShield, the Presidential Vacancy Act and the DHS Financial Accountability Act.<sup>60</sup>

In his opening remarks at the same hearing, Rules Subcommittee member Representative Curt Weldon listed three examples of homeland security legislation that seemed to be stalled at the committee stage after being referred to several committees.<sup>61</sup> Later in the hearing, select committee Chairman Cox, sitting as a member of the subcommittee, observed that there was little overlap in the work of the select committee and that of Energy and Commerce Committee, on which he also served.<sup>62</sup>

### ***What Is Homeland Security?***

Several witnesses made statements that suggested definitions of *homeland security*, speaking either specifically of DHS or broadly of the policy area.

Former Secretary Schlesinger responded as follows to a question about a mission for the department that might be selected from a continuum of possibilities:

Well, I think the department has, in the President's message [on a national strategy], indicated that what we must do is to anticipate through intelligence possible attacks on the United States, to respond to such attacks as quickly as we can and to mitigate the consequences of those attacks. And that is why we have responded. It is at the one pole [of the continuum] that you mentioned at the outset, which was, you know, to inform local governments.

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<sup>59</sup> Ibid., p. 77, 79.

<sup>60</sup> Ibid., p. 64-65.

<sup>61</sup> Ibid., p. 8.

<sup>62</sup> Ibid., p. 62.

Those local governments will need help, and only the United States, the Federal Government, can provide that help.

If we have nuclear detonation in some place in the United States, the local authorities will be overwhelmed, and we must have an entity that has thought through that problem and will bring to bear the resources of the Federal Government to help those local governments. It is not just warning.<sup>63</sup>

In a later hearing, former Speaker Gingrich responded to a question about the role of the department:

It is, first, intelligence and prevention. I think you put your finger on the key part: Can we block something bad from happening defensively inside our own country? Second, ensuring that the capability exists for response, recovery, and rehabilitation; setting the standards and monitoring to make sure that those capabilities exist. But it is, third, whenever possible, contracting out and coordinating those capabilities. For example, the Northern Command in the Department of Defense is a significant piece of this. The National Guard component of that is a significant piece. Health and Human Services and the Centers for Disease Control and the Public Health Service have a significant piece of this. The U.S. Department of Agriculture in terms of its food inspection.... And then, finally, the cities and States who are going to have an ongoing everyday first responder....<sup>64</sup>

Later in the same hearing, Speaker Gingrich responded to a question on committee organization:

...I think the jurisdiction issue is actually fairly easy in principle. The principle ought to be that this is a mission-driven jurisdiction; that is, when there are questions of activities that are uniquely homeland security, protection, response, recovery, rehabilitation, this committee ought to have either sole or lead jurisdiction. But it ought to have the right to claim concurrent jurisdiction over problems as they impinge on homeland security. And the reason I say that is, this year the problem may be an issue of how do you change spectrum, the next year the issue may be one dealing with agriculture. We can't tell in advance where the intelligence trail and where the threat is going to take us.<sup>65</sup>

Sitting as an ex officio member of the Rules Subcommittee, Select Committee on Homeland Security Chairman Cox expressed his concern over keeping DHS focused on its mission, which he summarized as follows: "First, to protect; second, to prevent; and third, to respond. Those three must, it seems to me, define the Department and thus the jurisdiction of any committee that oversees it to the exclusion of all else."<sup>66</sup>

### *Options Suggested*

Witnesses suggested a number of options for a new committee on homeland security. Some witnesses opposed some possible jurisdictional arrangements for such a committee.

*Homeland Security Committee Built Incrementally.* Congressional scholars Ornstein and Thomas Mann testified jointly. They suggested moving "gradually," or "incrementally," and

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<sup>63</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 19.

<sup>64</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 21.

<sup>65</sup> *Ibid.*, p. 29.

<sup>66</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, p. 23.

“strategically” in creating a permanent standing committee with “several areas of jurisdiction.” They warned that a new committee “with substantial jurisdiction that takes away from other committees at once” would “fail.” In addition, there would need to be coordination and shared jurisdiction since there were non-homeland security functions included in DHS and functions that were closely related to homeland security outside of the department. They suggested “creative use of the referral process,” including in the designation of “lead actors” for important legislation, and the Speaker’s involvement in creating a “process of prioritizing” requests for the testimony of executive officials.<sup>67</sup>

Dr. Ornstein added that Members would want to retain assignments in addition to service on a new committee “and we will end up with bigger institutional problems.”<sup>68</sup>

Former Secretary Schlesinger recommended consolidating committee jurisdiction over DHS as helpful to the new department, commenting favorably on creating a standing committee.<sup>69</sup> He also called it “useful” to give the committee both oversight and legislative authority.<sup>70</sup>

*No Homeland Security Committee.* In response to a question regarding possible “benefits” to *not* having a homeland security committee, Dr. Mann responded:

I think there are arguments. One of them is that the House since 1974 has figured out a way to live with and cope with jurisdictional sprawl, that the leadership working through the Parliamentarian’s office has developed strategies of joint and sequential referral, of special rules, of scheduling, in ways that allow them, the leadership, to pull the expertise from various committees and subcommittees together in coherent pieces of legislation. In doing so, you don’t disrupt existing patterns of expertise, of historical memory, of staffing, that you retain some capacity for alternative perspectives on similar problems, that you set up some competition between teams of members who might see things differently. All those are advantages in letting the current system go forward as it is.<sup>71</sup>

*Transfer Jurisdiction over DHS to Homeland Security Committee.* Dr. Thurber was specific in his recommendation to create a permanent standing committee on homeland security in House Rule X, with “jurisdiction directly related to the agencies of DHS and generally to the mission of reducing the threat [to] homeland security.” He noted that there are agencies outside of DHS that deal with homeland security, that the new committee needed an “oversight and coordination relationship” with those activities, and that coordination would be needed with other committees in order to develop a “comprehensive policy making approach to homeland security.” Dr. Thurber favored “shared [committee] jurisdiction with primary and secondary responsibilities for the functions of the entities in DHS” that are not related to homeland security. He recommended the jurisdictions of other committees over DHS agencies be transferred to the new committee. Finally, Dr. Thurber recommended that the membership of the new committee include members

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<sup>67</sup> *Hearing on Perspectives on House Reform: Lessons from the Past*, May 19, 2003, pp. 29, 33, 36-37. In a later hearing, former Speaker Foley began his testimony by endorsing Dr. Mann’s and Dr. Ornstein’s testimony, *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 7.

<sup>68</sup> *Ibid.*, p. 42.

<sup>69</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 13.

<sup>70</sup> *Ibid.*, p. 24.

<sup>71</sup> *Hearing on Perspectives on House Reform: Lessons from the Past*, May 19, 2003, p. 42.

from committees losing jurisdiction in order to bring to the new committee “knowledge, expertise, institutional history,” and that there be “transition rules” to facilitate this service.<sup>72</sup>

Mr. Wolfensberger also favored creation of a permanent standing committee on homeland security similar to that described by Dr. Thurber. Mr. Wolfensberger added that the committee should be a “major committee for assignment purposes, if not an exclusive committee.” He stated that the new committee should work closely with the leadership in “coordinating its oversight activities with that of other committees,” with oversight agendas “superintended by the bipartisan leadership.”<sup>73</sup> Finally, he suggested coupling the creation of a new homeland security committee with an increase in committee chairs’ term limits to four consecutive terms from three consecutive terms. The increase would serve as an incentive to support change as well as allow more time for a chair to build expertise.<sup>74</sup>

Both former Representative Walker and former Representative Hamilton also favored creation of a permanent standing committee on homeland security. Mr. Walker addressed the need to get rid of “silos” in order to make policy decisions on homeland security issues in support of a “common goal.” Mr. Hamilton spoke of the value of informed congressional oversight based on “acquired expertise.”<sup>75</sup>

A number of committee leaders expressed reservations about or opposition to the transfer of jurisdiction from committees with long expertise and with perspectives in addition to that of counter-terrorism security. Agriculture Committee Chairman Goodlatte urged the Rules Subcommittee to be “cautious in considering [jurisdictional] changes,” citing his committee’s expertise in agriculture compared to the breadth of expertise that a single committee would need to cumulate to oversee DHS’s wide and varied scope of responsibilities.<sup>76</sup> Energy and Commerce Committee Chairman Barton pointed out the difficulty of distinguishing the relationship of his committee’s jurisdiction to homeland security from the homeland security jurisdiction of a new committee, explaining that the “consequences” of terrorist attacks or of other actions or events may be the same.<sup>77</sup> Aviation Subcommittee Chairman Mica and Transportation and Infrastructure Committee Ranking Member Oberstar explained the expertise that existed in standing committees and that was needed to legislate on homeland security within complex systems such as aviation or emergency management.<sup>78</sup>

Judiciary Committee Chairman Sensenbrenner, as mentioned above, explained the balance within law enforcement and immigration between security and civil liberties in the case of law enforcement and between security and the several purposes of immigration in the case of legal immigration. He stated the Judiciary Committee should retain its jurisdiction, should the House create a homeland security committee, since the Judiciary Committee had “experience and expertise” and had demonstrated a “unified, balanced approach” to the work within its

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<sup>72</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, pp. 26-28, 29-30.

<sup>73</sup> *Ibid.*, pp. 33, 35-36.

<sup>74</sup> *Ibid.*, p. 42.

<sup>75</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, pp. 37, 39, 40-41, 42-44.

<sup>76</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, p. 32.

<sup>77</sup> *Ibid.*, p. 45.

<sup>78</sup> *Ibid.*, pp. 77, 81, 82-83. See also the statement of Transportation and Infrastructure Committee Chairman Don Young, pp. 77-79.

jurisdiction.<sup>79</sup> Ways and Means Committee Chairman Thomas explained that his committee's jurisdiction over customs functions is essential to U.S. international trade: "The point at which those [export and import] activities occur have to be allowed to go forward in a very smooth and efficient manner, with the full understanding of the concerns of security today different than previously..."<sup>80</sup>

*Split Transportation and Infrastructure Committee.* Mr. Wolfensberger suggested creating the new committee by splitting the existing Transportation and Infrastructure Committee, assigning about a third of its members to the new committee and adding members from the other committees that currently have jurisdiction over homeland security. The other members of the existing Transportation and Infrastructure Committee would be assigned to a new transportation committee. Mr. Wolfensberger made an analogy to the reorganization of the Appropriations Committees.<sup>81</sup>

*Assign Homeland Security to the Government Reform Committee.* Stating that a new homeland security committee would cause "new jurisdictional overlaps and conflicts," Government Reform Committee Chairman Tom Davis and Ranking Member Waxman proposed that the Government Reform Committee would "oversee the administration of the Department's headquarters and departmentwide policies as well as White House efforts to coordinate homeland security policy" and "current committees would continue to oversee their legacy agencies" that had been transferred to DHS. They made an analogy to the Senate Governmental Affairs Committee as it exercised jurisdiction over DHS in the 108<sup>th</sup> Congress.<sup>82</sup>

Chairman Davis noted that the Government Reform Committee has jurisdiction over "agency reorganization, human capital, IT security, Federal-State relations, procurement, and the management and efficiency of government organizations." He also noted that the committee had experience in working on legislation with other committees, that the proposal "strengthens the parallel structures of House-Senate relations," and that the arrangement ensured coordination among committees "when no other committee could naturally receive the primary referral" of "cross-agency proposals."<sup>83</sup>

In a statement submitted for the hearing record, Science Committee Chairman Boehlert suggested:

...giving primary legislative jurisdiction over each directorate of DHS to the appropriate standing Committee and having the Committee on Government Reform exercise its traditional jurisdiction across the agency.<sup>84</sup>

*Select Committee.* Congressional scholar David King recommended a permanent select committee on homeland security, with primary jurisdiction over homeland security generally and over DHS, and with jurisdiction over DHS agencies transferred from existing committees. In a

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<sup>79</sup> Ibid., pp. 92-95, 103-104, 108..

<sup>80</sup> Ibid., p. 117.

<sup>81</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 42.

<sup>82</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, pp. 65, 67, 68. See also the testimony of Chairman Tom Davis and Ranking Member Waxman, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 16, 2004.

<sup>83</sup> Ibid., pp. 65-66, 67.

<sup>84</sup> Ibid., p. 119.

departure from this recommendation of consolidation, he suggested transferring jurisdiction over the Coast Guard to the Armed Services Committee. Dr. King recommended that the Speaker direct the parliamentarian to draft a memorandum of understanding to govern “multiple referrals for homeland security issues,” and that, on referrals, the Speaker give “primary jurisdiction over homeland security” to the new committee and “secondary time-limited referrals” to other committees. Dr. King recommended that the new committee’s members be drawn from committees losing jurisdiction, with the distribution of committee seats specified; he added that seniority on the new committee should be “based on time served on the committees contributing their members.” Dr. King also recommended limiting the committee’s size.<sup>85</sup>

Intelligence Committee Chairman Goss pointed out the advantages of a permanent select committee on homeland security, specifically identifying the advantages of leadership selection of committee members.<sup>86</sup>

Ways and Means Committee Chairman Thomas made an analogy to the former Select Committee on Aging as a potential model, with a distinct focus, for an oversight committee on homeland security. He said such a homeland security committee would have the function “of coordination, of concern, of observation, of assistance.” He stated that a homeland security committee should not be vested with jurisdiction in a manner that would “interfere with a [committee] structure that has been successful through a number of other threats to our security....”<sup>87</sup>

**Ad Hoc Committees.** Several witnesses commented on the past use of ad hoc committees, including creation of the Select Committee on Homeland Security in the 107<sup>th</sup> Congress to report legislation establishing DHS.<sup>88</sup> Agriculture Committee Ranking Member Stenholm urged the Rules Subcommittee to “give more life” to the Speaker’s authority under House Rule XII to refer matters to ad hoc committees. He also suggested that the House work toward achievement of its rule of limiting each Member to two committee assignments.<sup>89</sup>

**Coordination.** A number of public witnesses and committee leaders addressed the need or the perceived need for coordination of legislation affecting DHS or of requests for hearings testimony by DHS officials. As mentioned above, former Secretary Schlesinger indicated the number of committees and subcommittees with jurisdiction over DHS would be a burden to the new department.<sup>90</sup> Congressional scholar James Thurber commented on the lack of effectiveness for both Members and departmental officials in having multiple hearings scheduled at the same time.<sup>91</sup> Former Representative Hamilton noted the contribution Congress could make to DHS’s implementation by simplifying its committee structures.<sup>92</sup>

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<sup>85</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, pp. 38-39, 40-41, 43.

<sup>86</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, pp. 19, 21. See also the testimony of Chairman Goss, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 17, 2004.

<sup>87</sup> *Ibid.*, pp. 115, 116.

<sup>88</sup> See, for example, the prepared statement of Thomas Mann and Norman Ornstein, *Hearing on Perspectives on House Reform: Lessons from the Past*, May 19, 2003, pp. 35-36.

<sup>89</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, pp. 35-36.

<sup>90</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, pp. 9, 11, 12.

<sup>91</sup> *Ibid.*, p. 45.

<sup>92</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 41.

Energy and Commerce Committee Chairman Barton observed that a response to the concern over numerous committees and subcommittees with jurisdiction over DHS would be coordination rather than the creation of a new committee. He suggested a liaison staff member in the Speaker's office as an option. He also suggested the possibility of extending the life of the Select Committee on Homeland Security for one more Congress.<sup>93</sup> Energy and Commerce Committee Ranking Member Dingell stated that the existing committees of jurisdiction could coordinate, as they have in the past, with the "assistance" of the House leadership. He also noted that House rules could be amended to assign specified homeland-security functions to the standing committees.<sup>94</sup>

Intelligence Ranking Member Harman explained the value of a permanent standing committee on homeland security as a "mechanism for coordinated review of terrorism" and as a means for effective oversight of DHS.<sup>95</sup> Aviation Subcommittee Chairman Mica noted that a homeland security committee could have a role in coordination over homeland-security activities of executive entities that were included in DHS and those outside DHS and in marshaling expertise in the House from among the committees of jurisdiction.<sup>96</sup>

*Budget Subcommittee on Homeland Security.* Speaker Gingrich recommended the creation of a homeland security subcommittee of the Budget Committee to ensure "adequate resources for Homeland Security before considering any other budgetary matters." He endorsed the creation of a permanent standing committee on homeland security, "with the right to claim concurrent jurisdiction over problems as they impinge on homeland security." Speaker Gingrich also recommended adoption of a resolution at the beginning of each Congress that "instructs the executive branch on who has to report where," and monitoring interactions by the House with DHS to prevent "diversions."<sup>97</sup>

*Homeland Security Subcommittees.* As mentioned earlier, six standing committees reorganized to create subcommittees with jurisdiction over homeland security. In his testimony, Energy and Commerce Committee Chairman Barton suggested that House rules might be changed to allow standing committees to create an additional subcommittee, to which a committee could assign jurisdiction over homeland security.<sup>98</sup>

## Select Committee's Recommendations for a Homeland Security Committee

On September 30, 2004, the Select Committee on Homeland Security transmitted its recommendations to the Rules Committee.<sup>99</sup> It recommended that a standing and therefore

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<sup>93</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, pp. 45-46, 53.

<sup>94</sup> *Ibid.*, p. 52, 60.

<sup>95</sup> *Ibid.*, pp. 16, 17-18.

<sup>96</sup> *Ibid.*, p. 91.

<sup>97</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, pp. 12, 16, 29.

<sup>98</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, pp. 56, 63. See also the testimony of Chairman Barton, Subcommittee on Technology and the House, *Rule X, The Organization of Committees*, June 17, 2004.

<sup>99</sup> A majority of members of the select committee signed a letter from Chairman Cox and Ranking Member Jim Turner (continued...)



permanent Committee on Homeland Security be established, with the addition of a new clause 12 to House Rule X.<sup>100</sup> Key aspects of the select committee's recommendations included:

- a standing committee is to be created, composed of not more than 29 members and not more than 16 from one party;
- the Speaker and minority leader to serve ex officio, without voting privileges;
- jurisdiction is to be granted over "homeland security generally" and over DHS, except, generally, for non-homeland security matters within the authority of the department;
- "exclusive authorizing and primary oversight jurisdiction" is to be granted with respect to the department's authorities related to the "prevention of, preparation for, and response to acts of terrorism within the United States";
- authorizations for the department to prevent, prepare for, or respond to acts of terrorism must precede appropriations; and
- referrals of legislation and other matters to the Select Committee on Homeland Security in the 108<sup>th</sup> Congress would not be considered precedent for referrals to the new committee.<sup>101</sup>

In addition to jurisdiction over homeland security generally and the department (numbered (1) and (2) in the proposed standing committee's jurisdiction), the select committee's recommendations enumerated eight other specific components of the proposed committee's jurisdiction:

(3) The integration, analysis, and sharing of homeland security information related to the risk of terrorism within the United States.

(4) The dissemination of terrorism threat warnings, advisories, and other homeland security-related communications to State and local governments, the private sector, and the public.

(5) Department of Homeland Security responsibility for research and development in support of homeland security, including technological applications of such research.

(6) Department of Homeland Security responsibility for security of United States borders and ports of entry, including the Department's responsibilities related to visas and other forms of permission to enter the United States.

(7) Enforcement of Federal immigration laws (except for responsibilities of the Department of Justice).

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(...continued)

transmitting the recommendations to the Rules Committee; the letter is available online at [http://hsc.house.gov/files/mini\\_report\\_sigs.pdf](http://hsc.house.gov/files/mini_report_sigs.pdf), visited December 10, 2004. There was not a committee meeting to consider the recommendations.

<sup>100</sup> House Select Committee on Homeland Security, *Recommendations of the Select Committee on Homeland Security on Changes to the Rules of the House of Representatives with Respect to Homeland Security Issues*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 30, 2004. The select committee also issued *Supplementary Materials* and *Summary of Activities of the Select Committee on Homeland Security*. (Available online at [http://hsc.house.gov/files/mini\\_report\\_sigs.pdf](http://hsc.house.gov/files/mini_report_sigs.pdf), visited December 10, 2004.) See also **Appendix A** for the text of select committee's recommendations.

<sup>101</sup> *Ibid.*, pp. 7-8.

- (8) Security of United States air, land, and maritime transportation systems.
- (9) Non-revenue aspects of customs enforcement.
- (10) Department of Homeland Security responsibility for Federal, state, and local level preparation to respond to acts of terrorism.<sup>102</sup>

These statements provided specificity to discussion in the House of what might constitute homeland security jurisdiction. The select committee observed in its report: “The Homeland Security Act of 2002 offers a congressionally-created road map to jurisdictional reform that focuses on the structure, organization, capabilities, and mission of the Department itself.”<sup>103</sup>

In addition, the recommendations included proposed changes to the Rule X jurisdictional statements of other committees to reduce or eliminate overlap of homeland security jurisdiction with the new committee. The committees that would be affected by the proposed changes were:

- Committee on Energy and Commerce, where there was an addition at the end of its jurisdictional statement: “In the case of each of the foregoing, the committee’s jurisdiction shall not include responsibilities of the Department of Homeland Security.”
- Committee on Financial Services, where there was an addition at the end of its jurisdictional statement: “In the case of each of the foregoing, the committee’s jurisdiction shall not include responsibilities of the Department of Homeland Security.”
- Committee on International Relations, where there was an addition at the end of its jurisdictional statement: “In the case of each of the foregoing, the committee’s jurisdiction shall not include responsibilities of the Department of Homeland Security.”
- Committee on the Judiciary, where its jurisdiction over immigration and naturalization was amended to contain an exception—“(except for Department of Homeland Security responsibility for security of United States borders and ports of entry, including the Department’s responsibilities for visas and other forms of permission to enter the United States, and immigration enforcement)”—and its jurisdiction over subversive activities was also amended to contain an exception—“(except for responsibilities of the Department of Homeland Security).”
- Committee on Transportation and Infrastructure, where its jurisdiction was amended at five points—
  - the non-homeland security-related missions of the Coast Guard remained within the jurisdiction of the committee,
  - federal management of natural disasters remained within the committee’s jurisdiction, although federal management of “emergencies” was not listed,

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<sup>102</sup> *Ibid.*, pp. 7-8.

<sup>103</sup> *Ibid.*, p. 2.

- jurisdiction over related transportation regulatory agencies was amended to contain an exception—“(except for responsibilities of the Department of Homeland Security),”
- jurisdiction over various forms of transportation and related matters was amended to contain an exception—“in each case exclusive of the responsibilities of the Department of Homeland Security,”
- jurisdiction over civil aviation was removed from the list of various forms of transportation, listed separately in a new subparagraph, and stated as follows—“Civil aviation, including safety and commercial impact of security measures.”
- Committee on Ways and Means, where the phrase “Revenue from” was added at the beginning of the jurisdictional statement “Customs, collection districts, and ports of entry and delivery.”

Finally, the membership of the Permanent Select Committee on Intelligence was proposed to include at least one member of the new Committee on Homeland Security; the membership of the Intelligence Committee already includes members of other committees.

In a news release announcing the issuance of the select committee’s recommendations, Chairman Cox stated:

We must give the new committee meaningful jurisdiction to legislate and to conduct congressional oversight of the Department of Homeland Security and related homeland security programs and activities. I think all of us would agree that it would be better to have no committee than a committee with jurisdictionally clipped wings, condemned never to take flight.

In the same news release, the ranking member of the select committee’s Rules Subcommittee, Representative Slaughter, stated:

Congress ordered the largest reorganization of government when it created the Department of Homeland Security. Now, Congress must act decisively and create a permanent standing committee to ensure that DHS becomes the agency that Congress envisioned. Anything less than that, and Congress will not be fulfilling its duty to the American people.<sup>104</sup>

These comments echoed the explanation the select committee gave for its recommendation:

The current diffused and unfocused congressional jurisdiction over the Department of Homeland Security, and homeland security in general, not only imposes extraordinary burdens on the Department, but makes it far more difficult for the Congress to guide the Department’s activities in a consistent and focused way that promotes integration and eliminates programmatic redundancies, and advances implementation of a coherent national homeland security strategy.<sup>105</sup>

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<sup>104</sup> House Select Committee on Homeland Security, “House Homeland Security Committee Recommends Reform of DHS Oversight,” news release, September 30, 2004. (Available online at <http://hsc.house.gov/release.cfm?id=257>, visited December 1, 2004.)

