

Statement of Walter J. Oleszek
Senior Specialist, Congressional Research Service
before the
House Armed Services Subcommittee on Oversight and Investigations
concerning certain reform recommendations of the
Project on National Security Reform (PNSR)

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Mr. Chairman, Mr. Ranking Member, and committee members, it is a high honor for me to testify before your committee on several of the legislative reform recommendations of the Project on National Security Reform (PNSR). I should state at the outset that I am not an expert in any way, shape, or form on issues involving the military or national security. I have been invited to testify because I have been involved in nearly every House and Senate legislative and committee reform effort since I started work at the Congressional Research Service in 1968.

Specifically, I will focus principally on one of the Project's reform recommendations: the creation of a permanent Select Committee on National Security. My testimony also includes brief commentary on the Project's proposals to consolidate oversight of homeland security in one panel; empower the House Foreign Affairs Committee; and two proposals that affect the Senate only: the nominations process and the use of "holds" on nominees for top national security positions.

The PNSR and its leadership have provided Congress with a tremendous amount of thought-provoking information and analysis. Their fundamental idea, as I see it, is that with the end of the Cold War, the United States now faces a host of non-traditional and trans-national challenges—everything from terrorist threats to global climate change to international criminal syndicates. As currently organized, however, Congress and the executive branch lack the integrative and coordinative capacity to meet today's multiplicity of diffuse challenges. What is needed, according to the PNSR, is a number of legislative and executive branch reforms that will enhance the integrative capacities of both branches in the broadly-defined national security area.

KEY QUESTIONS

It strikes me that there are three critical questions that require resolution: (1) Is the current committee system capable of dealing with national security issues in an integrated manner? (2) If not, is the establishment of a select committee on national security the best or only approach to achieve integration and coordination? (3) Are there other effective alternatives to achieve or promote those goals? Let me briefly answer those questions now, and then focus in more detail on select committees in general: their method of creation; purposes; authority; benefits and liabilities; and alternatives to the select committee model.

Is the current committee system able to deal with national security issues in an integrated and coordinated manner? The short answer is probably “no.”¹ I would add, however, that the great strength of Congress is its decentralized committee structure with specialized jurisdictions. Congress is really a “horizontal” institution, where numerous Members and committees have a chance to participate in the making of policy and to hear the views and opinions of numerous constituents and groups. Overlap, in brief, often produces positive legislative results. Congress, however, is generally short on mechanisms for integration and coordination, relying principally on party leaders and a few committees (Budget and Rules) to promote those goals.

If not, is the establishment of a select committee the best approach to achieve integration and coordination of national security issues? My answer is “perhaps,” because so much depends on its charter, composition, and support, which I will discuss shortly.

Are there other alternatives to achieve greater coordination and integration of national security issues? The short answer is “yes,” which I will highlight in my testimony.

Let me now focus on some of the issues that surround the establishment of select committees.

A SELECT COMMITTEE ON NATIONAL SECURITY

Creation. There are two basic ways to establish select committees in the House. One is for a Member to introduce a resolution proposing the creation of a select committee, which is referred to the Rules Committee. If that panel reports the measure, then the full House decides whether to establish the select panel. The Rules Committee could also include the creation of select committees in resolutions that it reports to the House.

The second way, rarely used, is that under House Rule XII, the Speaker has the authority to refer legislation “to a special ad hoc committee appointed by the Speaker with the approval of the House.” This approach bypasses the Rules Committee and has been employed only twice: in 1975 on the Ad hoc Select Committee on the Outer Continental Shelf² and in 1977 for the Ad hoc Energy Committee.³ In both cases, the Speaker (Carl Albert, D-OK, and Thomas “Tip” O’Neill, D-MA, respectively) recognized the majority leader to call up a privileged resolution establishing the select panels.

¹ Whether Congress does an inadequate job of dealing with national security issues would require detailed study. For example, if there are problems, can these be traced back to the committee structure of Congress, or are there other factors that inhibit integrated policymaking?