<sup>105</sup> *Recommendations of the Select Committee on Homeland Security on Changes to the Rules of the House of Representatives with Respect to Homeland Security Issues*, pp. 1-2.

## ***Subsequent Developments***

Following the release of the select committee's recommendations, Chairman Linder of the Rules Committee's Subcommittee on Technology and the House issued a "Dear Colleague" letter soliciting Members' "opinions on matters relating to homeland security and Rule X, including the formal recommendations of the Select Committee on Homeland Security."<sup>106</sup> In addition, following past practice near the end of a Congress, the Rules Committee solicited Members' proposals for House rules changes for the 109<sup>th</sup> Congress.<sup>107</sup>

The House also passed H.R. 10, the 9/11 Recommendations Implementation Act, containing a sense of the House provision:

It is the sense of the House of Representatives that the Committee on Rules should act upon the recommendations provided by the Select Committee on Homeland Security, and other committees of existing jurisdiction, regarding the jurisdiction over proposed legislation, messages, petitions, memorials and other matters relating to homeland security prior to or at the start of the 109<sup>th</sup> Congress.<sup>108</sup>

And, on November 16, 2004, following his renomination to the Speakership by the House Republican Conference, Speaker Hastert addressed the conference and said this about a House homeland security committee:

In the last Congress, we created a Select Committee on Homeland Security to help us coordinate our legislative response to the new Department of Homeland Security. This year, it is my intention that we make that Committee permanent.<sup>109</sup>

## ***Conclusion***

To this point, this report has recounted and synthesized actions in the 107<sup>th</sup> and 108<sup>th</sup> Congresses related to committee organization and the issue of homeland security. Key actions on committee organization in the 107<sup>th</sup> Congress were the creation of the Working Group on Terrorism and Homeland Security within the Permanent Select Committee on Intelligence and its elevation to a subcommittee, and the creation of the Select Committee on Homeland Security to mark up and report the bill establishing the Department of Homeland Security.

Key actions on committee organization in the 108<sup>th</sup> Congress were the creation of the Select Committee on Homeland Security, with jurisdiction over the Homeland Security Act and

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<sup>106</sup> Rep. Linder, Chair, Subcommittee on Technology and the House, Committee on Rules, Dear Colleague letter, October 4, 2004. See, for example, Judiciary Committee Chairman Sensenbrenner, letter to Chairman Linder, October 18, 2004; and "Hill Briefs: Homeland Security," *CongressDaily PM*, October 22, 2004.

<sup>107</sup> Rules Committee, "Proposed Rules Changes for the 109<sup>th</sup> Congress," special announcement, October 18, 2004 (available online at [http://www.house.gov/rules/108announce\\_109rulechngs.htm](http://www.house.gov/rules/108announce_109rulechngs.htm), visited December 10, 2004).

<sup>108</sup> Sec. 5027(b) of H.R. 10, passed by the House October 8, 2004. Subsequently, Congress passed and the President on December 17, 2004, signed into law S. 2845, P.L. 108-458, the Intelligence Reform and Terrorism Prevention Act of 2004. In addition, on October 7, 2004, Rep. Maloney introduced H.Res. 837, with five cosponsors, to create a standing Committee on Homeland Security, among other purposes; the measure was referred to the Committee on Rules.

<sup>109</sup> Speaker Hastert, "Speaker Hastert Wins Renomination to Fourth Consecutive Term," news release, November 16, 2004. (Available online at <http://speaker.house.gov/library/misc/041116term.shtml>, visited December 10, 2004). See also Select Committee on Homeland Security, "Speaker Hastert Endorses Homeland Security Committee," news release, November 16, 2004. (Available online at <http://hsc.house.gov/release.cfm?id=270>, visited December 10, 2004).

responsibility for a study of House rules, including Rule X, with respect to the issue of homeland security; hearings on committee organization held by a subcommittee of the select committee and, separately, by a subcommittee of the Rules Committee; recommendations from the select committee for a standing committee of the House on homeland security; and support voiced by the Speaker for a permanent homeland security committee in the 109<sup>th</sup> Congress.

The next two sections of this report distill the provisions of the Homeland Security Act of 2002 and the recommendations of four national commissions and two think tanks relevant to House committee organization and the issue of homeland security. The section on the Homeland Security Act focuses on the definitions of homeland security contained in the act. The section on commission and think tank recommendations captures the specific recommendations related to committee organization and the context in which the recommendations were made.

These two sections are followed by a brief history of committee reorganization related to departmental creation, bringing together this record in one place.

## What Is Homeland Security? The Homeland Security Act of 2002

As noted above, the Select Committee on Homeland Security stated in the report on its recommendations to the House: “The Homeland Security Act of 2002 offers a congressionally-created road map to jurisdictional reform that focuses on the structure, organization, capabilities, and mission of the Department itself.” Some of these directions are reflected in definitions of *homeland security* that appear in the Homeland Security Act as well as in the President’s national strategy, which served as a basis for the Homeland Security Act.

In the *National Strategy for Homeland Security* that President Bush issued in June 2002, the strategy contained the following:

Definition: Homeland security is a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.<sup>110</sup>

The Homeland Security Act of 2002, as enacted, contained three definitions of homeland security for three different purposes under the law. First, in the mission of DHS, Congress restated the definition from the President’s national strategy:

In general.—The primary mission of the Department is to—(A) prevent terrorist attacks within the United States; (B) reduce the vulnerability of the United States to terrorism; (C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States....<sup>111</sup>

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<sup>110</sup> Office of Homeland Security, Executive Office of the President, *National Strategy for Homeland Security*, June 2002. (Available online at, <http://www.whitehouse.gov/homeland/book/index.html>, visited September 21, 2004.) For a discussion of the evolution of the term *homeland security*, its relationship to the earlier term *civil defense*, and its contrast with the terms *national security* and *internal security*, see (name redacted), “Homeland Security and Information,” *Government Information Quarterly*, vol. 19, 2002, pp. 213-223.

<sup>111</sup> P.L. 107-296, §101; 116 Stat. 2135, 2142. In marking up H.R. 5005, the 107<sup>th</sup> Congress bill to create DHS, the (continued...)

Second, in establishing the Homeland Security Advanced Research Projects Agency, Congress defined *homeland security research* to explain the purpose of such research:

Homeland security research.—The term “homeland security research” means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.<sup>112</sup>

Third, in directing the President to include in his annual budget submission an analysis of homeland security spending, Congress provided the following definition for determining what activities and accounts to include in the analysis:

In this paragraph, consistent with the Office of Management and Budget’s June 2002 ‘Annual Report to Congress on Combatting Terrorism’, the term ‘homeland security’ refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.<sup>113</sup>

These definitions are explicit in stating that *homeland* refers to “within the United States.” A substantial part of homeland security—American military, intelligence, and diplomatic activities—relate to actions that occur outside of the United States.

## What Is Homeland Security? Commission and Think Tank Recommendations

As noted at the beginning of this report, the 9/11 commission and other commissions and think tanks recommended a reorganization of congressional committees, specifically recommending the creation of a homeland security committee in each chamber. These recommendations were not specific about key aspects of such committees, such as jurisdiction. However, each entity set out one or more principles that might guide House and Senate reorganization of its committees vis-à-vis the policy area of homeland security.

The commissions and think tanks made their recommendations on committee reorganization in the context of a larger set of recommendations for combating terrorism and securing the homeland. This context is helpful in understanding how these entities defined homeland security and how they arrived at a recommendation for committee reorganization.

This section examines the reports of four commissions and two think tanks. It analyzes the context for each entity’s recommendations for committee reorganization and provides the specific

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(...continued)

House Government Reform Committee approved an amendment in the nature of a substitute to H.R. 5005 that contained the following definition of homeland security: “The term ‘homeland security’ means the deterrence, detection, preemption, prevention, and defense against terrorism targeted at the territory, sovereignty, population, or infrastructure of the United States, including the management of the programs and policies necessary to respond to and recover from terrorist attacks within the United States.” Amendment in the nature of a substitute to H.R. 5005 offered by Chairman Burton, and approved by the House Committee on Government Reform June 12, 2002.

<sup>112</sup> P.L. 107-296, §307; 116 Stat. 2135, 2169.

<sup>113</sup> P.L. 107-296, §889; 116 Stat. 2135, 2251. The OMB report is available online at [http://www.whitehouse.gov/omb/legislative/combating\\_terrorism06-2002.pdf](http://www.whitehouse.gov/omb/legislative/combating_terrorism06-2002.pdf), visited December 10, 2004.

recommendation. Citations to additional studies related to committee reorganization are provided in the footnotes of this section.<sup>114</sup>

## 9/11 Commission Recommendations

Former New Jersey Governor Thomas Kean (R) chaired the 9/11 Commission; former Representative Lee Hamilton (D-IN) served as vice chair. The commission's official name was the National Commission on Terrorist Attacks Upon the United States. The 9/11 Commission reported to the President and Congress on July 22, 2004.<sup>115</sup>

### *Context*

In explaining the potential meaning and scope of *homeland security*, the 9/11 Commission summarized its proposed strategy as follows:

The present transnational danger is Islamist terrorism. What is needed is a broad political-military strategy that rests on a firm tripod of policies to

- attack terrorists and their organizations;
- prevent the continued growth of Islamist terrorism; and

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<sup>114</sup> Recommendations of the 9/11 Commission and other commissions and think tanks related to changes in Congress's oversight of intelligence are not discussed in this report, nor are recommendations related to policy options requiring congressional action. However, the excerpts from the reports provided in the appendices contain all analyses and recommendations related to *congressional organization*.

In addition, the commission and think tank reports summarized in this CRS report are representative of a large number of studies by various private, governmental, and congressional entities.

For example, see also recommendations by the Heritage Foundation on congressional committee reorganization: Michael Scardaville, "The New Congress Must Reform Its Committee Structure to Meet Homeland Security Needs," Heritage Foundation Background, November 12, 2002 (available online at <http://www.heritage.org/Research/HomelandDefense/bg1612.cfm>, visited December 10, 2004); James Jay Carafano and Paul Rosenzweig, "What the 9/11 Commission's Report Should Contain: Four Recommendations for Making America Safer," Heritage Foundation Background, July 13, 2004 (available online at <http://www.heritage.org/Research/HomelandDefense/bg1778.cfm>, visited December 10, 2004); James Jay Carafano, "Lack of Congressional Reform Leaves America Less Safe," Heritage Foundation Web Memo #579, September 30, 2004 (available online at <http://www.heritage.org/Research/HomelandDefense/wm579.cfm>, visited December 10, 2004); and James Jay Carafano, "Homework: Congress Needs To Return with a Better Plan to Reform Homeland Security Oversight" Heritage Foundation, Web Memo #587, October 14, 2004 (available online at <http://www.heritage.org/Research/HomelandDefense/wm587.cfm?renderforprint=1>, visited December 10, 2004).

For additional recommendations on policies and organization of the federal government, see also, for example, Office of the Undersecretary of Defense for Acquisition and Technology, *The Defense Science Board 1997 Summer Study Task Force on DOD Responses to Transnational Threats*, vol. I (Washington, October 1997) (available online at <http://www.acq.osd.mil/dsb/reports/trans.pdf>, visited December 10, 2004); and Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, *Joint Inquiry into Intelligence Community Activities before and after the Terrorist Attacks of September 11, 2001*, report, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 107-792 (Washington: GPO, December 2002) (available online at <http://www.gpoaccess.gov/serialset/creports/911.html>, visited December 10, 2004).

<sup>115</sup> Among the purposes spelled out in the law creating the commission, the commission was to "make a full and complete accounting of the circumstances surrounding the attacks of September 11, 2001," the source of the commission's popular name. See **Appendix B** for the citation in law to the commission's creation and for the full text of its analysis and recommendations related to congressional organization.

- protect against and prepare for terrorist attacks.<sup>116</sup>

The commission made numerous recommendations in the final two chapters of its report. It stated the purpose of these two chapters as follows:

The United States should consider *what to do*—the shape and objectives of a strategy. Americans should also consider *how to do it*—organizing their government in a different way.<sup>117</sup> (*Emphasis in original.*)

The commission’s recommendations related to congressional organization were made in the context of its recommendations for governmentwide organization. In introducing the chapter on “how to do it,” the commission summarized its recommendations for *government organization*:

The United States has the resources and the people. The government should combine them more effectively, achieving unity of effort. We offer five major recommendations to do that:

- unifying strategic intelligence and operational planning against Islamist terrorists across the foreign-domestic divide with a National Counterterrorism Center;
- unifying the intelligence community with a new National Intelligence Director;
- unifying the many participants in the counterterrorism effort and their knowledge in a network-based information-sharing system that transcends traditional governmental boundaries;
- unifying and strengthening congressional oversight to improve quality and accountability;
- strengthening the FBI and homeland defenders.<sup>118</sup>

### ***Recommendation***

With regard to intelligence, counterterrorism, and homeland security, the 9/11 Commission stated in its report to the President and Congress that congressional committee reorganization was critical to a “unity of effort” across the federal government. For intelligence oversight, it recommended a joint committee of the two houses of Congress, or a single committee in each chamber with authorizing and appropriating authority. With regard to homeland security, the commission stated:

The leaders of the Department of Homeland Security now appear before 88 committees and subcommittees of Congress.<sup>119</sup> One expert witness (not a member of the administration) told us that this is perhaps the single largest obstacle impeding the department’s successful development. The one attempt to consolidate such committee authority, the House Select Committee on Homeland Security, may be eliminated. The Senate does not have even this.

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<sup>116</sup> *The 9/11 Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 363.

<sup>117</sup> *Ibid.*, p. 361.

<sup>118</sup> *Ibid.*, pp. 399-400.

<sup>119</sup> For a discussion of the number of committees and subcommittees that could purportedly claim jurisdiction over homeland security, see *House Committee Jurisdiction over Entities and Functions Transferred to the Department of Homeland Security*, by (name redacted) and (name redacted), CRS congressional distribution memorandum, April 7, 2003, p. 2.



Congress needs to establish for the Department of Homeland Security the kind of clear authority and responsibility that exist to enable the Justice Department to deal with crime and the Defense Department to deal with threats to national security. Through not more than one authorizing committee and one appropriating subcommittee in each house, Congress should be able to ask the secretary of homeland security whether he or she has the resources to provide reasonable security against major terrorist acts within the United States and to hold the secretary accountable for the department's performance.

Recommendation: Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.<sup>120</sup>

## **Bremer Commission**

The Bremer Commission took its name from its chair, then-managing director of Kissinger Associates and former U.S. ambassador-at-large for counterterrorism L. Paul Bremer III. Its official name was the National Commission on Terrorism. The commission reported to the President and Congress on June 7, 2000.<sup>121</sup>

### *Context*

The commission's recommendation on congressional organization was part of a report that warned of an increasing and changing terrorist threat. The Bremer Commission focused its attention particularly on the intelligence and international components of counterterrorism and protection of the homeland, stating:

- International terrorism poses an increasingly dangerous and difficult threat to America.
- Countering the growing danger of the terrorist threat requires significantly stepping up U.S. efforts.
- Priority one is to prevent terrorist attacks. U.S. intelligence and law enforcement communities must use the full scope of their authority to collect intelligence regarding terrorist plans and methods.
- U.S. policies must firmly target all states that support terrorists.
- Private sources of financial and logistical support for terrorists must be subjected to the full force and sweep of U.S. and international laws.

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<sup>120</sup> *The 9/11 Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 421.

<sup>121</sup> See **Appendix C** for the citation in law to its creation and for the full text of its analysis and recommendations related to congressional organization.

- A terrorist attack involving a biological agent, deadly chemicals, or nuclear or radiological material, even if it succeeds only partially, could profoundly affect the entire nation. The government must do more to prepare for such an event.
- The President and Congress should reform the system for reviewing and funding departmental counterterrorism programs to ensure that the activities and programs of various agencies are part of a comprehensive plan.<sup>122</sup>

The report contained a series of recommendations related to laws, an unratified treaty, policies, and guidelines. In some instances the commission recommended ratification or implementation; in others it recommended change or repeal. These recommendations outlined specific actions that could help the U.S. government prevent terrorist acts, reduce their likelihood, and prepare for their possibility.

### ***Recommendation***

In its report to the President and Congress, the Bremer Commission recommended that Congress “should develop mechanisms for coordinated review of the President’s counterterrorism policy and budget, rather than having each of the many relevant committees moving in different directions without regard to the overall strategy.”<sup>123</sup>

## **Gilmore Commission**

The Gilmore Commission took its name from its chair, then-Virginia Governor James S. Gilmore III (R). Its official name was the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. The Gilmore Commission made five reports annually in December to the President and Congress, from December 1999 through December 2003.<sup>124</sup>

### ***Context***

The Gilmore Commission’s principal recommendation, which it examined in each of its five annual reports, was the promulgation of a national strategy to combat terrorism, “impelled by a stark realization that a terrorist attack on some level inside our borders is inevitable and the United States must be ready.”<sup>125</sup> In the commission’s view, a federal strategy would be a component of the national strategy.<sup>126</sup> And, by addressing its own organization, Congress would

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<sup>122</sup> National Commission on Terrorism, *Countering the Changing Threat of International Terrorism*, transmitted to the President and Congress June 7, 2000, pp. iv-v. (Available online at <http://www.gpo.gov/nct>, visited December 10, 2004.)

<sup>123</sup> *Ibid.*, p. 35.

<sup>124</sup> See **Appendix D** for the citation in law to its creation and for the full text of its analysis and recommendations related to congressional organization.

<sup>125</sup> Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *II. Toward a National Strategy for Combating Terrorism, Second Annual Report to the President and the Congress*, December 15, 2000, letter from the chairman. (Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.)

<sup>126</sup> *Ibid.* pp.3-5.

be able to address the national strategy for counterterrorism and homeland security in a “cohesive way.”<sup>127</sup> The Gilmore Commission made numerous other recommendations.

The Gilmore Commission chose to establish a strategic vision that in five years—by 2009—would describe “in both appearance and reality an acceptable level of awareness, prevention, preparedness, response, and recovery capabilities to cope with the uncertain and ambiguous threat of terrorism as part of dealing with all hazards.”<sup>128</sup> The commission called its strategic vision “America’s New Normalcy,” and stated that it presented a “carefully balanced approach to the difficult question of whether to place more or less emphasis on *reducing the terrorist threat* versus *lessening American vulnerabilities* to terrorist attacks.” (*Emphasis in original.*) The commission said the following about the strategic vision:

America’s New Normalcy in January of 2009 should reflect:

- Both the sustainment and further empowerment of individual freedoms in the context of measurable advances that secure the homeland.
- Consistent commitment of resources that improve the ability of all levels of government, the private sector, and our citizens to prevent terrorist attacks and, if warranted, to respond and recover effectively to the full range of threats faced by the nation.
- A standardized and effective process for sharing information and intelligence among all stakeholders—one built on moving actionable information to the broadest possible audience rapidly, and allowing for heightened security with minimal undesirable economic and societal consequences.
- Strong preparedness and readiness across State and local government and the private sector with corresponding processes that provide an enterprise-wide national capacity to plan, equip, train, and exercise against measurable standards.
- Clear definition about the roles, responsibilities, and acceptable uses of the military domestically—that strengthens the role of the National Guard and Federal Reserve Components for any domestic mission and ensures that America’s leaders will never be confronted with competing choices of using the military to respond to a domestic emergency versus the need to project our strength globally to defeat those who would seek to do us harm.
- Clear processes for engaging academia, business, all levels of government, and others in rapidly developing and implementing research, development, and standards across technology, public policy, and other areas needed to secure the homeland—a process that focuses efforts on real versus perceived needs.
- Well-understood and shared process, plans, and incentives for protecting the nation’s critical infrastructures of government and in the private sector—a unified approach to managing our risks.<sup>129</sup> (*Emphasis in original.*)

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<sup>127</sup> Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *IV. Implementing the National Strategy, Fourth Annual Report to the President and the Congress*, December 15, 2002, p. 50. (Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.)

<sup>128</sup> Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *V. Forging America’s New Normalcy: Securing Our Homeland, Preserving Our Liberty, Fifth Annual Report to the President and the Congress*, December 15, 2003, p. i. (Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.)

<sup>129</sup> *Ibid.*, p. iv.

The Gilmore Commission put its strategic vision in a context somewhat different from that of other commissions, perhaps reflecting the significant representation of state and local officials, including officials with first-responder duties. The commission emphasized that the strategic vision was “fully consistent with an all-hazards approach,” stating:

As our experience with SARS, West Nile Virus, monkeypox, the recent fires in California, and the current influenza epidemic have demonstrated vividly, we must be able to handle a wide variety of threats.<sup>130</sup>

In each of its reports the Gilmore Commission, among several commissions and other entities, addressed two additional major topics enmeshed in homeland security. The topics were “protecting civil liberties” and “empowering state and local government.” With regard to civil liberties, the commission’s report stated:

Rather than the traditional portrayal of security and civil liberties as competing values that must be weighed on opposite ends of a balance, these values should be recognized as mutually reinforcing. Under this framework, counterterrorism initiatives would be evaluated in terms of how well they preserve all of the unalienable rights that are essential to the strength and security of our nation: life, liberty, and the pursuit of happiness. While these fundamental rights are cited in our Declaration of Independence and imbedded in our Constitution, they should not be confused with privileges, which may be imposed upon to protect national security. However, even privileges should not be imposed upon lightly; they are fundamental to our quality of life. For example, the opportunity to fly may be viewed as a privilege rather than a right, but overly stringent and arbitrary security measures not only have an economic impact but could also increase public skepticism about security measures generally.<sup>131</sup>

Regarding the states and localities, the commission stated:

To achieve a truly national strategy, the Federal government must empower States and local governments by providing a clear definition of preparedness and a strategic plan and process to implement the objectives of a longer-term vision across the entire spectrum from awareness through recovery... Officials at the Federal level should lead the development of *an enterprise architecture* to institutionalize intelligence and information sharing, risk assessments, better integrated planning and training, and effective requirements generation in close coordination with State and local governments and the private sector. Only through true cooperation will we achieve some sustainable measure of preparedness for the uncertain threat of terrorism.<sup>132</sup> (*Emphasis in original.*)

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<sup>130</sup> Ibid., p. 3.

<sup>131</sup> Ibid., p. 4. Yet another entity that has recommended congressional committee reorganization, the Markle Foundation, put its recommendation in the context of “Oversight: Protecting Civil Liberties and Sustaining an Effective Homeland Security Mission,” in *Protecting America’s Freedom in the Information Age* (New York: The Markle Foundation, October 2002), pp. 75-77. (Available online at [http://swandive.securesites.net/resources/reports\\_and\\_publications/national\\_security/index.php](http://swandive.securesites.net/resources/reports_and_publications/national_security/index.php), visited December 10, 2004.)

<sup>132</sup> Ibid., p. 7. In a follow up report to the Hart-Rudman Commission (see next section), a task force of the Council on Foreign Relations recommended congressional committee reorganization in order to have one place in the House and Senate where emergency responder programs are authorized. *Emergency Responders: Drastically Underfunded, Dangerously Unprepared* (New York: Council on Foreign Relations, 2003), p. 19. (Available online at [http://www.cfr.org/pdf/Responders\\_TF.pdf](http://www.cfr.org/pdf/Responders_TF.pdf), visited December 10, 2004.)

## **Recommendation**

In the first two of its five annual reports, the Gilmore Commission recommended creating a committee in each chamber or a joint committee of the House and Senate that would have jurisdiction over counterterrorism and homeland security. It recommended that these committees comprise representatives of the principal authorizing committees and the Appropriations Committees, but that the new committees have their own expert staff. The commission explained the purpose of these committees:

First, it would constitute a forum for reviewing all aspects of a national strategy and supporting implementation plans for combating terrorism, developed and submitted by the National Office for Combating Terrorism. [The office was proposed earlier in the commission's second annual report.] As part of that process, the joint or each separate committee should develop a consolidated legislative plan, including authorizing language and corresponding budget and appropriations 'benchmarks' in response to the national strategy to combat terrorism and accompanying program and budget proposals.

Second, it would serve as the 'clearinghouse' for all legislative proposals for combating terrorism. For separate bills (unrelated to the omnibus package related to the strategy), the committee should have first referral of such legislation, prior to the referral to the appropriate standing committee.<sup>133</sup>

In its fourth report, the Gilmore Commission's recommendation evolved further:

Recommendation: That each House of the Congress establish a separate authorizing committee and related appropriation subcommittee with jurisdiction over Federal programs and authority for Combating Terrorism/Homeland Security.<sup>134</sup>

## **Hart-Rudman Commission**

The Hart-Rudman Commission took its name from its co-chairs, former Senators Gary Hart (D-CO) and Warren B. Rudman (R-NH). Its official name was the United States Commission on National Security/21<sup>st</sup> Century. The Hart-Rudman Commission issued three reports, in September 1999, April 2000, and February 2001.<sup>135</sup>

## **Context**

Over the course of two years, the Hart-Rudman Commission published three reports: one assessing the global security environment over the next 25 years, one detailing a strategy of national security/homeland security in that time frame, and a final report on institutional change to support the recommended strategy. The commission envisioned an era of rapid, profound change driven by scientific and technological development and other change.<sup>136</sup> It proposed a

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<sup>133</sup> Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *II. Toward a National Strategy for Combating Terrorism, Second Annual Report to the President and the Congress*, December 15, 2000, p. 18. (Available online at <http://www.rand.org/nsrd/terpanel>, visited December 10, 2004.)

<sup>134</sup> *IV. Implementing the National Strategy, Fourth Annual Report to the President and the Congress*, p. 50.

<sup>135</sup> See **Appendix E** for the citation to the Secretary of Defense charter creating the commission and for the full text of its analysis and recommendations related to congressional organization.

<sup>136</sup> United States Commission on National Security/21<sup>st</sup> Century, *New World Coming: American Security in the 21<sup>st</sup>* (continued...)

strategy wherein the United States would “lead in the construction of a world balanced between the expansion of freedom, and the maintenance of underlying stability.”<sup>137</sup> Finally, the commission recommended extensive changes in institutional arrangements and policies in the executive and legislative branches. It found: “The problem is that the current structures and processes of U.S. national security policymaking are incapable of such management [of the opportunities and dangers in implementing the recommended strategy].”<sup>138</sup>

The Hart-Rudman Commission summarized its proposal for U.S. *national security strategy* as follows:

We believe that American strategy must compose a balance between two key aims. The first is to reap the benefits of a more integrated world in order to expand freedom, security, and prosperity for Americans and for others. But second, American strategy must also strive to dampen the forces of global instability so that those benefits can endure and spread.<sup>139</sup>

The commission stated six objectives that underlie this strategy:

- First, to defend the United States and ensure that it is safe from the dangers of a new era.
- Second, to maintain America’s social cohesion, economic competitiveness, technological ingenuity, and military strength.
- Third, to assist the integration of key major powers, especially China, Russia, and India, into the mainstream of the emerging international system.
- Fourth, to promote, with others, the dynamism of the new global economy and improve the effectiveness of international institutions and international law.
- Fifth, to adapt U.S. alliances and other regional mechanisms to a new era in which America’s partners seek greater autonomy and responsibility.
- Sixth, to help the international community tame the disintegrative forces spawned by an era of change.<sup>140</sup>

The commission summarized the reasoning behind its objectives and the strategy the objectives support:

These six objectives, and the Commission’s strategy itself, rest on a premise so basic that it often goes unstated: democracy conduces generally to domestic and international peace, and

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(...continued)

*Century, Major Themes and Implications, The Phase I Report of the U.S. Commission on National Security/21<sup>st</sup> Century*, September 15, 1999. (Available online at <http://www.au.af.mil/au/awc/awcgate/nssg/nwc.pdf>, visited December 10, 2004.)

<sup>137</sup> United States Commission on National Security/21<sup>st</sup> Century, *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom, The Phase II Report of the U.S. Commission on National Security/21<sup>st</sup> Century*, April 15, 2000, p. 15. (Available online at <http://www.au.af.mil/au/awc/awcgate/nssg/phaseII.pdf>, visited December 10, 2004.)

<sup>138</sup> United States Commission on National Security/21<sup>st</sup> Century, *Road Map for National Security: Imperative for Change, The Phase III Report of the U.S. Commission on National Security/21<sup>st</sup> Century*, February 15, 2001, p. 7. (Available online at <http://govinfo.library.unt.edu/nssg/index.html>, visited December 10, 2004.)

<sup>139</sup> *Ibid.*, p. 5.

<sup>140</sup> *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom, The Phase II Report on a U.S. National Security Strategy for the 21<sup>st</sup> Century*, pp. 8-13.

peace conduces to, or at least allows, democratic politics. While this premise is not a ‘law,’ and while scholars continue to study and debate these matters, we believe they are strong tendencies, and that they can be strengthened further by a consistent and determined national policy.<sup>141</sup>

Finally, the Hart-Rudman Commission encapsulated its recommendations for organizational change into five components, which it listed as:

- ensuring the security of the American homeland;
- recapitalizing America’s strengths in science and education;
- redesigning key institutions of the Executive Branch;
- overhauling the U.S. government’s military and civilian personnel systems; and
- reorganizing Congress’s role in national security affairs.<sup>142</sup>

### ***Recommendation***

The Hart-Rudman Commission detailed several recommendations regarding congressional organization, including:

- The President should ask Congress to appropriate funds to the State Department in a single integrated Foreign Operations budget, which would include all foreign assistance programs and activities as well as all expenses for personnel and operations.<sup>143</sup>
- Congress should rationalize its current committee structure so that it best serves U.S. national security objectives; specifically, it should merge the current authorizing committees with the relevant appropriations subcommittees.<sup>144</sup>
- The Executive Branch must ensure a sustained focus on foreign policy and national security consultation with Congress and devote resources to it. For its part, Congress must make consultation a higher priority and form a permanent consultative groups of Congressional leaders as part of this effort.<sup>145</sup>
- The Congressional leadership should conduct a thorough bicameral, bipartisan review of the Legislative Branch relationship to national security and foreign policy.<sup>146</sup>

### **Brookings Institution**

Brookings Institution scholars prepared a report in 2002 and, in 2003, updated it with a lengthy preface.<sup>147</sup>

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<sup>141</sup> *Road Map for National Security: Imperative for Change, The Phase III Report of the U.S. Commission on National Security/21<sup>st</sup> Century*, p. 6.

<sup>142</sup> *Ibid.*, p. viii. The Council on Foreign Relations created a task force headed by former Senators Hart and Rudman to do a follow up report: *America—Still Unprepared, Still in Danger* (New York: Council on Foreign Relations, 2002). (Available online at [http://www.cfr.org/pub5099/gary\\_hart\\_warren\\_b\\_rudman\\_stephen\\_e\\_flynn/americastill\\_unprepared\\_still\\_in\\_danger.php](http://www.cfr.org/pub5099/gary_hart_warren_b_rudman_stephen_e_flynn/americastill_unprepared_still_in_danger.php), visited December 10, 2004.)

<sup>143</sup> *Ibid.*, p. 58.

<sup>144</sup> *Ibid.*, p. 112.

<sup>145</sup> *Ibid.*, p. 113.

<sup>146</sup> *Ibid.*, p. 110.

## Context

The 2003 preface added to the report summarized the accomplishments in homeland security in the intervening year and laid out an “unmet agenda.” The Brookings recommendations were made within the context of a homeland security strategy involving “border protection, domestic prevention, domestic protection, and consequence management.” The update focused on an “unmet agenda” broader than the creation of DHS and the other steps taken after the terrorist attacks of September 11, 2001.<sup>148</sup> The 2003 preface concluded with a summary of the unmet homeland security needs that suggested the scope of homeland security as the Brookings scholars perceived it:

The first priority relates to resources. Congress and the president enacted an inadequate level of funding in 2003 for homeland security. In addition to rectifying that problem, they need to turn promptly to the 2004 budget and redress vulnerabilities not yet given sufficient priority. These include the use of information technology, where federal funding to date has been a pittance of what is required. They also include public-private cooperation on protecting assets such as chemical facilities, hazardous materials trucking, and the air intakes of skyscrapers. Finally, a number of existing capabilities and capacities need dramatic and rapid augmentation. Such strengthening has already occurred in areas such as airport security and airplane marshals; it now is needed for the Coast Guard, the Customs Service, train travel, airliner protection against surface-to-air missiles, and many state and local capacities (such as first responder teams and hospitals) as well.

Another major part of the challenge is making real what Congress and President Bush have created on paper, but not yet in reality—a new and huge federal Department of Homeland Security. Tom Ridge and his management team face a mammoth reorganization task—larger in many ways than anything ever attempted in government. And they must undertake that task without in any way reducing their attention to the demanding effort of securing America against a future terrorist attack. It is therefore crucial that Ridge sets clear reorganization priorities—focusing on those areas that need the most immediate attention such border security and information analysis (and leaving others, such as federal emergency response, until later). Ridge’s undersecretary candidates will need to display strong organizational and managerial abilities, particularly in areas such as infrastructure protection, where whole new capacities need to be created and where little has been accomplished to date, despite the heightened attention given to homeland security since 9/11.

Finally, the government needs to organize itself much more effectively to monitor terrorists and try to determine where their next attacks may come. A stronger domestic counterterrorism entity is needed, including a new agency independent from the FBI. At present, we are hoping to get lucky by identifying and apprehending individual terrorists before they can strike. We also need to develop an alternative approach that allows us to address the “unknown unknowns,” using “red teams” to prepare for what terrorists might do next even if they have shown no proclivity for such attacks to date.<sup>149</sup>

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(...continued)

<sup>147</sup> See **Appendix F** for the full text of the Brookings analysis and recommendations related to congressional organization.

<sup>148</sup> Michael E. O’Hanlon, Ivo H. Daalder, David L. Gunter, Robert E. Litan, Peter R. Orszag, I.M. Destler, James M. Lindsay, and James B. Steinberg, *Protecting the American Homeland: One Year On* (Washington: Brookings Institution Press, 2002), pp. x, xii. (Available online at <http://brookings.edu/dybdocroot/fp/projects/homeland/newhomeland.pdf>, visited December 10, 2004.)

<sup>149</sup> *Ibid.*, pp. xxxvi-xxxvii.



## *Recommendation*

In 2002, the Brookings scholars recommended that Congress create homeland-security appropriations subcommittees in each chamber and, as a interim step until homeland-security authorizing committees were established, a joint study and oversight committee for homeland security policy.<sup>150</sup> In updating their report a year later, after the creation of DHS, these scholars specifically recommended that Congress create homeland security authorizing committees in each chamber to “maximize the efficacy of congressional oversight.” They explained the recommendation:

Much of the benefit of consolidating the homeland security mission within the executive branch will be lost if our national legislature fails to reflect that reorganization in its own structure.<sup>151</sup>

## **Center for Strategic and International Studies<sup>152</sup>**

Scholars at the Center for Strategic and International Studies issued a white paper in 2002. A task force organized by CSIS issued a subsequent white paper in December 2004.

## *Context*

The CSIS scholars’ recommendations were part of an agenda of recommendations that included the need to state a “national strategy for homeland security that defines the mission as well as the capabilities and processes necessary to perform that mission”<sup>153</sup> as well as numerous specific actions. Scholars at CSIS sounded a theme similar to that contained in the Brookings report:

Although creating a Department of Homeland Security is an important step, it must be viewed as only one part of the answer to the management challenges of the homeland security mission. No single structural fix can resolve what is a massive, long-term strategic problem.

Six broad considerations should inform the efforts of homeland security decision makers:

- Articulate a Homeland Security Strategy...
- Conduct a Comprehensive Threat and Vulnerability Assessment...
- Strengthen White House Coordination...
- Craft an Effective Implementation Strategy...
- Balance Other Critical Concerns...

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<sup>150</sup> Ibid., p. 123.

<sup>151</sup> Ibid., pp. xxviii, xxx.

<sup>152</sup> See **Appendix G** for the full text of the CSIS analysis and recommendations related to congressional organization.

<sup>153</sup> Center for Strategic and International Studies, *Meeting the Challenges of Establishing a New Department of Homeland Security: A CSIS White Paper*, 2002, p. 6. (Available online at <http://www.csis.org/features/hamrefinalpaper.pdf>, visited December 10, 2004.)

- Seize an Historic Opportunity to Reform Government...<sup>154</sup>

### **Recommendation**

Scholars at CSIS recommended Congress create select committees on homeland security in each chamber comprising the chairs and ranking members of committees and subcommittees that exercised jurisdiction over agencies included in DHS. They also recommended new “subcommittees of oversight” in each chamber’s Appropriations Committee.<sup>155</sup>

In a subsequent white paper issued in December 2004, a CSIS task force observed:

We believe that partial reform or piecemeal efforts will be ineffective. The Department of Homeland Security will be insufficiently accountable unless true reforms are made to place the majority of oversight responsibility in one committee in each chamber of Congress. The current situation poses a clear and demonstrable risk to our national security.<sup>156</sup>

The task force followed this observation with a recommendation:

We recommend that both the House and the Senate create strong standing committees for homeland security, with jurisdiction over all components of the Department of Homeland Security. We recommend that these committees have a subcommittee structure that maps closely to the core mission areas outlined in the National Strategy for Homeland Security, not simply to the individual directorates of DHS. Further, we recommend that these committees be established pursuant to developing a small, expert cadre of members who can exercise oversight and craft legislation taking into account the full spectrum of homeland security requirements—not simply one narrow element of the domestic war against terrorism. [The *core mission areas* were listed as ‘Intelligence and Warning, Border and Transportation Security, Domestic Counterterrorism, Protecting Critical Infrastructures and Key Assets, Defending Against Catastrophic Threats, Emergency Preparedness and Response.’]<sup>157</sup>

## **A Brief History of House Committees and Department Creation**

Since World War II, when confronted with an opportunity to create or reorganize its committees to correspond to new Cabinet departments, the House has responded differently to the creation of various departments. This section of this report chronicles the response of the House in its committee organization following creation of new departments, collecting this information in one place.<sup>158</sup>

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<sup>154</sup> Ibid., pp. 6-10.

<sup>155</sup> Ibid., pp. 19-21.

<sup>156</sup> Center for Strategic and International Studies and Business Executives for National Security, *Untangling the Web: Congressional Oversight and the Department of Homeland Security: A White Paper of the CSIS-BENS Task Force on Congressional Oversight of the Department of Homeland Security*, December 10, 2004, pp. 3-4. (Available online at [http://www.csis.org/hs/041210\\_DHS\\_TF\\_WhitePaper.pdf](http://www.csis.org/hs/041210_DHS_TF_WhitePaper.pdf), visited December 10, 2004.)

<sup>157</sup> Ibid., p. 4.

<sup>158</sup> See also CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by (continued...)

The House's creation of the Armed Services Committee occurred by merger of the separate Military Affairs and Naval Affairs Committees, pursuant to the Legislative Reorganization Act of 1946,<sup>159</sup> and preceded by one Congress the creation of the National Military Establishment, later redesignated the Department of Defense.<sup>160</sup> The Armed Services Committee's jurisdiction was updated in 1953 to reflect the existence of the department.<sup>161</sup>

When Congress in 1953 approved President Eisenhower's reorganization plan creating the Department of Health, Education, and Welfare,<sup>162</sup> the House did not make changes in its committee organization to parallel the department.<sup>163</sup>

The then-House Committees on Banking, Public Works, Education and Labor, and Veterans' Affairs were created or reorganized long before the creation of the Departments of Housing and Urban Development, Transportation, Education, and Veterans Affairs, respectively.<sup>164</sup>

The reorganization of House committee jurisdictions to reflect the 1977 creation of the Department of Energy<sup>165</sup> followed the department's organization by three years. On March 25, 1980, the House agreed to H.Res. 549, to be effective with the next Congress, redesignating the Interstate and Foreign Commerce Committee as the Energy and Commerce Committee and giving it jurisdiction over national energy policy generally and over many components of energy policy.

Still, the jurisdiction of the now-Science Committee over such related matters as energy research and development was expanded by H.Res. 549. The Ways and Means Committee continued to have jurisdiction over tax and trade laws, even as they affected energy policy. The now-Transportation Committee had jurisdiction over oil and other pollution of navigable waters, and the now-Resources Committee had jurisdiction over mineral resources on public lands.

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(name redacted). For a history of Appropriations Committee subcommittee changes, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by (name redacted).

<sup>159</sup> 60 Stat. 812.

<sup>160</sup> 63 Stat. 578.

<sup>161</sup> H.Res. 5, which was agreed to in the House January 3, 1953.

<sup>162</sup> 67 Stat. 18.

<sup>163</sup> Following the creation of major new agencies by executive action, such as the Environmental Protection Agency (Reorganization Plan No. 3 of 1970) and the Federal Emergency Management Agency (Executive Order 12127 of March 31, 1979, implementing Reorganization Plan No. 3 of 1978), Congress did not act to realign committee jurisdictions.

<sup>164</sup> 79 Stat. 667; 80 Stat. 931; 93 Stat. 668; and 102 Stat. 2635, respectively. In his prepared statement for the hearing of the Select Committee on Homeland Security's Subcommittee on Rules, then-House Parliamentarian Charles Johnson explained the subsequent evolution of the Public Works Committee, now the Transportation and Infrastructure Committee, after the formation of the Department of Transportation: "I recall the creation of the Department of Transportation in the late 1960s. Incrementally thereafter, the House in adoption of its rules from the majority caucus on opening day accomplished a consolidation of committee jurisdiction. Whereas at the time of creation of the Department, Public Works had jurisdiction over highways and civil aviation, Banking had jurisdiction over urban mass transit, Commerce had jurisdiction over railroads and Merchant Marine and Fisheries had jurisdiction over maritime transportation, those various aspects have been gradually consolidated under the umbrella of the Committee on Transportation and Infrastructure following the demise of certain transportation regulatory independent agencies that remained in place after the creation of DOT." *Hearing on Perspectives on House Reform: Lessons from the Past*, May 19, 2003, p. 11.

<sup>165</sup> 91 Stat. 565.

Appropriations for the Energy Department were generally contained in an energy and water appropriations bill, which through 1978 had been called a public works appropriations bill, and in an interior appropriations bill. Other committees retained other energy-related jurisdiction.<sup>166</sup> This arrangement was in part due to the retention of energy programs in other departments after the creation of the Department of Energy.

### ***Conclusion***

The House has tended to continue its committee organization following congressional creation of a new department or a major reorganization in the executive branch. In action after creation of the Department of Energy, the House established the Energy and Commerce Committee as the lead energy policy committee, but it also continued a jurisdictional structure that gave other committees a role in energy policymaking. The merger of the Military Affairs Committee and the Naval Affairs Committee into the Armed Services Committee was the exception to the House's pattern, but it took place within a wholesale and fundamental consolidation of House and Senate committees.

## **Analysis of Considerations Relevant to the Creation of a Homeland Security Committee**

The 9/11 Commission and other commissions and think tanks define *homeland security* to be a continuum of international and domestic initiatives and activities, all of which have a role reducing the likelihood and potential impact of a terrorist attack against the United States. The themes behind these initiatives and activities include:

- disabling terrorists overseas,
- winning friends in Islamic and other countries,
- counterterrorism and homeland security as the principle and purpose of American diplomatic and military strategy,
- good intelligence abroad and at home, shared appropriately within the federal government and between the federal government and state and local governments and the private sector,
- commitment abroad and at home to freedom and civil liberties,
- maintaining a national strategy for homeland security,
- organizing the federal executive to carry out the strategy,
- defining the military's domestic role in homeland security,
- organizing Congress to contribute to and oversee the strategy and its implementation, particularly the ongoing development of DHS to prevent attacks, reduce vulnerability, and respond to and recover from attacks,

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<sup>166</sup> For a legislative history of the creation of executive departments after World War II, see CRS Report RL31497, *Creation of Executive Departments: Highlights from the Legislative History of Modern Precedents*, by (name redacted).

- including state and local governments and the private sector in carrying out the strategy,
- federal funding of components of the strategy, and
- preparing the American citizenry for possible additional terrorist attacks.<sup>167</sup>

The Select Committee on Homeland Security recommended the creation of a permanent Homeland Security Committee that would have jurisdiction over domestic components of homeland security, reporting to the House Rules Committee on September 30, 2004, as required by H.Res. 5.<sup>168</sup> That jurisdiction in itself is wide ranging and requires expertise in a large number of policy areas, including intelligence analysis, public health, border control, transportation security, first responders, information technology, protection of critical infrastructure, and homeland security-related research, among other policy areas. The recommended jurisdiction includes DHS and, presumably, the national strategy issued by the President in 2002 and any changes to that strategy.

Among many policy areas, the select committee's recommendation would leave jurisdiction over the intelligence community principally in the jurisdiction of the Permanent Select Committee on Intelligence, the Federal Bureau of Investigation (FBI) in the jurisdiction of the Judiciary Committee, the armed forces in the jurisdiction of the Armed Services Committee, relations with foreign nations in the jurisdiction of the International Relations Committee, and money laundering and other financial arrangements in the jurisdiction of the Financial Services Committee.

In addition, the policy-area jurisdiction of the proposed committee could overlap with the policy-area jurisdictions of other committees; so, for example, legislation dealing with information technology or public health might be within the jurisdiction of the Homeland Security Committee, the Energy and Commerce Committee, and possibly other committees. Overlaps in some areas, such as with the Agriculture Committee on border issues and with the Science Committee on research and development, were not addressed in the select committee's recommendations.

Under the select committee's recommendations, activities within DHS that are not homeland-security-related would remain within the jurisdiction of standing committees already having jurisdiction. For example, the non-homeland-security missions of the Coast Guard and natural disaster preparedness and response would remain under the jurisdiction of the Transportation and Infrastructure Committee; the revenue functions of the Customs Service would remain under the jurisdiction of the Ways and Means Committee; and immigration and naturalization policy that is not related to homeland security would remain under the jurisdiction of the Judiciary Committee.

The select committee's recommendations would also leave jurisdiction over appropriations in the Appropriations Committee. As mentioned above, the Appropriations Committees in each chamber realigned their subcommittees to create one subcommittee that parallels the programs and entities of DHS, which leaves funding decisions for other homeland security-related programs and

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<sup>167</sup> For a comparison of the commissions' specific policy recommendations, see CRS Report RL32519, *Terrorism: Key Recommendations of the 9/11 Commission and Recent Major Commissions and Inquiries*, by (name redacted).

<sup>168</sup> *Recommendations of the Select Committee on Homeland Security on Changes to the Rules of the House of Representatives with Respect to Homeland Security Issues*, p. 7.

agencies in the jurisdiction of other appropriations subcommittees. (However, discussion of subcommittee jurisdiction over intelligence appropriations could lead to further realignment.)

## **Concentration or Dispersal of Homeland Security Jurisdiction**

The 9/11 Commission and the other commissions and think tanks recommended alternative committee arrangements: a joint committee, an authorizing committee in each chamber of Congress, or a combined authorization-appropriation committee in each chamber that would have jurisdiction over homeland security, as the 9/11 Commission explained its recommendation, in order to achieve a “unity of effort.” The recommendations for a consolidation of jurisdiction in Congress were based on a desire for coherent congressional policymaking vis-à-vis the new Department of Homeland Security or a national homeland-security strategy or both.

The commissions and think tanks that made recommendations after the President proposed the creation of DHS, including the select committee, argued that the department would have the best chance of developing with clear lines of authority in Congress. As the 9/11 Commission stated:

Through not more than one authorizing committee and one appropriating subcommittee in each house, Congress should be able to ask the secretary of homeland security whether he or she has the resources to provide reasonable security against major terrorist acts within the United States and to hold the secretary accountable for the department’s performance.<sup>169</sup>

Or, as the select committee stated in its recommendations:

The current diffused and unfocused congressional jurisdiction over the Department of Homeland Security, and homeland security in general, not only imposes extraordinary burdens on the Department, but makes it far more difficult for the Congress to guide the Department’s activities in a consistent and focused way that promotes integration and eliminates programmatic redundancies, and advances implementation of a coherent national homeland security strategy.<sup>170</sup>

The commissions that made recommendations prior to the President’s proposal to create DHS recommended a consolidation of committee jurisdictions so that the House and Senate could oversee a national strategy, rather than have separate committees pursue separate interests.

Some of the commissions and think tanks were explicit in their desire to ensure that the executive was accountable to Congress for its management of homeland security. As the Hart-Rudman Commission stated:

Solving the homeland security challenge is not just an Executive Branch problem. Congress should be an active participant in the development of homeland security programs as well. Its hearings can help develop the best ideas and solutions. Individual members should develop expertise in homeland security policy and its implementation so that they can fill in policy gaps and provide needed oversight and advice in times of crisis. Most important,

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<sup>169</sup> *The 9/11 Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 421.

<sup>170</sup> *Recommendations of the Select Committee on Homeland Security on Changes to the Rules of the House of Representatives with Respect to Homeland Security Issues*, pp. 1-2.

using its power of the purse, Congress should ensure that government agencies have sufficient resources and that their programs are coordinated, efficient, and effective.<sup>171</sup>

The select committee took this perspective a step further in arguing that it was essential for Congress to reorganize its committees in order to exercise its role in homeland security policymaking, stating:

Terrorism is now a first-order priority in Congress, the Executive branch, and among the American people. Global terrorism is recognized as a fundamental threat to our people, territory, and way of life for the foreseeable future. The Executive branch has been reconfigured in light of that reality. Congress, however, has not. The result has been uncoordinated oversight and conflicting legislative guidance—effecting a tacit enhancement of Executive branch authority over homeland security policy, programs, and activities. Congress must, in short, fundamentally reform itself or become largely irrelevant where homeland security matters are concerned.<sup>172</sup>

In testimony before the select committee's Rules Subcommittee, several witnesses explained in concrete terms what they believed Congress would gain from committee reorganization, enabling it in turn to better exercise its policymaking role. For example, for Representative Hamilton testified:

[R]eal congressional expertise on homeland security will come about better I think if you have a permanent committee. My guess is that everybody on [the select] committee has learned an awful lot about homeland security in the last few months, a lot more than they knew when they began work on that committee. That is the strength of the Congress, developing expertise on a difficult subject, and this is one of the key reasons why you should have a permanent committee.

There is no substitute for expertise focused on the task at hand; and I think then expertise has to be cultivated, it has to be developed. You have got so many other things that demand your attention, and serving on the committee will make you focus on it and make you do the job of oversight and will develop expertise that the Congress badly needs. But, more important, it will develop the expertise that is critical for the operation of the department itself, the executive branch.<sup>173</sup>

On this same point, congressional scholar Wolfensberger testified about an obstacle to developing new expertise in the current committee alignment:

Both branches are still wedded to traditional, pre-9/11 arrangements and relationships internally, and with their counterparts in the other branch, what some have referred to in the past as the iron triangle of subcommittees, agencies and their private and public sector clienteles.

You need a separate committee that is willing to set a new course and way of doing things; exercise tough oversight, employ innovative thinking and exert constant pressure on the new department to set the right priorities and pursue them rigorously.<sup>174</sup>

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<sup>171</sup> *Road Map for National Security: Imperative for Change, The Phase III Report of the United States Commission on National Security/21<sup>st</sup> Century*, p. 26.

<sup>172</sup> *Supplementary Materials* [of the Select Committee on Homeland Security], p. 16.

<sup>173</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, pp. 40-41.

<sup>174</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 33.

However, the House has made different decisions in different situations regarding the organization of its committees to oversee a policy area or even a Cabinet department. If the House were to organize a permanent homeland security committee, it could do so in a way that allowed more committee and Member participation in the formulation of homeland security policy, or that allowed integration of homeland-security-related and non-homeland-security-related components of a policy area. The House might choose an alternative to the recommendations of the various commissions and think tanks and its own select committee. Such a choice would be consistent with a number of past decisions on committee jurisdiction over a department or agency or policy area or components of a policy area.<sup>175</sup>

As described in a previous section, the House has tended not to follow reorganization in the executive branch with reorganization of House committees. Creation of the Armed Services Committee occurred from merger of two committees and preceded reorganization of what became the Department of Defense by one Congress. While the Armed Services Committee seems to represent the kind of “unity of effort” in committee organization sought by the 9/11 Commission, the committee’s creation occurred within the context of the Legislative Reorganization Act of 1946, under which virtually the whole House and Senate committee structure was reorganized. The new committee’s jurisdiction was also distinct from the jurisdictions of the other committees organized under the act.

The House’s renaming of the Interstate and Foreign Committee as the Energy and Commerce Committee and the designation of that committee as the House’s lead committee on energy occurred three years after the creation of the Department of Energy, following a review of committee jurisdiction. (This review is described further below.) The designation was accomplished in the same House resolution that enhanced the energy research jurisdiction of what is now the Science Committee. And, the jurisdiction of what is now the Transportation and Infrastructure Committee evolved only incrementally over a number of years after the creation of the Department of Transportation.

The House has also chosen not to concentrate all aspects of a policy area in a single committee, choosing instead openness and differing policy perspectives. For example, the Education and the Workforce Committee has jurisdiction over “education or labor generally,”<sup>176</sup> but jurisdiction over the education of veterans is vested in the Veterans’ Affairs Committee, over mining schools in the Resources Committee, over international education in the International Relations Committee, and over agricultural colleges in the Agriculture Committee.<sup>177</sup> Jurisdiction over the federal civil service is vested in the Government Reform Committee, and over transportation labor in the Transportation and Infrastructure Committee.<sup>178</sup> Although the Government Reform Committee has jurisdiction over the federal civil service, the Armed Services Committee has jurisdiction over “pay, promotion, retirement, and other benefits and privileges of members of the armed forces,” and the House Administration Committee has jurisdiction over “Employment of persons by the House, including staff for Members, Delegates, the Resident Commissioner, and committees; and reporters of debates....”<sup>179</sup>

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<sup>175</sup> For an analysis of House decisions on jurisdiction realignment, see CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by (name redacted).

<sup>176</sup> House Rule X, cl. 1(e)(6).

<sup>177</sup> House Rule X, cl. 1(r)(3), cl. 1(l)(14), cl. 1(j)(8), and cl. 1(a)(4), respectively.

<sup>178</sup> House Rule X, cl. 1(h)(1) and cl. 1(q)(20), respectively.

<sup>179</sup> House Rule X, cl. 1(c)(10) and cl. 1(i)(3), respectively.



The House has also tended to choose dispersal of at least components of a policy area rather than a concentration in one committee, with very large exceptions such as Appropriations and, with regard to taxation, Ways and Means. The House might choose such an arrangement to overcome a committee's bias in favor of a department or agency and too much deference to it; too close an alignment of a committee, a department or agency, and interest groups; or too concentrated power over a policy area. Due in part to dissatisfaction in the 1970s with the Armed Services Committee's and other committees' conduct of intelligence oversight, the House created what ultimately became the Permanent Select Committee on Intelligence.<sup>180</sup> The House abolished the Joint Committee on Atomic Energy in 1977, dispersing its jurisdiction to several committees. By the 1970s, public health and environmental concerns were part of the policy debate over nuclear energy's future, and the joint committee was criticized for its closeness to the nuclear power industry.<sup>181</sup>

The House has also chosen to redistribute a committee's jurisdiction when it has perceived that the jurisdiction is too broad, that components of the jurisdiction are closely related to the jurisdiction of another committee, or that a redistribution of jurisdiction would better distribute House committees' workload. For example, in adopting rules for the 104<sup>th</sup> Congress, the House redistributed specific parts of the Energy and Commerce Committee's jurisdiction to three other standing committees.<sup>182</sup>

Nonetheless, the House cleared up what might have been perceived as duplication of the work of the standing committees by abolishing four select committees in the 103<sup>rd</sup> Congress and what might have been perceived as committees with redundant or too narrow jurisdiction by abolishing three standing committees in the 104<sup>th</sup> Congress.<sup>183</sup> It also over the course of four Congresses transferred jurisdiction over several financial services policy areas to what is now the Financial Services Committee from the Energy and Commerce Committee, in recognition of changes in the financial services sector of the domestic and global economy.<sup>184</sup> Since World War II, however, the House has not done what the select committee has recommended with regard to homeland security jurisdiction: create a new committee and curtail the jurisdiction of existing standing committees.

If the House were to create a permanent homeland security committee, considerations in addition to the importance of homeland security might affect the design of the committee in its creation or in implementation of the House's decision. If selected jurisdictions of existing standing committee were to be curtailed or taken away, the House could lose the expertise of Members and staff serving or working on those committees, and the House might value shared jurisdiction allowing a broader range of expertise among its committees rather than expertise largely residing in one committee. Shared jurisdiction could arguably enhance the integration of homeland-

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<sup>180</sup> The select committee was created pursuant to H.Res. 658, agreed to in the House July 14, 1977. For background, see "U.S. Intelligence Agencies Probed in 1975," *Congressional Quarterly Almanac 1975*, vol. XXXI (Washington: Congressional Quarterly Inc., 1976), pp. 387-408; and "Intelligence Committee," *Congressional Quarterly Almanac 1977*, vol. XXXIII (Washington: Congressional Quarterly Inc., 1977), pp. 376-377.

<sup>181</sup> See CRS Report RL32538, *9/11 Commission Recommendations: Joint Committee on Atomic Energy—A Model for Congressional Oversight?*, by (name redacted); and "Atomic Energy Committee," *Congressional Quarterly Almanac 1977*, vol. XXXIII (Washington: Congressional Quarterly Inc., 1977), pp. 660-661.

<sup>182</sup> CRS Report RL32661, *House Committees: A Framework for Considering Jurisdictional Realignment*, by (name redacted), p. 7.

<sup>183</sup> *Ibid.*, p. 7.

<sup>184</sup> *Ibid.* p. 3.

security-related initiatives into the broader policy areas of which they are a part, such as immigration, transportation modes and systems, federally supported R&D, or international commerce.

While possibly creating a lead committee on homeland security, the House might desire having more than one committee serve as a watchdog of the new department and bring different perspectives of committees and the Members who serve on them to bear on homeland security policymaking. For example, even in designating the Energy and Commerce Committee as the House's lead committee on energy policy, important components of energy policy were left or placed in the jurisdiction of other committees. While such an arrangement might arguably make it more difficult to legislate in a policy area at the committee level, the arrangement can provide an incentive for a larger number of Members to become knowledgeable about policymaking related to that area. Indeed, one consequence of a number of Members having waivers from the House rule limiting Members to service on two standing committees is to give many Members a broader role in policymaking at the committee level.

A more dispersed jurisdiction could also provide additional access to Congress for whistleblowers, alternative forums that might be more receptive to critical reviews or the conduct of oversight, or alternative forums for competing views contributing to more robust policymaking.

### **Implications of Jurisdictional Gains and Losses**

Despite the House's predilection for multiple perspectives being brought to bear on policy problems and the desire it manifested in the 103<sup>rd</sup> and 104<sup>th</sup> Congresses to reduce the number of House committees, the policy area of homeland security seems to be something new. Remarkably, the Legislative Reorganization Act of 1946, perhaps due to the broadness and flexibility of the subject terms employed, anticipated many policy problems and the role the federal government would come to play in policy setting and funding through congressional authorization. Cabinet departments could be created and policy problems acted on, and the House could make incremental adjustments over the years to committee jurisdiction and the referral of legislation to accommodate change.

Possibly the closest analogy to the perception of homeland security as a new policy problem is the energy crises of the 1970s. Some Members then perceived a need for jurisdictional changes in House committees following the creation of the Department of Energy, and the House eventually created a select committee to study committee jurisdiction and other matters, including jurisdiction over energy policy, and to develop recommendations. In addition, subcommittees had proliferated in the 1970s, and some 83 House committees and subcommittees were believed to have a jurisdictional claim over energy policy. The select committee recommended the creation of an energy committee. However, the House instead by vote affirmed the Interstate and Foreign Commerce Committee's lead role in energy policy and then agreed to the changes that were described above.<sup>185</sup>

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<sup>185</sup> For a history of congressional reform since World War II, see CRS Report RL31835, *Reorganization of the House of Representatives: Modern Reform Efforts*, by (name redacted), (name redacted), and (name redacted). See pp. 43-45 for a history of the Select Committee on Committees.

Are the energy crises analogous to the terrorist attacks of 9/11 that brought homeland security into focus? Some have at least tacitly said no. In distinguishing the House's decision to reduce the number of standing committees in 1994 from his favoring a new permanent homeland security committee, former Speaker Gingrich testified as follows:

[T]his is the only potential standing committee which really has the defensive obligation that could involve millions of lives. And for the House to have not some centralized authority monitoring the Department of Homeland Security and creating an effective, secure relationship[,] I think would be an enormous mistake and one which literally could over the next decade result in us having a tragic loss dramatically greater than September 11. This is an unusual case. I don't think you are going to see me come up here and testify about new standing committees, but this is a very unusual moment in our history.<sup>186</sup>

In distinguishing the long-term problem of terrorism from previous challenges the United States has faced, former Secretary Schlesinger testified as follows:

We now face a different kind of crisis. It is not a question of responding to Pearl Harbor, and four years later accepting the surrender of Japan in Tokyo Bay.

Terrorism is the tool of the weak and the terrorists are likely always to be with us. We must lower their capacity to inflict damage. If we fail to lower that capacity to inflict damage, this society will begin to change. It is a democracy, but if you begin to contemplate the psychological reaction of the public seeing a biological attack in Cincinnati, followed by a nuclear attack in Houston, what have you, you are going to see this society change.

If we value what has been the wellspring of this constitutional democracy, which continues to be a dispersion of power, then we must as effectively as we can lower the capacity of those hostile to the United States to commit terrorist acts. And that is what the Department of Homeland Security is about. That is the legislation that you passed, and now you are called upon to make it effective.<sup>187</sup>

The commissions and think tanks also described the gravity of the terrorist threat and its long-term nature, and the critical importance of a national strategy in response and its implementation.

Former Secretary Schlesinger also contrasted the Department of Energy with the Department of Homeland Security and the needs of a diverse new department, stating:

[C]reating the Department of Energy was child's play compared to creating this new department simply because the bulk of the resources came from one previously existing agency. Some of the responsibilities, particularly in [the] area of price controls, were shed over the course of the next three years. And as a result, we have a compact, relatively compact, department.

What we have here is [a] set of agencies brought together that have a long tradition, Customs Service, the Coast Guard, and newly formed agencies that have not completely jelled, like the Transportation Security [Administration]. These must be helped along so that the disparate cultures of these agencies can be brought together.<sup>188</sup>

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<sup>186</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, pp. 24-25.

<sup>187</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 21.

<sup>188</sup> *Ibid.*, p. 11.

Later, Secretary Schlesinger stated his concerns about the impact on DHS's future of "fragmentation" among congressional committees:

[Y]ou [a subcommittee member] talked about what essentially was fragmentation. If the 88 committees of some jurisdiction in the Congress are dealing with the Department of Homeland Security, they cannot successfully achieve that common mission of protecting the homeland. Thus, it will wind up that some committees, some committee members, some staffs will say to that Department of Homeland Security, unless you do X, unless you give us this response, we are going to take it out on the department. And you will have fragmentation that will be pulling the department apart. It will be responding to the fragmentation that would continue to exist on Capitol Hill.

And as a consequence, I think that if you are going to achieve the results that everybody wants, they may disagree in retrospect about what should have been put in the department, but the result that everybody wants, that this department be successful because it is the umbrella that protects the society, then we must have a greater degree of unity on the Hill, as well as in the executive branch. The executive branch will continue to fragment if the Hill remains fragmented.<sup>189</sup>

Congressional scholar King made a similar point: "The fragmentation is tremendously debilitating [to DHS]."<sup>190</sup>

The question for many committee leaders and presumably some number of House Members is how to reconcile the new and perhaps overriding national security purpose of homeland security with existing programs and policies. Can the House disambiguate the homeland security components of threats to agriculture, nuclear plants, transportation modes, ports, information technology, or public health, or of management of immigration, emergency response, or the Coast Guard, from the individual policy systems governing animal and plant health, nuclear plant safety and security, transportation regulation, and so on?

Ways and Means Committee Chairman Bill Thomas explained this concern in relation to traditional Customs functions and international trade, stating:

I am very concerned about losing the knowledge and the ability in a continually growing, complicated area of intercourse. It is not bright-lighted. It is not a big area, but, boy, is it necessary to function smoothly as the world's largest importer and the world's largest exporter. The point at which those activities occur have to be allowed to go forward in a very smooth and efficient manner, with the full understanding of the concerns of security today different than previously, that we are more than willing to take into consideration on a negotiated basis[,] with Treasury retraining the structure that it has, with the ability to consult and make adjustments. That is where we are today. That arrangement seems reasonable to me.

But if the option of a permanent committee on homeland security is to take jurisdiction from other committees and put it together under the rubric of security and expect, for example, the Customs fees and duty collection function to continue[,] would be rather naive. They would

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<sup>189</sup> *Ibid.*, p. 24.

<sup>190</sup> *Ibid.*, p. 45.

be submitted to security restrictions which I think would make it virtually impossible for them to do their historic job.<sup>191</sup>

As noted in the section above related to the select committee's Rules Subcommittee's hearings, other committee leaders also discussed this problem. For example, Energy and Commerce Committee Chairman Barton mentioned the nuclear plant safety provisions in the energy bill and asked in his testimony: "How do you distinguish the need to keep our nuclear plants secure from terrorism versus the need to secure them against sabotage or something done by a former disgruntled employee?"<sup>192</sup>

A number of committee leaders also pointed to the legislative and oversight accomplishments of their committees related to homeland security, some pre-dating 9/11 and many in response to the terrorist attacks. Aviation Subcommittee Chairman Mica and Transportation and Infrastructure Committee Ranking Member Oberstar discussed aviation security; a list was included in the statement submitted by committee Chairman Don Young. Energy and Commerce Committee Chairman Barton listed the committee's accomplishments in both his oral and written testimony. Judiciary Committee Chairman Sensenbrenner and Government Reform Committee Chairman Tom Davis and Ranking Member Waxman also detailed the work of their committees. Energy and Commerce Committee Ranking Member Dingell explained this perspective:

I would note that the standing committees have taken their responsibilities as seriously as have you ladies and gentlemen here [members of the select committee], and we have moved cooperatively with you and with the others who are concerned with these matters [of homeland security] and with each other to see to it that we have accomplished the legislative purposes that were needed.<sup>193</sup>

The committee leaders also noted the expertise of their committee members and staff, and expressed the value of different perspectives being brought to bear on policy problems. Agriculture Committee Chairman Goodlatte and Ranking Member Stenholm asked how one committee could gain the expertise to oversee an enterprise as large and diverse as DHS. Chairman Goodlatte stated:

Mr. Chairman, with nearly 170,000 employees and countless missions and responsibilities, the function of the Department of Homeland Security lends itself to a functionally diverse oversight mechanism. I cannot see how a single standing committee with a normal staff can ever amass the expertise necessary to completely[,] properly oversee this new Department. The Congress has a constitutional responsibility to ensure that sufficient resources are provided to review and analyze each of our Federal programs. A single standing [C]ommittee on Homeland Security would have great difficulty in fulfilling this responsibility....<sup>194</sup>

Transportation and Infrastructure Committee Ranking Member Oberstar spoke about his committee's expertise in aviation and asked that that expertise be used to deal with policy problems and their oversight:

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<sup>191</sup> *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, p. 117.

<sup>192</sup> *Ibid.*, p. 45.

<sup>193</sup> *Ibid.*, p. 48.

<sup>194</sup> *Ibid.*, p. 32.

Secretary Mineta has said he wants world class security with world class service. How to get there? I think our committee understands how to do that. We have contributed a great deal of time to the deliberation [of] these issues. And while we might start out with differing viewpoints, we generally come to a consensus position on the underlying legislation and then work to ensure that it is well carried out.

So I urge this committee (the select committee's Rules Subcommittee) to keep in mind this body of expertise, that not only ours but other authorizing committees, standing committees[,] have in matters such as the one you are considering and, more importantly, the interrelationship with other functions of these departments and agencies that are not security but may have [a] relationship to security, and let us continue to attend to the needs and craft the legislation and shape the future missions of these agencies in a way that will be supportive of security but also respectful of the historic functions of say, Coast Guard, aviation, FEMA, and our maritime system.<sup>195</sup>

At several points during the hearings, select committee Chairman Cox, sitting as a member of the Rules Subcommittee, provided a perspective on the mission of DHS and a homeland security committee overseeing it that distinguished the department's homeland security mission and the committee's potential jurisdiction from the work and jurisdiction of other standing committees. His perspective reflected the definitions of homeland security contained in the Homeland Security Act. In an exchange involving jurisdiction over aviation security, Chairman Cox explained:

[Y]ou have got a Department of Homeland Security that is focused on prevention, protection, and response, and is not going to become the regulator of every aspect of American life; it is not going to become the regulator of every aspect of American commerce. But, as I have said, before other panels have testified today, I think there is a risk the Department could morph into those things.

And that is one of the reasons that we want very, very strenuous oversight from the Congress that created it so recently, because if the department, which surely is going to exist indefinitely, the new cabinet department[,] history suggests they don't go away, is going to grow. And if it is going to grow and last indefinitely, then it needs to stay focused, and it needs to stay focused on protecting Americans and our security and not get into all these other areas. And we will lose our competitiveness in all these industries if we regulate them not with a view to the big picture, which includes competition of global commerce, job creation, investment, in the case of transportation safety and all these other things.

If we have on the blinders of security and that is all, and then we become—we, the Department of Homeland Security in this case, become the regulators of all these industries, then the regulation will suffer, the industries will suffer, the country will suffer, and it won't work. So I think that dichotomy [between the traditional functional responsibilities of the standing committees and the role of DHS in prevention, protection, and response] makes a great deal of sense. And it is just as important that we circumscribe the mission of the Department of Homeland Security as it is that we respect the traditional jurisdictions of the committees.<sup>196</sup>

Former Speaker Gingrich, as cited earlier, responded similarly when asked a question about committee organization:

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<sup>195</sup> *Ibid.*, p. 81.

<sup>196</sup> *Ibid.*, pp. 89-91.

...I think the jurisdiction issue is actually fairly easy in principle. The principle ought to be that this is a mission-driven jurisdiction; that is, when there are questions of activities that are uniquely homeland security, protection, response, recovery, rehabilitation, this committee ought to have either sole or lead jurisdiction.<sup>197</sup>

And, a statement of the Gilmore Commission, cited previously, could be read as consistent with Chairman Cox's explanation. The commission emphasized that its strategic vision for homeland security was "fully consistent with an all-hazards approach," in other words a component of the larger and prevailing emergency management system. The commission noted:

As our experience with SARS, West Nile Virus, monkeypox, the recent fires in California, and the current influenza epidemic have demonstrated vividly, we must be able to handle a wide variety of threats.<sup>198</sup>

A former senior analyst at the Congressional Research Service, Walter Kravitz, described the legislative process in Congress as a "procedural obstacle course." Under the Constitution, both houses of Congress and the President must agree to the same legislation. Under the rules and practices of each chamber, leaders' support must be garnered and majorities assembled at each stage of the legislative process—subcommittee, committee, floor—to advance legislation or prevent its derailment. Referral of a measure in the House to one committee or to more than one committee, based on jurisdiction, can be looked at from different perspectives. If a measure is referred to just one committee, a majority on that committee can control the committee phase. If a measure is referred to more than one committee, the control of a single committee is lost, but the support of members from multiple committees is gained if each committee reports the legislation. Whether one committee or several committees report a measure, a majority must still be assembled on the floor. The rules and practices of the House and Senate and the requirements of the Constitution make it difficult to pass a measure and enact it into law.

If the House were to organize a permanent homeland security committee, would a homeland security committee created in a way that curtails or takes away jurisdiction from existing standing committees shift inter-committee negotiations from the committee phase to the post-reporting/pre-floor phase? Might the leadership or the House Rules Committee or party entities, or a combination of these groups, be called on to negotiate base text or substitute amendments or other changes to any measure reported from the new committee? The existing standing committees have expertise and decades of experience with the policy problems of which security is now a component, and their continued involvement in the development of legislation that affects their traditional jurisdiction is a possibility. Their leverage lies in the legislative process.

Witnesses at the select committee's subcommittee hearings offered a variety of options that the House could consider at the time of the creation of a homeland security committee or over the course of one or more Congresses after its creation. For example, several witnesses mentioned the tools at the Speaker's disposal to facilitate committee processing of homeland security legislation—making referrals, designating a primary committee, not designating a primary committee, making sequential referrals, and setting time limits for action under a referral are some of these tools. These tools can be particularly effective where there is shared jurisdiction or a measure's provisions trigger the jurisdiction of more than one committee.

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<sup>197</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 29.

<sup>198</sup> *V. Forging America's New Normalcy: Securing Our Homeland, Preserving Our Liberty, Fifth Annual Report to the President and the Congress*, December 15, 2003, p. 3.

Congressional scholars Ornstein and Mann suggested going slowly in building a new committee's jurisdiction, adding to it over time. They, as well as others, also commented on the use of committee assignments, including members from existing standing committees of jurisdiction, as a way to build support for a new committee. Congressional scholar King noted that committees build jurisdiction through such actions as "bill referrals over jurisdictionally ambiguous issues," and that that jurisdiction is later validated in rules changes.<sup>199</sup> Former Speaker Gingrich discussed the concept of "concurrent jurisdiction" to allow the new committee to assert jurisdiction when future problems "impinge on homeland security."<sup>200</sup> Some witnesses discussed oversight jurisdiction, by which a committee can be granted under House rules a broader or different jurisdiction from the committee's legislative jurisdiction. Even in a system of shared jurisdiction, jurisdictional changes could be effected that limit the number of committees with jurisdiction over a function or directorate of DHS.<sup>201</sup>

### **Would a Homeland Security Committee Be Enough?**

The select committee's recommendations related to jurisdiction cover many domestic components of homeland security, those specifically a part of DHS. Other domestic components and international components, such as combating terrorism overseas, are not specifically listed. This fact was summarized at the beginning of this section. In recognition of the importance of counterterrorism and homeland security, a number of witnesses at the select committee's subcommittee hearings made suggestions for coordination among congressional committees. In addition, a common element among all commission and think tank reports was the need for coordination among congressional committees.

One matter cited in the hearings, in the 9/11 Commission report, and in the select committee's recommendations is a perceived need for coordinating or reducing hearings appearances by DHS officials and perhaps other requests to DHS. While some witnesses de-emphasized this concern, many witnesses deplored the number of requests from congressional committees for DHS hearings witnesses and other responses. Former Speaker Gingrich suggested that the House agree to a resolution at the beginning of a Congress "which instructs the executive branch on who has to report where."<sup>202</sup> He also suggested that the leadership monitor DHS "interactions with the House" to prevent diversion of DHS's leadership.<sup>203</sup> Some witnesses called for coordination of requests to DHS by the leadership or by a successor to the select committee. Congressional scholar Wolfensberger suggested that, with regard to homeland security, the "oversight agendas adopted by the committees at the beginning of a Congress should be superintended by the bipartisan leadership."<sup>204</sup>

Another matter cited in several of the commission and think tank reports and by former Speaker Gingrich that would benefit from coordination is review of the budget for counterterrorism and homeland security. The reorganization of the Appropriations Committees' subcommittees seemed

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<sup>199</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 38.

<sup>200</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 29.

<sup>201</sup> See, for example, the statement of Science Committee Chairman Boehlert, *Homeland Security Jurisdiction: The Perspectives of Committee Leaders*, March 24, 2004, pp. 118-119.

<sup>202</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 12.

<sup>203</sup> *Ibid.*, p. 17-18.

<sup>204</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, p. 33.



to answer at least some of the concerns raised by the commissions and think tanks. However, Speaker Gingrich, as noted earlier, suggested the creation of a homeland security subcommittee of the Budget Committee to ensure “adequate resources for Homeland Security before considering any other budgetary matters.”<sup>205</sup>

Finally, creation of a permanent homeland security committee with jurisdiction over DHS, homeland security generally, and related, enumerated policy areas, as the select committee recommended, might not alone guarantee the policy coordination in Congress over counterterrorism and homeland security that the various commissions, think tanks, and witnesses recommended. The Brookings Institution scholars explained this concern as follows:

Congress would be wise then to take to heart its message in the Department of Homeland Security Act and reorganize its jurisdictions to create authorizing committees for homeland security. Such a reorganization would not produce a unified decisionmaking process. *Some fragmentation would remain as a result of bicameralism and the twin-track authorization and appropriations process. The task of coordinating the authorizers and appropriators on homeland security with those responsible for related activities by the intelligence agencies, the FBI, and the Pentagon (to name just a few) would also remain.* But establishing dedicated homeland security committees to complement the homeland security appropriations subcommittees would likely maximize the efficacy of congressional oversight.<sup>206</sup> *(Emphasis added.)*

Congressional scholar Thurber addressed this concern in a concrete manner in his testimony before the select committee’s subcommittee, explaining:

The jurisdiction of the new committee should also, though, take into account that most agencies dealing with homeland security are outside the DHS. These agencies include the Northern Command. And I am not recommending that they be in your committee [a homeland security committee that the select committee might ultimately recommend creating], but I just want to point out that there should be some relationship with these things. The Northern Command, the National Guard, the Federal Bureau of Investigation, the Central Intelligence Agency, the NSA [National Security Agency], the National Imagery and Mapping Agency, the Centers for Disease Control.

We talked about the NRC [Nuclear Regulatory Commission] before. I have done a lot of work with NRC. And there is a division there that deals with security. There should be some relationship to that. And the elements of the Drug Enforcement [Administration] that deal with borders, and many parts of the Department of Energy. There should be some kind of oversight and coordination relationship with those activities, in my opinion.

The new committee will need to strengthen coordination with other committees, such as Armed Services, Judiciary and the Permanent Select Committee on Intelligence, in order to develop, in my opinion, a comprehensive policy making approach to homeland security.<sup>207</sup>

One indication of the need for coordination arises from various assessments of what is important or critical to homeland security. For example, the Hart-Rudman Commission stated: “Non-proliferation of weapons of mass destruction is of the highest priority in U.S. national security

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<sup>205</sup> *Hearing on Perspectives on House Reform: Former House Leaders*, September 9, 2003, p. 16.

<sup>206</sup> *Protecting the American Homeland: One Year On*, pp. xxix-xxx.

<sup>207</sup> *Hearing on Perspectives on House Reform: Committees and the Executive Branch*, July 10, 2003, pp. 27-28.

policy in the next quarter century.”<sup>208</sup> The Armed Services and International Relations Committees would be the forums for work on such an issue, but a homeland security committee would have a policy interest in the issue.

If the House desired to increase coordination over homeland security within the United States, or over homeland security *and* combating terrorism overseas, the commissions, think tanks, and hearings witnesses suggested options. An option related to the design of permanent homeland security committee is assignment to the committee of members from other committees with related jurisdiction. This option is a variation on the assignments to the select committee in the 108<sup>th</sup> Congress. Or, the new committee itself could be assigned a coordinating role. The Select Committee on Homeland Security in the 107<sup>th</sup> Congress had, and the Budget Committee has, a coordinating role; these and other coordinating roles could be examined. Several of the commissions suggested ad hoc committees of chairs and ranking members or other arrangements to bring together the principal Members whose committees would have jurisdiction over components of homeland security policy. Such an arrangement could be organized or led by the leadership, and be formally or informally instituted, including being formally constituted under the Speaker’s authority in Rule XII. And, as mentioned above, congressional scholar Wolfensberger suggested a new use and increased management of committee oversight plans. Relatedly, the role of the Government Reform Committee, to which committees submit their oversight plans, could be enhanced with regard to plans related to homeland security.

## Conclusion

If the House were to create a permanent homeland security committee in the 109<sup>th</sup> Congress, the time after creation of the committee, in the 109<sup>th</sup> Congress and beyond, would provide an opportunity for adjustments within the House’s committee structure. Would a homeland security committee better be able to guide development of the Department of Homeland Security, hold its officials accountable, and keep it focused on its mission? What could other committees contribute to the department’s development, and how could they contribute? Would a new committee help make Congress a stronger institutional player in setting homeland security policy? Experience will help generate answers to these questions and better inform the House whether a concentration of jurisdiction over the issue of homeland security is preferable to a more dispersed jurisdictional structure.

A particular challenge for a new committee, the existing standing committees, and the House leadership is the relationship of homeland security policy to non-homeland-security policy. Can homeland security concerns be addressed separately from the existing policies and programs related to sectors of the economy like air transportation, types of activities like trade, or agencies with large non-homeland-security responsibilities like the Coast Guard or FEMA? Would the existing standing committees work with a new committee, in parallel to it, or separately from it? Again, experience could help answer questions raised about what a homeland security committee could contribute to policymaking and how best to ensure that both homeland security and non-homeland-security missions and purposes are achieved.

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<sup>208</sup> *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom, The Phase II Report of the U.S. Commission on National Security/21<sup>st</sup> Century*, p. 8.

Finally, a homeland security committee has not been envisioned or proposed that would displace committees with jurisdiction over the intelligence community, foreign relations, the armed forces, or other activities and entities that are important to realizing homeland security. How could the legislative committees reduce further the “fragmentation” that is expected to be reduced with the creation of a homeland security committee? The period following the creation of a homeland security committee would provide an opportunity to try different coordinating mechanisms.

## Epilogue

### Creation of the Homeland Security Committee in the 109<sup>th</sup> Congress

On January 4, 2005, the House created a standing Committee on Homeland Security in agreeing to H.Res. 5, providing for the adoption of the House’s rules for the 109<sup>th</sup> Congress.<sup>209</sup> New House Rule X, cl. 1(i)<sup>210</sup> granted the jurisdiction of the new committee:

- (1) Overall homeland security policy.
- (2) Organization and administration of the Department of Homeland Security.
- (3) Functions of the Department of Homeland Security relating to the following:
  - (A) Border and port security (except immigration policy and non-border enforcement).
  - (B) Customs (except customs revenue).
  - (C) Integration, analysis, and dissemination of homeland security information.
  - (D) Domestic preparedness for and collective response to terrorism.
  - (E) Research and development.
  - (F) Transportation security.

The new committee was also given “special oversight functions,” like those of other committees, in new Rule X, cl. 3(f),<sup>211</sup> which stated:

The Committee on Homeland security shall review and study on a continuing basis all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department Homeland Security.

To differentiate the jurisdiction of the new committee from that of existing committees, the homeland-security-related jurisdiction of three standing committees was amended in H.Res. 5. An addition was made to the Judiciary Committee’s jurisdiction—“criminal law enforcement”<sup>212</sup>—

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<sup>209</sup> “Rules of the House,” debate in the House, *Congressional Record*, daily edition, vol. 151, January 4, 2005, pp. H7-H31.

<sup>210</sup> The rules changes contained in H.Res. 5 redesignated the paragraphs of clause 1, after paragraph (h), in order to insert the Homeland Security Committee alphabetically at clause 1(i). Conforming cross references were also made in other places in the House rules.

<sup>211</sup> The rules changes contained in H.Res. 5 redesignated the paragraphs of clause 3, after paragraph (e), in order to insert the Homeland Security Committee alphabetically at clause 3(f).

<sup>212</sup> Redesignated Rule X, cl. 1(7).

and the committee's jurisdiction over "immigration and naturalization" was amended to "immigration policy and non-border enforcement."<sup>213</sup>

The Transportation and Infrastructure's jurisdiction over "related transportation regulatory agencies" was amended to add an exception—"except the Transportation Security Administration."<sup>214</sup> The committee's general jurisdiction over transportation was amended to add an exception—"transportation security functions of the Department of Homeland Security." This paragraph then read:

Transportation, including civil aviation, railroads, water transportation, transportation safety (except automobile safety and transportation security functions of the Department of Homeland Security), transportation infrastructure, transportation labor, and railroad retirement and unemployment (except revenue measures related thereto).<sup>215</sup>

The Ways and Means Committee's jurisdiction over "customs" was amended to state "customs revenue." This paragraph then read:

Customs revenue, collection districts, and ports of entry and delivery.<sup>216</sup>

Legislative History. Rules Committee Chair David Dreier inserted in the *Congressional Record* a "legislative history" concerning the changes to Rule X.<sup>217</sup> The legislative history first explained that the new committee's *legislative jurisdiction* over "overall homeland security policy" was to be interpreted "on a government-wide or multi-agency basis similar to the Committee on Government Reform's jurisdiction over 'overall economy, efficiency, and management of government operations and activities....'" The legislative history stated further: "Surgical addresses of homeland security policy in sundry areas of jurisdiction occupied by other committees would not be referred to the Committee on Homeland Security on the basis of 'overall' homeland security policy jurisdiction."<sup>218</sup>

Second, the legislative history interpreted the new committee's *legislative jurisdiction* over DHS's "organization and administration" to be "confined to organizational and administrative efforts and would not apply to programmatic efforts within the Department of Homeland Security within the jurisdiction of other committees."<sup>219</sup>

Third, the legislative history explained the new committee's homeland security *oversight jurisdiction*. The new committee would have oversight jurisdiction over the "homeland security community of the United States." However, as noted in the legislative history, this jurisdiction would not necessarily circumscribe the oversight jurisdiction of other committees:

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<sup>213</sup> Redesignated Rule X, cl. l(9).

<sup>214</sup> Redesignated Rule X, cl. r(18).

<sup>215</sup> Redesignated Rule X, cl. r(20).

<sup>216</sup> Redesignated Rule X, cl. t(1).

<sup>217</sup> "Legislative History to Accompany Changes to Rule X," *Congressional Record*, daily edition, vol. 151, January 4, 2005, pp. H25-H26.

<sup>218</sup> *Ibid.*, p. H25.

<sup>219</sup> *Ibid.*, p. H25.

Nothing in this clause shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review homeland security activities to the extent that such activity directly affects a matter otherwise within the jurisdiction of that committee.<sup>220</sup>

Fourth, the legislative history interpreted the “individual committee concerns” between the new committee on the one hand and nine standing committees and the Permanent Select Committee on Intelligence on the other. This section of the legislative history detailed jurisdictional relationships covering a number of specific policy and programmatic areas. In addition, in further explanation of the relationship between the new committee and the Ways and Means Committee, the legislative history contained a copy of the “Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over Customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002.”<sup>221</sup>

Referral Precedents. In the “Speaker’s Announcements” for the 109<sup>th</sup> Congress, the Speaker included a statement about the referral of legislation to the new committee:

The 109<sup>th</sup> Congress established the Committee on Homeland Security. The Chair would announce that the Speaker’s referrals of measures to the Select Committee on Homeland Security of the 108<sup>th</sup> Congress will not constitute precedent for referrals to the new committee.<sup>222</sup>

H.Res. 5 Summary. Chairman Dreier also inserted a section-by-section summary of H.Res. 5 in the Congressional Record, which included a summary of the jurisdiction granted to the Homeland Security Committee.<sup>223</sup> In remarks to the House, Chairman Dreier commented on the creation of the new committee:

...This change in House rule X, which governs the committees and their legislative jurisdictions, is a delicately crafted architecture. It creates a primary committee while recognizing the other legitimate oversight roles of existing committees. We envision a system of purposeful redundancy. By that, we mean more than one level of oversight and an atmosphere in which the competition of ideas is encouraged.

With this jurisdiction and the legislative history that I will be placing in the *Record*, the Department of Homeland Security will have more certainty as to which committee has the primary responsibility for homeland security. At the same time, the American people will live with the assurance that we are working to prevent anything from falling through the cracks.<sup>224</sup>

Committee Funding. The House on January 4, 2005, also agreed to H.Res. 10, providing interim funding for the Homeland Security Committee through March 31, 2005.<sup>225</sup> Funding for the 109<sup>th</sup>

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<sup>220</sup> Ibid., p. H25.

<sup>221</sup> Ibid., pp. H25-H26. For an analysis of bill referrals affected by House rules changes and the creation of the Homeland Security Committee—in the first five months of the 109<sup>th</sup> Congress—see CRS Report RL33061, *Homeland Security and House Committees: Analysis of 109<sup>th</sup> Congress Jurisdiction Changes and Their Impact on the Referral of Legislation*, by (name redacted) and (name redacted).

<sup>222</sup> “Announcement by the Speaker Pro Tempore,” *Congressional Record*, daily edition, vol. 151, January 4, 2005, p. H35.

<sup>223</sup> “Section-by-Section Summary of H.Res. 5, Adopting House Rules for the 109<sup>th</sup> Congress,” *Congressional Record*, daily edition, vol. 151, January 4, 2005, p. H12.

<sup>224</sup> Rep. David Dreier, remarks in the House, *Congressional Record*, daily edition, vol. 151, January 4, 2005, p. H14.

<sup>225</sup> Rep. Bob Ney and Rep. John Larson, remarks in the House, *Congressional Record*, daily edition, vol. 151, January (continued...)

Congress for the Homeland Security Committee and other committees was contained in an omnibus committee funding resolution (H.Res. 224).<sup>226</sup>

Committee Assignments. Representative Christopher Cox was elected as committee chair and Representative Bennie G. Thompson as ranking minority member in H.Res. 32 and H.Res. 33, respectively, on January 6, 2005.<sup>227</sup> Chairman Cox had also chaired the Select Committee on Homeland Security in the 108<sup>th</sup> Congress. Representative Thompson had served on the select committee in the 108<sup>th</sup> Congress, and was the ranking minority member on its Subcommittee on Emergency Preparedness and Response. Representative Jim Turner, who served as ranking minority member of the select committee, did not seek reelection to the 109<sup>th</sup> Congress.

Freshman Republican Members Charlie Dent, Bobby Jindal, Daniel E. Lungren, Michael T. McCaul, and David G. Reichert were elected to the committee in H.Res. 48 on January 26, 2005.<sup>228</sup> Thirteen Republican Members and 14 Democratic Members were elected to the committee in H.Res. 73 and H.Res. 74, respectively, on February 9, 2005.<sup>229</sup> On February 10, Chairman Cox announced his appointment of Representative Curt Weldon as the committee's vice chair.<sup>230</sup>

There were 19 Republican committee members and 15 Democratic committee members. Two Republican Members chaired other committees: Representative Don Young chaired the Transportation and Infrastructure Committee and Representative Tom Davis chaired the Government Reform Committee. One Democratic Member, Representative Jane Harman, was the ranking member on the Permanent Select Committee on Intelligence. The committee membership in order of seniority as of February 9 was as follows:

Majority Members	Minority Members
Christopher Cox, CA, Chair	Bennie G. Thompson, MS
Don Young, AK	Loretta Sanchez, CA
Lamar S. Smith, TX	Edward J. Markey, MA
Curt Weldon, PA, Vice Chair	Norman D. Dicks, WA
Christopher Shays, CT	Jane Harman, CA
Peter T. King, NY	Peter A. DeFazio, OR
John Linder, GA	Nita M. Lowey, NY

(...continued)

4, 2005, pp. H35-H37.

<sup>226</sup> "Providing for Expenses of Certain Committees of House of Representatives in One Hundred Ninth Congress," *Congressional Record*, daily edition, vol. 151, April 27, 2005, pp. H2573-H2576.

<sup>227</sup> "Election of Majority Members to Certain Standing Committees," and "Election of Minority Members to Certain Standing Committees," *Congressional Record*, daily edition, vol. 151, January 6, 2005, pp. H81-H82.

<sup>228</sup> "Election of Majority Members to Certain Standing Committees," *Congressional Record*, daily edition, vol. 151, January 26, 2005, p. H200.

<sup>229</sup> "Election of Majority Members to Certain Standing Committees," and "Election of Minority Members to Certain Standing Committees," *Congressional Record*, daily edition, vol. 151, February 9, 2005, pp. H419, H422.

<sup>230</sup> Committee on Homeland Security, "Representative Curt Weldon Named Homeland Security Committee Vice Chairman," news release, February 10, 2005. (Available online at <http://www.homeland.house.gov/release.cfm?id=309>, visited February 10, 2005.)

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Majority Members	Minority Members
Mark E. Souder, IN	Eleanor Holmes Norton, DC
Tom Davis, VA	Zoe Lofgren, CA
Daniel E. Lungren, CA	Sheila Jackson-Lee, TX
Jim Gibbons, NV	Bill Pascrell Jr., NJ
Rob Simmons, CT	Donna M. Christensen, VI
Mike Rogers, AL	Bob Etheridge, NC
Stevan Pearce, NM	James R. Langevin, RI
Katherine Harris, FL	Kendrick B. Meek, FL
Bobby Jindal, LA	
David G. Reichert, WA	
Michael T. McCaul, TX	
Charlie Dent, PA	

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Committee Organization. The new committee met February 9, 2005, to organize. It adopted its rules for the 109<sup>th</sup> Congress, which were printed in the *Congressional Record*.<sup>231</sup> The following subcommittees were created:

- Economic Security, Infrastructure Protection, and Cybersecurity  
Chair: Daniel E. Lungren; Ranking Member: Loretta Sanchez
- Emergency Preparedness, Science, and Technology  
Chair: Peter T. King; Ranking Member: Bill Pascrell Jr.
- Intelligence, Information Sharing, and Terrorism Risk Assessment  
Chair: Rob Simmons; Ranking Member: Zoe Lofgren
- Management, Integration, and Oversight  
Chair: Mike Rogers; Ranking Member: Kendrick B. Meek
- Prevention of Nuclear and Biological Attack  
Chair: John Linder; Ranking Member: James R. Langevin<sup>232</sup>

On March 3, 2005, the committee released its subcommittee rosters.<sup>233</sup>

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<sup>231</sup> “Publication of the Rules of the Committee on Homeland Security, 109<sup>th</sup> Congress,” *Congressional Record*, daily edition, vol. 151, February 16, 2005, pp. H675-H679. (The committee’s rules were available online on the committee’s website, at <http://hsc.house.gov/files/rules.pdf>, visited February 10, 2005.)

<sup>232</sup> The committee announced subcommittee chairs and ranking members on February 15, 2005. U.S. House, Committee on Homeland Security, “Homeland Security Committee Announces Subcommittee Leaders,” news release, February 15, 2005. (Available online at <http://www.homeland.house.gov/release.cfm?id=311>, visited February 28, 2005.)

<sup>233</sup> U.S. House, Committee on Homeland Security, “Homeland Security Committee Announces Members, Subcommittees and Leadership,” news release, March 3, 2005. (Available online at <http://hsc.house.gov/release.cfm?>, visited March 7, 2005.)



The committee's rules provided that the committee chair and ranking minority member were ex officio members of all subcommittees. They were allowed to vote in subcommittee and to be counted for purposes of establishing a quorum.<sup>234</sup>

At its organization meeting, the committee also adopted its oversight plan for the 109<sup>th</sup> Congress.<sup>235</sup>

Later in the 109<sup>th</sup> Congress, Chairman Cox was nominated by the President to become a member of the Securities and Exchange Commission. The Senate confirmed his nomination July 29, 2005, and he resigned from the House August 2. On September 15, 2005, Representative Peter L. King was elected as the committee's new chair, and Representative Ginny Brown-Waite, FL, was elected to fill the Republican vacancy on the committee (H.Res. 445).<sup>236</sup>

To fill the then-vacant chairmanship of the Subcommittee on Emergency Preparedness, Science and Technology, committee Chairman King on September 22, 2005, named Representative David G. Reichert.<sup>237</sup> In addition, as a consequence of Hurricane Katrina's devastation of the Gulf Coast and for other reasons, Chairman King created a new Subcommittee on Investigations on October 7. Representative Michael T. McCaul was named chair and Representative Bob Etheridge was named ranking minority member.<sup>238</sup>

## Committee Organization in the 110<sup>th</sup> Congress

Organization. In the 2006 general election, Democrats won a majority of the House and organized it and its committees in the 110<sup>th</sup> Congress. The ratio of Democrats to Republicans on the Homeland Security Committee was 20-to-15. The members elected to the committee were:<sup>239</sup>

Majority Members	Minority Members
Bennie G. Thompson, MS, Chair	Peter T. King, NY
Loretta Sanchez, CA, Vice Chair <sup>240</sup>	Lamar S. Smith, TX
Edward J. Markey, MA	Christopher Shays, CT

<sup>234</sup> Committee Rule IV(D).

<sup>235</sup> U.S. House, Committee on Homeland Security, *Committee on Homeland Security Oversight Plan*.

<sup>236</sup> "Election of Members to Certain Standing Committees of the House," debate in the House, *Congressional Record*, daily edition, vol. 151, September 15, 2005, pp. H8060-H8061. See also Martin Kady II, "New Yorker Wins Homeland Gavel: Long Island's King New House Chairman," *CQ Weekly*, vol. 63, no. 36, September 19, 2005, p. 2503.

<sup>237</sup> Rep. David G. Reichert, "Reichert Named Chair of Emergency Preparedness Subcommittee," news release, September 22, 2005. (Available online at <http://www.house.gov/reichert/press.05/9.22.05.shtml>, visited March 2, 2007.)

<sup>238</sup> Rep. Michael McCaul, "McCaul Named Subcommittee Chair: Congressman McCaul to Lead Homeland Security Subcommittee on Investigations," news release, October 7, 2005. (Available online at [http://www.house.gov/mccaul/list/press/tx10\\_mccaul/10\\_7\\_05\\_HLS\\_sub\\_com.html](http://www.house.gov/mccaul/list/press/tx10_mccaul/10_7_05_HLS_sub_com.html), visited March 2, 2007.)

<sup>239</sup> H.Res. 7, agreed to in the House January 4, 2007; H.Res. 8, agreed to in the House January 4, 2007; H.Res. 45, agreed to in the House January 10, 2007; and H.Res. 56, agreed to in the House January 12, 2007. For a current roster of committee members, reflecting any subsequent membership changes in the 110<sup>th</sup> Congress, see the Clerk of the House website at [http://clerk.house.gov/committee\\_info/index.html](http://clerk.house.gov/committee_info/index.html), or the Homeland Security Committee's website at <http://homeland.house.gov>, both visited March 12, 2008.

<sup>240</sup> Rep. Loretta Sanchez, "Sanchez Oversees Homeland Security Subcommittee: California Democrat to Set Homeland Security Priorities," news release, January 18, 2007.

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Majority Members	Minority Members
Norman D. Dicks, WA	Mark E. Souder, IN
Jane Harman, CA	Tom Davis, VA
Peter A. DeFazio, OR	Daniel E. Lungren, CA
Nita M. Lowey, NY	Mike Rogers, AL
Eleanor Holmes Norton, DC	Bobby Jindal, LA
Zoe Lofgren, CA	David G. Reichert, WA
Sheila Jackson-Lee, TX	Michael T. McCaul, TX
Donna M. Christensen, VI	Charlie Dent, PA
Bob Etheridge, NC	Ginny Brown-Waite, FL
James R. Langevin, RI	Marsha Blackburn, TN
Henry Cuellar, TX	Gus M. Bilirakis, FL
Christopher P. Carney, PA	David Davis, TN
Yvette D. Clarke, NY	
Al Green, TX	
Ed Perlmutter, CO	
Vacancy	

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The Committee on Homeland Security organized and adopted its oversight plan on January 23, 2007.<sup>241</sup> The six subcommittees created had been previously announced:<sup>242</sup>

- Border, Maritime, and Global Counterterrorism  
Chair: Loretta Sanchez; Ranking Member: Mark E. Souder
- Emergency Communications, Preparedness, and Response  
Chair: Henry Cuellar; Ranking Member: Charlie Dent
- Emerging Threats, Cybersecurity, and Science and Technology  
Chair: James R Langevin; Ranking Member: Michael T. McCaul

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<sup>241</sup> The committee's rules for the 110<sup>th</sup> Congress were published in the *Congressional Record*: "Publication of the Rules of the Committee on Homeland Security, 110<sup>th</sup> Congress," *Congressional Record*, daily edition, vol. 153, January 31, 2007, pp. H1127-H1130. (The committee's rules were available online on the committee's website, at <http://homeland.house.gov/documents/chsrules110th.pdf>, visited March 2, 2007.) See also U.S. House, Committee on Homeland Security, *Committee on Homeland Security Oversight Plan*, and Committee on Homeland Security, "Thompson Lays Out Homeland Security Agenda," news release, January 29, 2007 (available online at <http://homeland.house.gov/press/index.asp?ID=157&SubSection=0&Issue=0&DocumentType=0&PublishDate=0>, visited March 2, 2007).

<sup>242</sup> Committee on Homeland Security, "Thompson Announces Homeland Security Subcommittees for the 110<sup>th</sup> Congress," news release, January 11, 2007 (available online at <http://homeland.house.gov/press/index.asp?ID=151&SubSection=0&Issue=0&DocumentType=0&PublishDate=0>, visited March 2, 2007); and Committee on Homeland Security, "Homeland Security Committee Nominates Subcommittee Chairs," news release, January 18, 2007 (available online at <http://homeland.house.gov/press/index.asp?ID=153&SubSection=0&Issue=0&DocumentType=0&PublishDate=0>, visited March 2, 2007).

- Intelligence, Information Sharing, and Terrorism Risk Assessment  
Chair: Jane Harman; Ranking Member: David G. Reichert
- Management, Investigations, and Oversight  
Chair: Christopher P. Carney; Ranking Member: Mike Rogers
- Transportation Security and Infrastructure Protection  
Chair: Sheila Jackson-Lee; Ranking Member: Daniel E. Lungren

Jurisdictional Memorandum. With the convening of the 110<sup>th</sup> Congress, Rules Committee Chair Louise McIntosh Slaughter inserted in the *Congressional Record* a memorandum of understanding arrived at by the chairs of the Homeland Security Committee and Transportation and Infrastructure Committee, Messrs. Bennie G. Thompson and James L. Oberstar, respectively.<sup>243</sup> The memorandum of understanding began by acknowledging that the legislative history that had been inserted in the *Congressional Record* in the 109<sup>th</sup> Congress was the authoritative source of legislative history, and then stated that the memorandum's purpose was to provide "two clarifications."

First, with regard to the Federal Emergency Management Agency (FEMA), the Homeland Security Committee had jurisdiction over the Homeland Security Department's "responsibilities with regard to emergency preparedness and collective response only as they relate to terrorism." Referring then to the enactment of the Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295) and its title VI, the Post-Katrina Emergency Management Reform Act of 2006, the memorandum of understanding next stated that a bill to amend FEMA's "all-hazards emergency preparedness programs that necessarily addresses FEMA's terrorism preparedness programs" would be referred to the Transportation and Infrastructure Committee and that, in addition, the Homeland Security Committee would have a "jurisdictional interest" in the bill.

This part of the memorandum of understanding also stated that the memorandum did not affect the Transportation and Infrastructure Committee's jurisdiction over the Stafford Disaster Relief and Emergency Assistance Act or the Federal Fire Prevention and Control Act.

Second, with regard to port security, the memorandum of understanding stated that the Homeland Security Committee had jurisdiction over port security, and that some responsibilities of the Coast Guard fell within the jurisdiction of both committees. The memorandum next stated that a bill that addressed the "activities, programs, assets, and personnel of the Coast Guard as they relate to port security and non-port security missions" would be referred to the Transportation and Infrastructure Committee and that, in addition, the Homeland Security Committee would have a "jurisdictional interest" in the bill.

The memorandum of understanding concluded with a disclaimer that the memorandum clarified jurisdiction only with respect to these two specific issues and did not address other issues or the jurisdiction of other committees.

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<sup>243</sup> Rep. Louise McIntosh Slaughter, remarks in the House, *Congressional Record*, daily edition, vol. 153, January 4, 2007, pp. H15-H16. Press reports, statements by Members of Congress, and other sources have noted the jurisdictional competition between the new Homeland Security Committee and other committees, which may be an explanation for the two committees' agreement to a memorandum of understanding. For a summary of this jurisdictional competition, see Martin Kady II, "Three Years on, Turf Wars Persist," *CQ Weekly*, vol64, no. 26, June 26, 2006, pp. 1776-1777.

## Appendix A. Recommendations of the Select Committee on Homeland Security on Changes to the Rules of the House of Representatives with Respect to Homeland Security Issues

In this appendix, the reader will find the text of the report of the Select Committee on Homeland Security, which was directed by the House, as explained above, to “conduct a thorough and complete study of the operation and implementation of the rules of the House, including rule X, with respect to the issue of homeland security. The select committee shall submit its recommendations regarding any changes in the rules of the House to the Committee on Rules not later than September 30, 2004.”<sup>244</sup> Different type styles and formats reflect those used in the original text.

House Select Committee on Homeland Security, *Recommendations of the Select Committee on Homeland Security on Changes to the Rules of the House of Representatives with Respect to Homeland Security Issues*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 30, 2004. (Available online at [http://hsc.house.gov/files/mini\\_report\\_sigs.pdf](http://hsc.house.gov/files/mini_report_sigs.pdf), visited December 10, 2004.<sup>245</sup>)

### “THE NEED FOR A PERMANENT STANDING COMMITTEE ON HOMELAND SECURITY

“The 9/11 terrorists exploited longstanding policy, structural, and programmatic gaps in America’s homeland security caused by the separation of foreign from domestic intelligence, the division of ‘national security’ and ‘law enforcement’ information and activities, and the stove-piped and uncoordinated nature of our multi-agency border and transportation security systems. Since then, Congress and the President have collaborated in a fundamental re-focusing of executive branch agencies to close those gaps, particularly by creating the Department of Homeland Security (DHS), but also through a wide variety of other initiatives, such as the Terrorist Threat Integration Center (TTIC), the Terrorist Screening Center (TSC), and the proposed National Intelligence Director (NID) and National Counterterrorism Center (NCTC).

“Despite this significant Executive Branch reorganization, Congressional structures remain almost the same as they were before the 9/11 attacks. Scores of committees and subcommittees of the Congress have some claim to jurisdiction over various elements of the Department of Homeland Security (DHS), with six standing committees claiming some jurisdiction over critical border security functions of the Department. This creates chaos for the Department. Since January 2004, senior officials from the Department have had to testify at more than 160 Congressional hearings—an average of 20 each month.

“Creating a permanent standing Committee on Homeland Security, commencing in the 109<sup>th</sup> Congress, is necessary if the House of Representatives is effectively to meet its legislative and oversight responsibilities with respect to homeland security programs and activities, particularly

<sup>244</sup> H.Res. 5, §4(b)(3). H. Res 5 was agreed to in the House January 7, 2003.

<sup>245</sup> A facsimile of the letter transmitting the report to the House Rules Committee and two additional documents, “Supplementary Materials” and “Summary of Activities of the Select Committee on Homeland Security,” are also available online at this location.

those of DHS. The current diffused and unfocused congressional jurisdiction over the Department of Homeland Security, and homeland security in general, not only imposes extraordinary burdens on the Department, but makes it far more difficult for the Congress to guide the Department's activities in a consistent and focused way that promotes integration and eliminates programmatic redundancies, and advances implementation of a coherent national homeland security strategy. Current legislative "silos" foster—and, if left unchanged, will continue to foster—fragmentation within DHS as it struggles to build a new common culture focused squarely on the homeland security mission.

"For these reasons, not only the 9/11 Commission, but virtually every other commission and outside expert has recognized that effective and efficient legislation and oversight with respect to homeland security requires congressional reorganization that vests in a single standing committee in each chamber jurisdiction that parallels the homeland security mission of preventing, preparing for, and responding to acts of terrorism in the United States. A select committee, while appropriate in certain situations, would not be conducive to fostering the clear lines of accountability and responsibility that are necessary when dealing with the variety and cross-cutting nature of homeland security programs and activities situated largely in a single Department.

"The success of this endeavor requires that the new standing committee have legislative and oversight jurisdiction broad enough to ensure that it can take a holistic approach toward homeland security issues, and that the unnecessarily heavy burden the Department of Homeland Security now bears in interacting with a vast array of committees and subcommittees in both houses of the Congress is drastically reduced.

"In carrying out this consolidation, it is important to craft the right balance between the jurisdiction of the new standing Committee on Homeland Security and that of existing committees. The Homeland Security Act of 2002 offers a congressionally-created road map to jurisdictional reform that focuses on the structure, organization, capabilities, and mission of the Department itself. The House must reorganize the committee structure so that the new homeland security mission is provided sustained and consistent attention.

"RECOMMENDATIONS ON CHANGES TO RULE X WITH RESPECT TO HOMELAND SECURITY

"Pursuant to House Resolution 5, the Select Committee on Homeland Security makes the following recommendations for changes to Rule X regarding the reorganization of jurisdiction within the House with respect to homeland security matters:

"RULE X

*"Organization of Committees*

"COMMITTEES AND THEIR LEGISLATIVE JURISDICTIONS

"I. There shall be in the House the following standing committees, each of which shall have the jurisdiction and related functions assigned by this clause and clauses 2, 3, and 4. All bills, resolutions, and other matters relating to subjects within the jurisdiction of the standing committees listed in this clause shall be referred to those committees, in accordance with clause 2 of rule XII, as follows:

**“(a) Committee on Agriculture. ...**

[no changes]

**“(b) Committee on Appropriations. ...**

[no changes]

**“(c) Committee on Armed Services. ...**

[no changes]

**“(d) Committee on the Budget. ...**

[no changes]

**“(e) Committee on Education and the Workforce. ...**

[no changes]

**“(f) Committee on Energy and Commerce. ...**

Add at end: “In the case of each of the foregoing, the committee’s jurisdiction shall not include responsibilities of the Department of Homeland Security.”

**“(g) Committee on Financial Services. ...**

Add at end: “In the case of each of the foregoing, the committee’s jurisdiction shall not include responsibilities of the Department of Homeland Security.”

**“(h) Committee on Government Reform. ...**

[no changes]

**“(i) Committee on House Administration. ...**

[no changes]

**“(j) Committee on International Relations. ...**

Add at end: “In the case of each of the foregoing, the committee’s jurisdiction shall not include responsibilities of the Department of Homeland Security.”

**“(k) Committee on the Judiciary. ...**

“(8) Immigration and naturalization (except for Department of Homeland Security responsibility for security of United States borders and ports of entry, including the Department’s responsibilities for visas and other forms of permission to enter the United States, and immigration enforcement) .

“(18) Subversive activities affecting the internal security of the United States (except for responsibilities of the Department of Homeland Security) .

“(l) **Committee on Resources. ...**

[no changes]

“(m) **Committee on Rules. ...**

[no changes]

“(n) **Committee on Science. ...**

[no changes]

“(o) **Committee on Small Business. ...**

[no changes]

“(p) **Committee on Standards of Official Conduct. ...**

[no changes]

“(q) **Committee on Transportation and Infrastructure.**

“(1) Non-homeland security missions of the Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy.

“(2) Federal management of natural disasters.

“(18) Related transportation regulatory agencies (except for responsibilities of the Department of Homeland Security).

“(20) Transportation, including railroads, water transportation, transportation safety (except automobile safety), transportation infrastructure, transportation labor, and railroad retirement and unemployment (except revenue measures related thereto); in each case exclusive of the responsibilities of the Department of Homeland Security.

“(22) Civil aviation, including safety and commercial impact of security measures.

“(r) **Committee on Veterans’ Affairs. ...**

[no changes]

“(s) **Committee on Ways and Means. ...**

“(1) Revenue from customs, collection districts and ports of entry and delivery. ...

“GENERAL OVERSIGHT RESPONSIBILITIES

“[no changes]

“SPECIAL OVERSIGHT FUNCTIONS...

“[no changes]

\* \* \* \* \*

“PERMANENT SELECT COMMITTEE ON INTELLIGENCE

“...

“ I I.(a)(I) There is established a Permanent Select Committee on Intelligence (hereafter in this clause referred to as the “select committee”). The select committee shall be composed of not more than 18 Members, Delegates, or the Resident Commissioner, of whom not more than 10 may be from the same party. The select committee shall include at least one Member, Delegate, or the Resident Commissioner from each of the following committees:

“(A) the Committee on Appropriations;

“(B) the Committee on Armed Services;

“(C) the Committee on Homeland Security;

“(D) the Committee on International Relations; and

“(E) the Committee on the Judiciary. ...

\* \* \* \* \*

“COMMITTEE ON HOMELAND SECURITY

“12. (a)(I) There is here by established a permanent standing Committee on Homeland Security (hereafter in this clause referred to as the “committee”), which shall be composed of not more than 29 Members, Delegates, or the Resident Commissioner, of whom not more than 16 may be from the same party.

“(2) The Speaker and the Minority Leader shall be ex officio members of the committee but shall have no vote in the committee and may not be counted for purposes of determining a quorum thereof.

“(3) The Speaker and Minority Leader each may designate a member of his leadership staff to assist him in his capacity as ex officio member, with the same access to committee meetings, hearings, briefings, and materials as employees of the committee and subject to the same security clearance and confidentiality requirements as employees of the committee under applicable rules of the House.

“(b) There shall be referred to the committee proposed legislation, messages, petitions, memorials, and other matters related to—



**“(1) Homeland security generally.**

**“(2) The Department of Homeland Security (except with respect to Federal management of natural disasters, the non-homeland security missions of the Coast Guard, and immigration and naturalization matters unrelated to homeland security).**

**“(3) The integration, analysis, and sharing of homeland security information related to the risk of terrorism within the United States.**

**“(4) The dissemination of terrorism threat warnings, advisories, and other homeland security related communications to State and local governments, the private sector, and the public.**

**“(5) Department of Homeland Security responsibility for research and development in support of homeland security, including technological applications of such research.**

**“(6) Department of Homeland Security responsibility for security of United States borders and ports of entry (unrelated to customs revenue functions), including the Department’s responsibilities related to visas and other forms of permission to enter the United States.**

**“(7) Enforcement of Federal immigration laws (except for responsibilities of the Department of Justice).**

**“(8) Security of United States air, land, and maritime transportation systems.**

**“(9) Customs functions, other than customs revenue functions.**

**“(10) Department of Homeland Security responsibility for Federal, state, and local level preparation to respond to acts of terrorism.**

“(c) In addition to the general oversight responsibilities described in clause 2, the committee shall review, study, and coordinate on a continuing basis laws, programs, and Government activities related to all aspects of homeland security.

“(d) The committee shall have exclusive authorizing and primary oversight jurisdiction with respect to the Department of Homeland Security’s responsibilities and activities related to the prevention of, preparation for, and response to acts of terrorism within the United States. The committee also shall have jurisdiction over the other responsibilities and activities of the Department of Homeland Security, except as specified in subsection (b) (2).

“(e) Subject to the Rules of the House, funds may not be appropriated for a fiscal year, with the exception of a bill or joint resolution continuing appropriations, or an amendment thereto, or a conference report thereon, to, or for use of, the Department of Homeland Security to prevent, prepare for, or respond to acts of terrorism in the United States, unless the funds shall previously have been authorized by a bill or joint resolution passed by the House during the same or preceding fiscal year to carry out such activity for such fiscal year.

“(f) No referrals of legislation, executive communication, or any other action taken in the 108<sup>th</sup> Congress with regard to the Select Committee on Homeland Security or any other committee of the House shall be considered to be a precedent for referrals of any homeland security-related measures in the current Congress.”

## Appendix B. Recommendations on Congressional Organization Made by the 9/11 Commission<sup>246</sup>

In this appendix, the reader will find excerpts from the report of the 9/11 Commission. The excerpts are the verbatim recommendations related to congressional organization that are contained in this report. Different type styles and formats reflect those used in the original text.

1) National Commission on Terrorist Attacks Upon the United States, *The 9/11 Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington: GPO, July 22, 2004), p. 416. (Available online at <http://www.gpoaccess.gov/911/index.html>, visited December 10, 2004.)

**“Recommendation: Finally, to combat the secrecy and complexity we have described [in accomplishing unity of effort in the intelligence community], the overall amounts of money being appropriated for national intelligence and to its component agencies should no longer be kept secret. Congress should pass a separate appropriations act for intelligence, defending the broad allocation of how these tens of billions of dollars have been assigned among the varieties of intelligence work.**

“The specifics of the intelligence appropriation would remain classified, as they are today. Opponents of declassification argue that America’s enemies could learn about intelligence capabilities by tracking the top-line appropriations figure. Yet the top-line figure by itself provides little insight into U.S. intelligence sources and methods. The U.S. government readily provides copious information about spending on its military forces, including military intelligence. The intelligence community should not be subject to that much disclosure. But when even aggregate categorical numbers remain hidden, it is hard to judge priorities and foster accountability.”

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2) *The 9/11 Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, pp. 419-423.<sup>247</sup>“13.4 UNITY OF EFFORT IN THE CONGRESS

### **“Strengthen Congressional Oversight of Intelligence and Homeland Security**

“Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need. The

<sup>246</sup> Created in PL 107-306, §§601-611; 116 Stat. 2383, 2408-2413. The original 18-month existence of the commission was extended to 20 months in PL 108-207; 118 Stat. 556. Among the purposes spelled out in sec. 603 of PL 107-306, the commission’s mandate was to “make a full and complete accounting of the circumstances surrounding the attacks of September 11, 2001,” the source of the commission’s popular name. The commission’s official name was the National Commission on Terrorist Attacks Upon the United States.

<sup>247</sup> See also Chapter 3, “Counterterrorism Evolves,” of the 9/11 Commission report, where the commission analyzed the “evolution of government efforts to counterterrorism by Islamic extremists against the United States.” Section 3.7 addressed the evolution in Congress, focusing on the post-Cold War period. *The 9/11 Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, pp. 102-107.

United States needs a strong, stable, and capable congressional committee structure to give America's national intelligence agencies oversight, support, and leadership.

“Few things are more difficult to change in Washington than congressional committee jurisdiction and prerogatives. To a member, these assignments are almost as important as the map of his or her congressional district. The American people may have to insist that these changes occur, or they may well not happen. Having interviewed numerous members of Congress from both parties, as well as congressional staff members, we found that dissatisfaction with congressional oversight remains widespread.

“The future challenges of America's intelligence agencies are daunting. They include the need to develop leading-edge technologies that give our policy-makers and warfighters a decisive edge in any conflict where the interests of the United States are vital. Not only does good intelligence win wars, but the best intelligence enables us to prevent them from happening altogether.

“Under the terms of existing rules and resolutions the House and Senate intelligence committees lack the power, influence, and sustained capability to meet this challenge. While few members of Congress have the broad knowledge of intelligence activities or the know-how about the technologies employed, all members need to feel assured that good oversight is happenings. When their unfamiliarity with the subject is combined with the need to preserve security, a mandate emerges for substantial change.

“Tinkering with the existing structure is not sufficient. Either Congress should create a joint committee for intelligence, using the Joint Atomic Energy Committee as its model, or it should create House and Senate committees with combined authorizing and appropriations powers.

“Whichever of these two forms are chosen, the goal should be a structure—codified by resolution with powers expressly granted and carefully limited—allowing a relatively small group of members of Congress, given time and reason to master the subject and the agencies, to conduct oversight of the intelligence establishment and be clearly accountable for their work. The staff of this committee should be nonpartisan and work for the entire committee and not for individual members.

“The other reforms we have suggested—for a National Counterterrorism Center and a National Intelligence Director—will not work if congressional oversight does not change too. Unity of effort in executive management can be lost if it is fractured by divided congressional oversight.

**“Recommendation: Congressional oversight for intelligence—and counterterrorism—is now dysfunctional. Congress should address this problem. We have considered various alternatives: A joint committee on the old model of the Joint Committee on Atomic Energy is one. A single committee in each house of Congress, combining authorizing and appropriating authorities, is another.**

“●The new committee or committees should conduct continuing studies of the activities of the intelligence agencies and report problems relating to the development and use of intelligence to all members of the House and Senate.

“●We have already recommended that the total level of funding for intelligence be made public, and that the national intelligence program be appropriated to the National Intelligence Director, not to the secretary of defense.

“●We also recommend that the intelligence committee should have a subcommittee specifically dedicated to oversight, freed from the consuming responsibility of working on the budget.

“●The resolution creating the new intelligence committee structure should grant subpoena authority to the committee or committees. The majority party’s representation on this committee should never exceed the minority’s representation by more than one.

“●Four of the members appointed to this committee or committees should be a member who also serves on each of the following additional committees: Armed Services, Judiciary, Foreign Affairs, and the Defense Appropriations subcommittee. In this way the other major congressional interests can be brought together in the new committee’s work.

“●Members should serve indefinitely on the intelligence committees, without set terms, thereby letting them accumulate expertise.

“●The committees should be smaller—perhaps seven or nine members in each house—so that each member feels a greater sense of responsibility, and accountability, for the quality of the committee’s work.

“The leaders of the Department of Homeland Security now appear before 88 committees and subcommittees of Congress. One expert witness (not a member of the administration) told us that this is perhaps the single largest obstacle impeding the department’s successful development. The one attempt to consolidate such committee authority, the House Select Committee on Homeland Security, may be eliminated. The Senate does not have even this.

“Congress needs to establish for the Department of Homeland Security the kind of clear authority and responsibility that exist to enable the Justice Department to deal with crime and the Defense Department to deal with threats to national security. Through not more than one authorizing committee and one appropriating subcommittee in each house, Congress should be able to ask the secretary of homeland security whether he or she has the resources to provide reasonable security against major terrorists acts within the United States and to hold the secretary accountable for the department’s performance.

**“Recommendation: Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does not have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.**

#### **“Improve the Transitions between Administrations**

“In chapter 6, we described the transition of 2000-2001. Beyond the policy issues we described, the new administration did not have deputy cabinet officers in place until the spring of 2001, and the critical subcabinet officials were not confirmed until the summer—if then. In other words, the new administration—like others before it—did not have its team on the job until at least six months after it took office.

**“Recommendation: Since a catastrophic attack could occur with little or no notice, we should minimize as much as possible the disruption of national security policymaking during the change of administrations by accelerating the process for national security**

**appointments. We think the process could be improved significantly so transitions can work more effectively and allow new officials to assume their new responsibilities as quickly as possible.**<sup>248</sup>

“● Before the election, candidates should submit the names of selected members of their prospective transition teams to the FBI so that, if necessary, those team members can obtain security clearances immediately after the election is over.

“● A president-elect should submit lists of possible candidates for national security positions to begin obtaining security clearances immediately after the election, so that their background investigations can be complete before January 20.

“● A single federal agency should be responsible for providing and maintaining security clearances, ensuring uniform standards—including uniform security questionnaires and financial report requirements, and maintaining a single database. This agency can also be responsible for administering polygraph tests on behalf of organizations that require them.

“● A president-elect should submit the nominations of the entire new national security team, through the level of under secretary of cabinet departments, not later than January 20. The Senate, in return, should adopt special rules requiring hearings and votes to confirm or reject national security nominees within 30 days of their submission. The Senate should not require confirmation of such executive appointees below Executive Level 3.

“● The outgoing administration should provide the president-elect, as soon as possible after election day, with a classified, compartmented list that catalogues specific, operational threats to national security; major military or covert operations; and pending decisions on the possible use of force. Such a document could provide both notice and a checklist, inviting a president-elect to inquire and learn more.”

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<sup>248</sup> For an analysis of this recommendation’s implications for Senate procedures, see CRS Report RL32551, *9/11 Commission Recommendations: The Senate Confirmation Process for Presidential Nominees*, by (name redacted); and CRS Report RL32588, *9/11 Commission Recommendations: Changes to the Presidential Appointment and Presidential Transition Processes*, by (name redacted).

## Appendix C. Recommendations on Congressional Organization Made by the Bremer Commission<sup>249</sup>

In this appendix, the reader will find excerpts from the report of the Bremer Commission. The excerpts are the verbatim recommendations related to congressional organization that are contained in this report. Different type styles and formats reflect those used in the original text.

National Commission on Terrorism, *Countering the Changing Threat of International Terrorism*, transmitted to the President and Congress June 7, 2000, pp. 33, 35-36. (Available online at <http://www.gpo.gov/nct>, visited December 10, 2004.)

### **“Improve Executive and Legislative Branch Review of Counterterrorism Activities**

**“Congressional responsibility for reviewing the President’s counterterrorism budget is divided among several committees and sub-committees, making coordinated review more difficult.**

“One of the essential tasks for the national counterterrorism coordinator [on the President’s staff] is to prepare a comprehensive counterterrorism plan and budget. Similarly, Congress should develop mechanisms for coordinated review of the President’s counterterrorism policy and budget, rather than having each of the many relevant committees moving in different directions without regard to the overall strategy.

“As a first step, the Commission urges Congress to consider holding joint hearings of two or more committees on counterterrorism matters. In addition, to facilitate executive-legislative discussion of terrorism budget issues, the House and Senate Appropriations committees should each assign to senior staff responsibility for cross-appropriations review of counterterrorism programs.

“Finally, the Commission notes the importance of bipartisanship both in Congress and in the executive branch when considering counterterrorism policy and funding issues.

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<sup>249</sup> Created in P.L. 105-277 (within this law, the Omnibus Appropriations Act for FY1999, the commission was created in the Foreign Operations Appropriations Act for FY1999, §591); 112 Stat. 2681-1, 2681-210 - 2681-213. The Bremer Commission took its popular name from its chair, L. Paul Bremer III, then-managing director of Kissinger Associates and former U.S. ambassador-at-large for counter-terrorism.

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**“KEY CONGRESSIONAL COMMITTEES WITH OVERSIGHT  
RESPONSIBILITY FOR COUNTERTERRORISM**

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**“SENATE**

Appropriations  
Armed Services  
Foreign Relations  
Governmental Affairs  
Judiciary  
Intelligence

**HOUSE OF REPRESENTATIVES**

Appropriations  
Armed Services  
Government Reform  
International Relations  
Judiciary  
Intelligence

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**“Recommendations:**

“• Congress should develop a mechanism for reviewing the President’s counterterrorism policy and budget as a whole. The executive branch should commit to full consultation with Congress on counterterrorism issues.

“• House and Senate Appropriations Committees should immediately direct full-committee staff to conduct a cross-subcommittee review of counterterrorism budgets.”

## Appendix D. Recommendations on Congressional Organization Made by the Gilmore Commission<sup>250</sup>

In this appendix, the reader will find excerpts from the report of the Gilmore Commission. The excerpts are the verbatim recommendations related to congressional organization that are contained in this report. Different type styles and formats reflect those used in the original text.

1) Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *I. Assessing the Threat, First Annual Report to the President and the Congress*, December 15, 1999, p. 57. (Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.)

### “Congressional Responsibilities

“In much the same way that the complexity of the Federal bureaucratic structure is an obstacle—from a state and local perspective—to the provision of effective and efficient Federal assistance, it appears that the Congress has made most of its decisions for authority and funding to address domestic preparedness and response issues with little or no coordination. The various committees of the Congress continue to provide authority and money within the confines of each committee’s jurisdiction over one or a limited number of Federal agencies and programs. The Panel recommends, therefore, that the Congress consider forming an *ad hoc* Joint Special or Select Committee, composed of representatives of the various committees with oversight and funding responsibilities for these issues, and give such an entity the authority to make determinations that will result in more coherent efforts at the Federal level.”

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2) Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *II. Toward a National Strategy for Combating Terrorism, Second Annual Report to the President and the Congress*, December 15, 2000, pp. 16-18. (Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.)

### “IMPROVING COORDINATION IN THE CONGRESS

“In our first report, we were critical of the Congress for its propensity to make ‘decisions for authority and funding to address domestic preparedness and response issues with little or no coordination.’ We noted that the ‘various committees of the Congress continue to provide authority and money within the confines of each committee’s jurisdiction over one or a limited number of Federal agencies and programs.’ Those observations still pertain.

“The Congress has been active in proposing legislative “fixes” to the problem of Interagency coordination. Two recent examples are the unanimous passage by the House of Representatives of a bill to create the ‘Office of Terrorism Preparedness’ in the Executive Office of the President,

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<sup>250</sup> Created in P.L. 105-661, §1405; 112 Stat. 1920, 2169-2170. The original three-year existence of the commission was extended to five years, through 2003, in P.L. 107-107, §1514; 115 Stat. 1012, 1273-1274. The Gilmore Commission took its popular name from its chair, former Virginia Gov. James S. Gilmore III. Its official name was the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction.



and of a provision to create a new ‘Deputy Attorney General for Combating Domestic Terrorism.’ Numerous Congressional panels on both sides of Capitol Hill have held hearings on the subject of terrorism. The Congress has also commissioned various studies and reports on combating terrorism by the General Accounting Office (GAO). One Act noted that Members ‘continue to be concerned about the threat of domestic terrorism, particularly involving the use of weapons of mass destruction (WMD) and the ability of the Federal Government to counter this threat.’ As a consequence the Congress directed a comprehensive report from the GAO:

“‘The conferees agree to a provision that would require the Comptroller General to provide an updated report to Congress, not later than 180 days after the enactment of this Act, on federal strategy, policy and programs to combat domestic terrorism. The conferees direct the Comptroller General to include in the report on combating domestic terrorism a discussion of the following issues: lead agency responsibility for crisis and consequence management; adequacy of exiting plans formulated by the various federal agencies; threat and risk assessments; command and control structures; exercises, including a thorough assessment of the recent Top Official Exercise 2000; cyberterrorism; and research and development efforts of new technologies.’

“The Congress continues to direct the creation and funding of specific programs with little coordination among the various committees. Some programs are funded with little apparent consideration for the impact of those decisions on a comprehensive national effort.

“Moreover, appropriations committees, through their various agency appropriations bills, occasionally create and fund programs that were not subject to the normal authorization processes. The result of such action is often lack of detail and clarity in the structure and execution of programs, as well as a lack of continuity and sustainability, as most such programs are only funded year by year. Examples of major programs created and funded in appropriations bills, which have no parallel authorizing language, include most of the programs for combating terrorism administered by the Office of State and Local Domestic Preparedness Support in the Department of Justice: equipment grant programs totaling \$75 million; and training programs, including grants to the national training consortium and the Center for Domestic Preparedness totaling \$37 million; and earmarks to two institutes totaling \$30 million.

“The Congress may, however, be foundering on the issue in large measure because of the absence of a comprehensive ‘national strategy’ for combating terrorism. We do not suggest that Congress has or should have the responsibility for creating such a national strategy. That is, in our view, clearly the responsibility for the Executive Branch. (*Footnote citations to previous commission report, congressional bills and reports, GAO, and programs are not included.*)

#### ***“Special Committee for Combating Terrorism***

**“We recommend the establishment of a Special Committee for Combating Terrorism—either a joint committee between the Houses or separate committees in each House<sup>251</sup>—to address authority and funding, and to provide Congressional oversight, for Federal programs and authority for combating terrorism.**

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<sup>251</sup> Similar to the processes of permanent select committees on intelligence—the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence.

“We do not make this proposal lightly, and do so with the full recognition that such change may be difficult but is no less meritorious.

***“Committee Functions and Structure***

“The joint or separate committee of each House should consist of bipartisan representation from Members of all relevant authorization, oversight, budget, and appropriations committees and subcommittees that currently have cognizance over Federal programs and activities to combat terrorism. It should have a full-time staff either detailed from those relevant committees and subcommittees or new employees who have the requisite experience and expertise.<sup>252</sup>

“The joint or separate panel should perform several critical functions. *First*, it would constitute a forum for reviewing all aspects of a national strategy and supporting implementation plans for combating terrorism, developed and submitted by the National Office for Combating Terrorism. [The office is proposed earlier in the second annual report.] As part of that process, the joint or each separate committee should develop a consolidated legislative plan, including authorizing language and corresponding budget and appropriations ‘benchmarks’ in response to the national strategy to combat terrorism and accompanying program and budget proposals.

“*Second*, it would serve as the ‘clearinghouse’ for all legislative proposals for combating terrorism. For separate bills (unrelated to the omnibus package related to the strategy), the committee should have first referral of such legislation, prior to the referral to the appropriate standing committee.

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<sup>252</sup> The ‘relevant committees and subcommittees; would include as a minimum:

- “Agriculture Committee (House and Senate)
- “Appropriations Committee (House and Senate)
- “Subcommittee on Commerce, Justice, State, and the Judiciary
- “Subcommittee on Defense
- “Subcommittee on Transportation
- “Subcommittee on Treasury, Postal Service, and General Government
- “Subcommittee on Labor, Health and Human Services, and Education
- “Subcommittee on Foreign Operations
- “Subcommittee on Energy and Water Development
- “Subcommittee on Agriculture and Rural Development
- “Armed Services Committee (House and Senate)
- “Budget Committee (House and Senate)
- “Commerce Committee (House and Senate)
- “Energy and Natural Resources Committee (Senate)
- “Resources Committee (House)
- “Foreign Relations Committee (Senate)
- “International Relations Committee (House)
- “Governmental Affairs Committee (Senate)
- “Government Reform Committee (House)
- “Health, Education, Labor, and Pensions Committee (Senate)
- “Science Committee (House)
- “Judiciary Committee (House and Senate)
- “Transportation and Infrastructure Committee (House)
- “Ways and Means Committee (House)
- “Senate Select Committee on Intelligence
- “House Permanent Select Committee on Intelligence”

“Such a structure, with the direct testimony from Executive Branch representatives, State and local officials, private industry, and terrorism experts, could help to eliminate duplication in programs and funding, and to promote an effective national program.

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3) Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *IV. Implementing the National Strategy, Fourth Annual Report to the President and the Congress*, December 15, 2002, pp. 44-45. (Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.)<sup>253</sup>

“In addition [to the proposed creation of a National Counter Terrorism Center (NCTC) that would replace the FBI in collecting intelligence and other information on international terrorist activities inside the United States], there could be more focused and effective Congressional oversight of the domestic collection and analysis functions. Currently, the oversight of the FBI’s FISA [Foreign Intelligence Surveillance Act] and other domestic intelligence activities is split between the Judiciary and Intelligence committees of each House of Congress. Creation of the NCTC would clearly place the primary responsibility for oversight of that agency under the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence. Such a structure and improved oversight would likely provide an even better mechanism for protecting civil liberties than do current structure and processes. For that reasons, the panel makes the following, related

**“Recommendation: That the Congress ensure that oversight of the NCTC be concentrated in the intelligence committees of each House.”**

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4) *IV. Implementing the National Strategy, Fourth Annual Report to the President and the Congress*, p. 50.

***“The Congress***

“The Congress is still not well organized to address issues involving homeland security in a cohesive way. The House recently took the bold, necessary, but unfortunately only temporary step of creating a special committee just to consider the proposal to create the Department of Homeland Security. Structures of that nature are required on a longer-term basis. Jurisdiction for various aspects of this issue continues to be scattered over dozens of committees and subcommittees. We therefore restate our prior recommendation with a modification.

**“Recommendation: That each House of the Congress establish a separate authorizing committee and related appropriation subcommittee with jurisdiction over Federal programs and authority for Combating Terrorism/Homeland Security.”**

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<sup>253</sup> The third annual report focused on “functional challenges to protecting the United States against terrorism,” and did not contain additional recommendations related to congressional organization. Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *III. For Ray Downey, Third Annual Report to the President and the Congress*, December 15, 2001. (Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.)

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5) Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *V. Forging America's New Normalcy: Securing Our Homeland, Preserving Our Liberty, Fifth Annual Report to the President and the Congress*, December 15, 2003, p. 16. (Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.)

[As an achievement of the strategic vision—] “Executive Branch and Congressional oversight mechanisms have proven highly effective in preventing any abuses [by the Terrorist Threat Integration Center that the commission recommended be created and charged with certain domestic intelligence collection responsibilities].”

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6) In Appendix K , “Status of Previous Advisory Panel Recommendations,”<sup>254</sup> of the fifth annual report, the following information, in a similar format, is provided on recommendations related to congressional organization:

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<sup>254</sup> Available online at <http://www.rand.org/nsrd/terrpanel>, visited December 10, 2004.

Page	“Category	Recommendation	1999	2000	2001	2002	Outcome
K-10	“Intelligence	That the Congress ensure that oversight of the NCTC be concentrated in the intelligence committee in each House				X	The TTIC will presumably be principally within the oversight of the intelligence committees
K-15	“Strategy and Structure	That the Congress consider forming an ad hoc Joint Special or Select Committee, composed of representatives of the various committees with oversight and funding responsibilities for domestic preparedness and response, and give such an entity the authority to make determinations that will result in more coherent efforts at the Federal level	X				Three new committees have been established in the Congress for oversight and appropriations: the House Select Committee on Homeland Security, the House Appropriations Committee, subcommittee on Homeland Security, and the Senate Committee on Appropriations, Subcommittee on Homeland Security. These committees commenced operation in 2003.
K-15	“Strategy and Structure	The establishment of a Special Committee for Combating Terrorism—either a joint committee between the Houses or separate committees in each House—to address authority and funding, and to provide Congressional oversight, for Federal programs and authority for combating terrorism		X			Three new committees have been established in the Congress for oversight an appropriations: the House Select Committee on Homeland Security, the House Appropriations Committee, subcommittee on Homeland Security, and the Senate Committee on Appropriations, Subcommittee on Homeland Security. These committees commenced operation in 2003. In addition, the House Armed Services Committee created a special oversight panel on terrorism and the House Permanent Select Committee on Intelligence created a subcommittee on Terrorism and Homeland Security.
K-18	“Strategy and Structure	That each House of Congress establish a separate authorizing committee and related appropriation subcommittee with jurisdiction over Federal programs and authority for Combating Terrorism/ Homeland Security				X	Three new committees have been established in the Congress for oversight an appropriations: the House Select Committee on Homeland Security, the House Appropriations Committee, subcommittee on Homeland Security, and the Senate Committee on Appropriations, Subcommittee on Homeland Security. These committees commenced operation in 2003. In addition, the House Armed Services Committee created a special oversight panel on terrorism and the House Permanent Select Committee on Intelligence created a subcommittee on Terrorism and Homeland Security.”

## Appendix E. Recommendations on Congressional Organization Made by the Hart-Rudman Commission<sup>255</sup>

In this appendix, the reader will find excerpts from the report of the Hart-Rudman Commission. The excerpts are the verbatim recommendations related to congressional organization that are contained in this report. Different type styles and formats reflect those used in the original text.

1) United States Commission on National Security/21<sup>st</sup> Century, *Road Map for National Security: Imperative for Change, The Phase III Report of the United States Commission on National Security/21<sup>st</sup> Century*, February 15, 2001, pp. 26-28. (Available online at <http://govinfo.library.unt.edu/nssg/index.html>, visited December 10, 2004.)<sup>256</sup>

### “C. EXECUTIVE-LEGISLATIVE COOPERATION

“Solving the homeland security challenge is not just an Executive Branch problem. Congress should be an active participant in the development of homeland security programs as well. Its hearings can help develop the best ideas and solutions. Individual members should develop expertise in homeland security policy and its implementation so that they can fill in policy gaps and provide needed oversight and advice in times of crisis. Most important, using its power of the purse, Congress should ensure that government agencies have sufficient resources and that their programs are coordinated, efficient, and effective.

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<sup>255</sup> Created by a charter from Secretary of Defense William S. Cohen, September 2, 1999. For text of charter, see United States Commission on National Security/21<sup>st</sup> Century, *Road Map for National Security: Imperative for Change, The Phase III Report of the United States Commission on National Security/21<sup>st</sup> Century*, February 15, 2001, Appendix 2. (Available online at <http://govinfo.library.unt.edu/nssg/index.html>, visited December 10, 2004.) The Hart-Rudman Commission took its name from its co-chairs, former Senators Gary Hart (D-CO) and Warren B. Rudman (R-NH). Its official name was the United States Commission on National Security/21<sup>st</sup> Century.

For the Hart-Rudman Commission’s first two reports, see United States Commission on National Security/21<sup>st</sup> Century, *New World Coming: American Security in the 21<sup>st</sup> Century: Major Themes and Implications, The Phase I Report on the Emerging Global Security Environment for the First Quarter of the 21<sup>st</sup> Century*, September 15, 1999 (available online at <http://www.au.af.mil/au/awc/awcgate/nssg/nwc.pdf>, visited December 10, 2004), and *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom, The Phase II Report on a U.S. National Security Strategy for the 21<sup>st</sup> Century*, April 15, 2000 (available online at <http://www.au.af.mil/au/awc/awcgate/nssg/phaseII.pdf>, visited December 10, 2004).

<sup>256</sup> As a supplement to the third report, the Hart-Rudman Commission published an extensive addendum, one part of which contained profiles of six House and five Senate committees. Each profile contained eight parts plus an appendix with a “key process” flowchart. The eight parts were: (1) legal specifications, authorization, and responsibilities; (2) missions/functions/purposes; (3) vision and core competencies; (4) organizational culture, which included committee and subcommittee rosters and subcommittee jurisdictions; (5) formal national security process involvement; (6) informal national security process involvement; (7) funding and personnel; and (8) observations. The committees profiled were the House Committees on Appropriations, Armed Services, International Relations, Budget, Science, and Transportation and Infrastructure, and the Senate Committees on Appropriations, Armed Services, Foreign Relations, Budget, and Commerce, Science, and Transportation. United States Commission on National Security/21<sup>st</sup> Century, *Road Map for National Security: Imperative for Change, The Phase III Report of the United States Commission on National Security/21<sup>st</sup> Century*, February 15, 2001, Addendum on Structure and Process Analyses, Vol. III—*Congress*. (Available online at <http://govinfo.library.unt.edu/nssg/addedumpage.htm>, visited December 10, 2004.)

“Congress has already taken important steps. A bipartisan Congressional initiative produced the U.S. effort to deal with the possibility that weapons of mass destruction could ‘leak’ out of a disintegration Soviet Union. It was also a Congressional initiative that established the Domestic Preparedness Program and launched a 120-city program to enhance the capability of federal, state, and local first responders to react effectively in a WMD emergency. Members of Congress from both parties have pushed the Executive Branch to identify and manage the problem more effectively. Congress has also proposed and funded studies and commissions on various aspects of the homeland security problem. But it must do more.

“A sound homeland security strategy requires the overhaul of much of the legislative framework for preparedness, response, and national defense programs. Congress designed many of the authorities that support national security and emergency preparedness programs principally for a Cold War environment. The new threat environment—from biological and terrorist attacks to cyber attacks on critical systems—poses vastly different challenges. ***We therefore recommend that Congress refurbish the legal foundation for homeland security in response to the new threat environment.***

“In particular, Congress should amend, as necessary, key legislative authorities such as the Defense Production Act of 1950 and the Communications Act of 1934, which facilitate homeland security functions and activities. Congress should also encourage the sharing of threat, vulnerability, and incident data between the public and private sectors—including federal agencies, state governments, first responders, and industry. In addition, Congress should monitor and support current efforts to update the international legal framework for communications security issues. (*Footnote citations to laws and other reports are not included.*)

“Beyond that, Congress has some organizational work of its own to do. As things stand today, so many federal agencies are involved with homeland security that it is exceedingly difficult to present federal programs and their resource requirements to the Congress in a coherent way. It is largely because the budget is broken up into so many pieces, for example, that counterterrorism and information security issues involve nearly *two dozen* Congressional committees and subcommittees. The creation of the National Security Homeland Agency will redress this problem to some extent, but because of its growing urgency and complexity, homeland security will still require a stronger working relationship between the Executive and Legislative Branches. Congress should therefore find ways to address homeland security issues that bridge current jurisdictional boundaries and that create more innovative oversight mechanisms.

“There are several ways of achieving this. The Senate’s Arms Control Observer Group and its more recent NATO Enlargement Group were two successful examples of more informal Executive-Legislative cooperation on key multi-dimensional issues. Specifically, in the near term, this Commission recommends the following:

**“7. Congress should establish a special body to deal with homeland security issues, as has been done effectively with intelligence oversight. Members should be chosen for their expertise in foreign policy, defense, intelligence, law enforcement, and appropriations. This body should also include members of all relevant Congressional committees as well as ex-officio members from the leadership of the Houses of Congress.**

“This body should develop a comprehensive understanding of the problem of homeland security, exchange information and viewpoints with the Executive Branch on effective policies and plans, and work with standing committees to develop integrated legislative responses and guidance. Meetings would often be held in closed session so that Members could have access to interagency

deliberations and diverging viewpoints, as well as to classified assessments. Such a body would have neither a legislative nor an oversight mandate, and it would not eclipse the authority of any standing committee.

“At the same time, Congress needs to systematically review and restructure its committee system, as will be proposed in recommendation 48. A single, select committee in each house of Congress should be given authorization, appropriations, and oversight responsibility for all homeland security activities. When established, these committees would replace the function of the oversight body described in recommendation 7.”

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2) *Road Map for National Security: Imperative for Change, The Phase III Report of the United States Commission on National Security/21<sup>st</sup> Century*, pp. 58-59.

“It follows from a reform that integrates many of the nation’s foreign policy activities under the Secretary of State that a similar logic should be applied to the State Department budget. We therefore recommend the following:

**“• 22. The President should ask Congress to appropriate funds to the State Department in a single integrated Foreign Operations budget, which would include all foreign assistance programs and activities as well as all expenses for personnel and operations.”**

“The State Department’s International Affairs (Function 150) Budget Request would no longer be divided into separate appropriations by the Foreign Operations subcommittee on the one hand, and by a subcommittee on the Commerce, State, and Justice Departments on the other. The Congressional leadership would need to alter the current jurisdictional lines of the Appropriation subcommittees so that the Foreign Operations subcommittee would handle the entire State Department budget. Such a reform would give the administration the opportunity to:

“—Allocate all the State Department’s resources in a way to carry out the President’s overall strategic goals;

“—Ensure that the various assistance programs are integrated, rather than simply a collection of administrations’ political commitments and Congressional earmarks; and

“—Replace the existing budget categories with purposeful goals.” (*Footnote citation to Function 150 budget categories is not included.*)

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3) *Road Map for National Security: Imperative for Change, The Phase III Report of the United States Commission on National Security/21<sup>st</sup> Century*, pp. 72-73.

“Program turbulence, often stemming from lack of funds or from budgetary instability, is the primary cause of inefficiencies and cost overruns in DoD programs. This budgetary instability has several sources. One is the current reality of the resource allocation process itself within DoD, which unfortunately often takes *all* resources into account during budget reductions—including acquisition programs. This normally results in a known and deliberate underfunding of previously approved programs. Another problem is the acquisition system itself, which suffers from cost overruns and program extensions. Lastly, the Congress often uses small “takes” from large



programs to reallocate funds to other priorities without realizing or understanding the problems this creates in having to reprogram funds, write new contracts, and establish new schedules.

“We realize that many commissions, and ever more studies, over the past several years have recommended two-year budgeting and multiyear procurement as a way of limiting program turbulence. If these forms of budgeting were introduced, the disincentive to disrupt acquisition programs would appropriately be very high. We also know that Congress had doggedly refused to take such proposals seriously. Congress lacks confidence in DoD’s ability to execute such a budget given past weapons cost overruns. Furthermore, appropriating funds on a yearly basis gives Congress a greater ability to influence the Defense Department’s policies and programs.

“Therefore, rather than propose two-year budgeting across the entire Department of Defense, we focus on the single area where two-year budgeting makes the most sense and stands to do the most good. We recommend the following:

**“31. Congress should implement two-year defense budgeting solely for the modernization element of the DoD budget (R&D/procurement) because of its long-term character, and it should expand the use of multiyear procurement.**

“Such steps would markedly increase the stability of weapons development programs and result in budgetary savings in the billions of dollars. For this to happen, however, the Secretary of Defense must impose discipline in the decision-making process. It is already difficult to start new engineering development programs. It should be made even more demanding, ensuring that the military requirements are understood and enduring, and that the technology, concepts, and funding are all well in hand. Once a program is approved, it should be equally difficult to change it. The Commission also notes that it is sometimes better to eliminate some programs early than to absorb the costs of constantly extending programs and procuring limited numbers of weapons at high costs. To accomplish this, Congress will need to let decisions to kill programs stand as well as support DoD budgeting and procurement reforms.

“If the government will not take the measures to improve program stability by introducing two-year budgeting in modernization and R&D accounts, and more broadly adopt multiyear funding, it cannot expect private industry to obligate itself to suppliers, or to assume risks on its own investments with little prospect of long-term returns.”

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4) *Road Map for National Security: Imperative for Change, The Phase III Report of the United States Commission on National Security/21<sup>st</sup> Century*, pp. 110-115.

### “V. The Role of Congress

“This Commission has recommended substantial change in Executive Branch institutions, change that is needed if America is to retain its ability to lead the world and to assure the nation’s safety. A number of prominent leaders have exhausted themselves and frustrated their careers by too aggressively seeking to reform the House and Senate. The Legislative Branch, however, must change as well.

“It is one thing to appeal to Congress to reform the State Department or the Defense Department, quite another to call on Congress to reform itself. Over the years since World War II, the Legislative Branch has been reformed and modernized much less than the Executive Branch.

Indeed, the very nature of power in Congress makes it difficult for legislators to reform their collective institution. Yet American national security in the 21<sup>st</sup> century, and the prominent role of daily global involvement that is the nature of American life in our generation, mandates a serious reappraisal of both the individual and collective efforts of Congress and its members.

“Such a reappraisal must begin with a shared understanding of the Legislative Branch’s role in the development and assessment of post-Cold War foreign policy. Divided Constitutional responsibilities require the Executive and Legislature to work together in order for U.S. foreign policy to have coherence. Yet the Executive Branch has at times *informed* rather than consulted Congress. It has often treated Congress as an obstacle rather than as a partner, seeking Congressional input mostly in times of crisis rather than in an ongoing way that would yield support when crises occur. For its part, Congress has not always taken full responsibility for educating its members on foreign policy issues. It is not often receptive to consultation with the Executive Branch, as well, and has sustained a structure that undermines rather than strengthens its ability to fulfill its Constitutional obligations in the foreign policy arena.

“Several measures are needed to address these shortcomings and they are described below. But as an immediate first step we recommend that:

**•46. The Congressional leadership should conduct a thorough bicameral, bipartisan review of the Legislative Branch relationship to national security and foreign policy.**

“The Speaker of the House, the Majority and Minority leaders of the House, and the Majority and Minority leaders of the Senate should form a bipartisan, bicameral working group with select staff and outside advisory panels to review the totality of Executive-legislative relations in the real-time global information age we are entering. Only by having the five most powerful members of the Congress directly involved is there any hope of real reform. They should work methodically for one year and, by the beginning of the second session of the Congress, they should report on proposed reforms to be implemented by the next Congress. The President, the Vice President, the National Security Advisor, and senior cabinet officers should work directly with this unique panel to rethink the structure of Executive-Legislative relations in the national security and foreign policy domains.

“With that as a basis, reforms can and must be undertaken in three crucial areas: improving the foreign policy and national security expertise of individual members of Congress; undertaking organizational and process changes within the Legislative Branch; and achieving a sustained and effective Executive-Legislative dialogue on national security issues.

“Despite the range of foreign policy challenges facing the United States, many current members of Congress are poorly informed in this area. Their main electoral priorities are generally within domestic policy; foreign policy concerns are often limited to issues of concern to special interests or to prominent ethnic groups in their districts. Once in office, attention to foreign policy issues generally focuses on pending votes and looming crisis. To build a broad base of informed and involved members on foreign policy issues, we recommend the following:

**•47. Congressional and Executive Branch leaders must build programs to encourage individual members to acquire knowledge and experience in both national security and foreign policy.**

“In particular, this means that:

“●The Congressional leadership should educate its members on foreign policy and national security matters beyond the freshman orientation provided for new members. Such education should emphasize Congress’ foreign policy roles and responsibilities. We must reinforce the principal of minimal partisanship on foreign policy issues: that politics stops at the water’s edge. Effective education of members will ensure a more knowledgeable debate and better partnership with the Executive Branch on foreign policy issues. It also will allow members to become more effective educators of their constituencies about the importance of national security concerns.

“●Members should be encouraged to travel overseas for serious purposes and each member should get letters from the President or from the head of their body formally asking them to undertake trips in the national interest. A concerted effort should be made to distinguish between junkets (pleasure trips at taxpayer expenses) and the serious work that members need to undertake to learn about the world. A major effort should be made to ensure that every new member of Congress undertakes at least one serious trip in his or her first term, and is involved in one or more trips each year from the second term on.

“●Legislature-to-legislature exchanges and visits should be encouraged and expanded. More funding and staffing should be provided to both accommodate foreign legislators visiting the United States and to encourage American legislators and their spouses to visit foreign legislatures. Much is to be gained by strengthening the institutions of democracy and by improving understanding among elected officials. This should get a much greater emphasis and much more institutional support than it currently does.

“●The wargaming center at the National Defense University should be expanded so that virtually every member of Congress can participate in one or more war games per two-year cycle. By role-modeling key decision-makers (American and foreign), members of Congress will acquire a better understanding of the limits of American power, and of the reality that any action the United States taken invariably has multiple permutations abroad. Giving members of Congress a reason to learn about a region, about the procedures and systems of Executive Branch decision-making, and about crisis interactions will lead eventually to a more sophisticated Legislative Branch. On occasion, particularly useful or insightful games should lead to a meeting between the participating Congressmen and Senators and key Executive Branch officials.

“Member’s increased fluency in national security issues is a positive steps but one that must be accompanied by structural reforms that address how Congress organizes itself and conducts its business. Several recommendations concerning Congressional structure have already been made in this report: to create a special Congressional body to deal with homeland security issues (recommendation 7); to consider all of the State Department’s appropriations within the Foreign Operations subcommittee (recommendation 22); and to move to a two-year budget cycle for defense modernization programs (recommendation 31). To meet the challenges of the next quarter century, we recommend Congress take additional steps.

**“48. Congress should rationalize its current committee structure so that it best serves U.S. national security objectives; specifically, it should merge the current authorizing committees with the relevant appropriations subcommittees.**

“Our discussion of homeland security highlights the complexity and overlaps of the current committee structure. The Congressional leadership must review its structure systematically in light of likely 21<sup>st</sup> century security challenges and of U.S. national security priorities. This is to ensure both that important issues receive sufficient attention and oversight and the unnecessary duplication of effort by multiple committees is minimized.

“Such an effort would benefit the Executive Branch, as well, which currently bears a significant burden in terms of testimony. The number of times that key Executive Branch officials are required to appear on the same topics in front of different panels is a minor disgrace. At a minimum, *we recommend that a public record should be kept of these briefings and published annually.* If that were done, it would become obvious to all observers that a great deal of testimony could be given in front of joint panels and, in some cases, bicameral joint panels. While we emphasize the need for strong consultation with the Legislative Branch, we need a better sense of what constitutes a reasonable amount of time that any senior Executive Branch official should spend publicly educating Congress.

“Specifically, in terms of committee structure, we believe action must be taken to streamline the budgeting and appropriations processes. In 1974, Congress developed its present budget process as a way of establishing overall priorities for the various authorizations and appropriations committees. Over time, however, the budget process has become a huge bureaucratic undertaking and the authorization process has expanded to cover all spending areas. In light of this, there is no longer a compelling rationale for separate authorization and appropriations bills.

“This is why we believe that the appropriations subcommittees should be merged with their respective authorizing committees. The aggregate committee (for example, the Senate Armed Services Committee) should both authorize and appropriate within the same bill. This will require realigning appropriations subcommittees. For example, appropriations relating to defense are currently dealt with in three subcommittees (defense, military construction, and energy and water); under this proposal, all appropriations would be made within the Senate Armed Services Committee.

“This approach has at least two important merits. First, it furthers the aim of rationalizing committee jurisdiction because all appropriating and authorizing elements relating to a specific topic are brought within one committee. Second, it brings greater authority to those charged with oversight as well as appropriations. In the current system, power has shifted from the authorizing committees to the appropriating committees with a much-narrower budgetary focus. By combining the two functions, more effort may be paid to examining how foreign policy laws have been implemented, what their results have been, and how policy objectives can be better achieved. Finally, this new structure may facilitate adoption of two-year budgeting if efforts such as those proposed for defense modernization programs prove successful. The merged committee could authorize, in less detail, for the two-fiscal-year period while appropriating, in greater detail, for the first fiscal year.

“If this important reform were undertaken, then the budget committees in each house of Congress would consist of the Chairman and ranking member of each new combined committee. As part of

the budget function, these two committees would distribute the macro-allocations contained in the budget resolution.

“Once Congress has gotten its own house in order, it still remains to ensure that there is ongoing Executive-Legislative consultation and coordination. Efforts to do so are beneficial not only so that both branches can fulfill their Constitutional obligations but also because effective consultation can improve the quality of U.S. policy. We have acknowledged this, for example, in our Defense Department planning recommendation, which defers detailed program and budget decisions until Congress has marked up the previous year’s submission. Because Congress is the most representative branch of government, Executive Branch policy that considers a range of Congressional views is more likely to gain public support. The objections raised by differing Congressional opinions can refine policy by forcing the administration to respond to previously unconsidered concerns. Finally, Congress can force the President and his top aides to articulate and explain administration policy—so the American people and the world can better understand it.

“Given these benefits, efforts must be undertaken to improve the consultative process. Indeed, a coherent and effective foreign policy *requires* easy and honest consultation between the branches. The bicameral, bipartisan panel put forward in recommendation 46 is a good first step in this process, but additional processes must be established to ensure that such efforts are ongoing. Therefore, we recommend the following:

**“•49. The Executive Branch must ensure a sustained focus on foreign policy and national security consultation with Congress and devote resources to it. For its part, Congress must make consultation a higher priority and form a permanent consultative group of Congressional leaders as part of this effort.**

“A sustained effort at consultation must be based on mutual trust, respect, and partnership and on a shared understanding of each branch’s role. The Executive Branch must recognize Congress’ role in policy formulation and Congress must grant the Executive Branch flexibility in the day-to-day implementation of that policy. Congress must also ensure that if it is consulted and its criticisms are taken seriously, it will act with restraint and allow the Executive Branch to lead. For his part, the President must convey to administration officials the importance of *ongoing*, bipartisan consultation and dialogue. Efforts must not be limited to periods of crisis. Further, administration officials should take into consideration the differences in knowledge and perspective among members.

“Beyond these general principles, specific mechanisms can facilitate better consultation:

“•Congress should create a permanent consultative group composed of the Congressional leadership and the Chairmen and ranking member of the main Congressional committees involved in foreign policy. Other members with special interest or expertise could join the group’s work on certain issues. The group would meet regularly—in informal and private sessions—with representatives of the Executive Branch. While these may regularly be Cabinet officials, they may often be at the Under Secretary level. This will make possible a regular dialogue with knowledgeable administration officials, allowing the Congressional group not only to respond to crises but to be part of the development of preventive strategies. The agenda for these meetings would not be strictly limited, allowing members to raise issues they are concerned about. The group would also meet on any emergency basis whenever the President considers military action abroad or deals with a foreign policy crisis.

“●Beyond this interaction between the leadership of both branches, the administration must reach out to consult with a broader Congressional group. This will involve increasing the number of administration representatives working to consult with Congress and assigning high-quality people to that task. The Executive must send mid-level, as well as high-level, officials to Capitol Hill and keep closer track of the foreign policy views and concerns of every member of Congress. Only through such concerted efforts, combined with the aforementioned education initiatives, will there be a critical mass of members knowledgeable of and engaged in foreign policy issues.

“●Finally, in order for Congress to be most effective in partnering with the Executive Branch, it must undertake its own consultation with a broad group of leaders in science, international economics, defense, intelligence, and in the high-technology, venture-capital arena. Congress is far more accessible to this expertise than the Executive Branch and should work to bring these insights into consultations. To do this, however, Members of Congress need regular and direct dialogue with experts without the screen of their staffs. The best experts in these fields are vastly more knowledgeable than any Congressional staff member, and there needs to be a routine system for bringing members of Congress in touch with experts in the areas in which they will be making decisions. All four parts of the National Academies of Science should play key roles in bringing the most knowledgeable scientists and engineers in contact with members of the Legislative Branch. Policy institutions with deep reservoirs of expertise on defense and foreign policy, too, can help build Congressional fluency with these issues with a measure of detachment and independent perspective. Similar institutions need to be engaged in other areas. (*Footnote citations other parts of the report and to additional reading are not included.*)

“An effective national security policy for the 21<sup>st</sup> century will require the combined resources of the Executive and Legislative Branches. While much of this report has rightly focused on the needs for reform within Executive Branch structures and processes, corresponding efforts must be undertaken for Congress. We believe that a tripartite effort focused on the foreign policy education of members, the restructuring of the Congressional committee system, and stronger Executive-Legislative consultative efforts will go a long way to ensuring that the United States can meet any future challenges.”

## Appendix F. Recommendations on Congressional Organization Made by The Brookings Institution

In this appendix, the reader will find excerpts from the report of The Brookings Institution. The excerpts are the verbatim recommendations related to congressional organization that are contained in this report. Different type styles and formats reflect those used in the original text.

1) Michael E. O'Hanlon, Ivo H. Daalder, David L. Gunter, Robert E. Litan, Peter R. Orszag, I.M. Destler, James M. Lindsay, and James B. Steinberg, *Protecting the American Homeland: One Year On* (Washington: Brookings Institution Press, 2002), p. xxviii-xxx. (Available online at <http://brookings.edu/dybdocroot/fp/projects/homeland/newhomeland.pdf>, visited December 10, 2004.)

### *“Reforming Congress’s Role*

“Much of the benefit of consolidating the homeland security mission within the executive branch will be lost if our national legislature fails to reflect that reorganization in its own structure. Congressional oversight of homeland security activities has traditionally been scattered across Capitol Hill. By the administration’s count, thirteen full committees in each house, and a total of 88 committees and subcommittees overall, shared responsibility for overseeing the homeland security mission in 2002. The House Appropriations Committee alone had eight subcommittees overseeing the agencies and programs merged into DHS. With authority so badly fragmented, coordination problems were rife, and no one was responsible for trying to bring coherence to the decisions made by individual committees.

“The Department of Homeland Security Act expresses “the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch.” To its credit, Congress has taken some important steps to meet this call. The House and Senate Appropriations Committees agreed at the start of 2003 to realign their subcommittee jurisdictions to create new homeland security subcommittees. This restructuring both institutionalizes the responsibility for appropriations oversight of the executive branch—increasing the changes that budgetary supervision will occur even if events shift political appeal to other topics—and reduce fragmentation—increasing the chances that Congress can identify major gaps and sensible tradeoffs in homeland security spending.

“Congress has not moved as aggressively to consolidate the badly fragmented authorization process. The Senate plans no changes to its committee structure. The Government Affairs Committee had responsibility for overseeing the creation of DHS, while other authorizing committees have responsibility for overseeing individual programs and agencies within DHS. The House has gone somewhat further. It has created a Select Homeland Security Committee, composed on the Republican side largely of the chairmen of the committees with a stake in homeland security. The goal is to establish a permanent Homeland Security Committee at the start of the 109<sup>th</sup> Congress (2005-07). The question of what jurisdictions a permanent committee would take from other panels has yet to be answered. In the interim, the leadership of the select committee sees its task as coordinating the homeland security actions of other committees and reconciling any disagreements rather than establishing a claim to primary authorization oversight of homeland security.

“Although the House’s approach is preferable to the Senate’s, neither is sufficient to ensure effective congressional oversight. Maintaining a fragmented authorization process increases the odds that Congress will drag its feet in considering executive branch proposals, bicker internally over the direction of homeland security, and issue conflicting directives to DHS. A streamlined appropriations process cannot eliminate these problems, even though appropriators normally follow the authorizers in the legislative process and can in theory reconcile any conflicting authorization mandates. Appropriators approach oversight largely through budgetary and management lenses. Their instinct is to ask how much is being spend and whether it can be spent efficiently. They devote less time to the related but distinct policy issues that the authorization committees specialize in. As a result, the chances remain that broader policy issues either will be the object of turf wars or fall through the cracks of the authorization process. Bringing committee heads together as the House proposes can mitigate these problems in the short term. It is debatable, however, that a select committee will provide adequate oversight in the long term. Committee chairs have numerous competing demands on their time, many of which are more politically salient than homeland security. Moreover, the select committee approach by its nature focuses oversight attention on where committees disagree rather than on the equally pressing question of whether the sum total of committee decisions makes sense.

“Congress would be wise then to take to heart its message in the Department of Homeland Security Act and reorganize its jurisdictions to create authorizing committees for homeland security. Such a reorganization would not produce a unified decisionmaking process. Some fragmentation would remain as a result of bicameralism and the twin-track authorization and appropriations process. The task of coordinating the authorizers and appropriators on homeland security with those responsible for related activities by the intelligence agencies, the FBI, and the Pentagon (to name just a few) would also remain. But establishing dedicated homeland security committees to complement the homeland security appropriations subcommittees would likely maximize the efficacy of congressional oversight.”

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2) *Protecting the American Homeland: One Year On*, 2002, pp. 122-123.

**“Congress**

“However the executive branch conducts its work, many issues will inevitably engage the legislative branch. The president’s ability to make homeland security his top priority will be helped, or hindered, according to whether and how much Congress can revamp its structure and process to the same end. Two reforms would be especially useful: establishment of House and Senate appropriations subcommittees for homeland security, and creation of a joint committee to oversee the national effort. The congressional role and focus would be further strengthened, moreover, if the Homeland Security Council were made a statutory entity, and its director subject to Senate confirmation—as recommended above.

“One of Tom Ridge’s signal achievements has been the submission of a unified homeland security budget. But once on Capital Hill, it now must be disaggregated and its components distributed among multiple appropriations subcommittees. There they will be weighed not in relation to overall homeland security needs, but within such jurisdictions as Commerce, Justice, and State; Defense; and Labor, Health and Human Services, and Education. What the executive branch has laboriously pulled together, Congress must quickly pull apart. The obvious remedy, difficult though it may be to implement, is to establish new appropriations subcommittees on



homeland security in both branches. If that proves too large a reform to swallow, a second-best alternative would be for the appropriations committees as a whole to take up and pass the homeland security budget.

“Ideally, there would also be established authorizing committees with the same jurisdiction. In the near term, however, this would likely prove even harder to accomplish than appropriations reform. A useful “second-best” option, therefore, would be to enhance congressional capacity for analysis and oversight by creating a new body on the model of the Joint Economic Committee. This would limit the threat to existing jurisdictions, as a joint committee for homeland security would have no legislative authority. This would also limit its impact, of course, but such a committee could be a useful focal point, holding hearings, issuing reports, calling executive officials to task.”

## Appendix G. Recommendations on Congressional Organization Made By the Center for Strategic and International Studies

In this appendix, the reader will find excerpts from the report of the Center for Strategic and International Studies (CSIS). The excerpts are the verbatim recommendations related to congressional organization that are contained in this report. Different type styles and formats reflect those used in the original text.

Center for Strategic and International Studies, *Meeting the Challenges of Establishing a New Department of Homeland Security: A CSIS White Paper*, 2002, pp. 19-21. (Available online at <http://www.csis.org/features/hamrefinalpaper.pdf>, visited December 10, 2004.)

### Revamp Congressional Oversight of Homeland Security

- **Create a Select Committee of oversight in the House, and a similar committee in the Senate.**

Congressional leadership should create new select committees in order to streamline the report process, eliminate fragmentation of authority, and ensure efficient and effective oversight of the new Homeland Security Department.

- **Relinquish responsibility in committees that exercise overly broad and, in most cases, duplicative oversight of the agencies that will be folded into the Department of Homeland Defense.**

Today, far too many Congressional committees and subcommittees have been given, or have taken, oversight responsibility for various aspects of homeland security. To ensure effective oversight of homeland security, Congress must rein in the number of committees and subcommittees that exercise authority over the new department.

Specifically, the scope of jurisdiction of the House Government Reform Committee should be narrowed and its functions redefined to eliminate duplicate oversight over the many defense and homeland security functions already under the jurisdiction of other committees.

The Senate Government Affairs Committee should revise its charter and divest itself of the International Security and Proliferation function of the Subcommittee on International Security, Proliferation and Federal Services. This oversight role is adequately exercised in other standing Senate committees.

- **Membership of each respective Select Committee should be made up of chairpersons and ranking members from the committees (House and Senate) and subcommittees (House) that now exercise oversight over the various agencies that will be consolidated in the new Department of Homeland Security. This criteria for membership will ensure cross-jurisdictional involvement by members, further providing comprehensive oversight.**

The relevant Senate committees include: Agriculture; Appropriations; Armed Services; Banking, Housing and Urban Affairs; Commerce, Science and Transportation; Energy and Natural Resources; Judiciary; and Intelligence.

The relevant House committees (and attendant subcommittees) include: Agriculture (Specialty Crops and Foreign Agriculture); Appropriations (Agriculture; Commerce, Justice, State; Defense; Energy and Water; Transportation; Treasury, Postal Service and General Government); Armed Services (Military Readiness; Military Research and Development); Energy and Commerce (Environment and Hazardous Materials; Health; Telecommunications and the Internet); Financial Services (Financial Institutions and Consumer Credit); Judiciary (Courts, the Internet and Intellectual Property; Crime; Immigration and Claims); Science (Energy; Research); Transportation (Aviation; Coast Guard and Maritime Transportation; Highways; Railroads); and Intelligence (Human Intelligence, Analysis and Counterintelligence; Intelligence Policy and National Security; Terrorism and Homeland Security).

- **Terms of membership on each Select Committee should be governed by the same criteria that govern chairmanship or ranking member status on other committees.**

Term limits on membership ensure fresh perspectives, while maintaining more than adequate understanding of the issue because of members' other committee assignments.

- **Each new Select Committee should have its own separate staff, not affiliated with any other committee or subcommittee.**

Separate staff will ensure independence and limit cross-jurisdictional turf battles. Further, a separate staff provides focused and expert insight to members of each Select Committee.

- **Within each Appropriations Committee, create new subcommittees of oversight. In conjunction with those new subcommittees, dissolve oversight responsibilities now resident in standing subcommittees.**

“Unless separate new subcommittees are created, and oversight within current subcommittees is dissolved, the new Department will be whipsawed by competing demands and lines of authority within the Appropriations Committees.”

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