² *Congressional Record*, April 22, 1975, pp. 11261-11262.

³ *Congressional Record*, April 21, 1977, pp. 11550-11556.

In addition, under House Rule X, the Speaker, with the approval of the House, “may appoint special ad hoc oversight committees for the purpose of reviewing specific matters within the jurisdiction of two or more standing committees.” To date, this authority has never been used by the Speaker, but it remains (along with the ad hoc approach under House Rule XII) an option for implementing the PNSR’s recommendation for a select national security committee with comprehensive oversight responsibility.

Purposes. The House has a long history of establishing select committees to accomplish diverse purposes. In fact, during the House’s early years that is the way business was handled, through the formation of temporary select panels, until a system of permanent committees came into being around 1816. The overlapping purposes or incentives for their creation are several. Among them are the following:

- *To recommend institutional reforms of the House (or Senate).* An example is the 1973-1974 Select Committee on Committees. Representative Richard Bolling, D-MO, was the principal champion for the panel’s creation. As a senior and highly-regarded member, Bolling persuaded Speaker Albert and Minority Leader Gerald Ford, R-MI, of the importance and necessity of revising the committee system. The House adopted the resolution creating the bipartisan select panel.

- *To respond to the needs and concerns of outside groups.* A classic example is the Select Committee on Aging, chaired for a number of years by Representative Claude Pepper, D-FL. The panel’s mandate was to conduct a continuing comprehensive study and review of the problems of older Americans.

- *To supplement the work of the standing committees.* Select committees are established to address specific topics—crime, hunger, children, assassinations, for example—that the standing committees may lack adequate time to explore and examine in depth.

- *To coordinate and integrate issues of major importance that overlap the jurisdictions of several standing committees.* Advocates of House select panels sometimes contend that the many jurisdictional overlaps among the standing committees inhibit the formulation of coherent and coordinated national policies. This idea is the principal rationale of the PNSR as to why the House and Senate should create a Select National Security Committee.

Permanent Select or Standing Committee. The PNSR recommends that the House and Senate should first establish select task forces composed of lawmakers interested in national security matters. Then, if “these task forces perform adequately,” they should be established as permanent select committees. The issues of what constitutes adequate performance, or an adequate time for assessment, are left undefined. Given the range of topics that these select entities might address, it could be difficult to determine whether or not their job performance is satisfactory.

Also left unanswered is why the PNSR recommended a permanent select committee rather than a standing committee. The principal difference between the two is in their composition. Appointment of lawmakers to most standing committees follows a three-step procedure: (1) recommendations for committee membership are made by each party's Steering Committee; (2) these recommendations are then submitted to either the Democratic Caucus or the Republican Conference, as the case may be, for approval or rejection; and, finally, (3) under House Rule X, the membership of standing committees is elected by the House "from nominations submitted by the respective party caucus or conference."

By contrast, appointment of Members to a permanent select committee is regulated by House Rule I, which states: the "Speaker shall appoint all select ... committees ordered by the House." Rules I also permits the Speaker to remove Members from select panels or to appoint additional Members. By custom, the Minority Leader chooses the minority members, who are then formally named to the select panel by the Speaker. Thus, a permanent Select Committee on National Security *might* be viewed by the House membership as a "leadership" committee. This recognition could bolster the new select committee's ability to develop working relationships with the standing committees that will continue to exercise some jurisdiction over interagency national security matters.

Legislative Authority. Most select committees are established to study a specific issue and make recommendations to the standing committees of appropriate jurisdiction. They lack legislative authority—the right to receive and report legislation—unless that power is granted to them by their authorizing resolution. During the past three decades, only four select committees have been granted legislative authority: the Ad Hoc Outer Continental Shelf Committee, created in 1975; the Ad hoc Energy Committee, formed in 1977; the Select Committee on Homeland Security, established in 2002; and the Select Homeland Security Committee, constituted in 2003.⁴

The two homeland security committees were created for different purposes. In the aftermath of 9/11, President George W. Bush proposed in June 2002, the creation of a new Department of Homeland Security (DHS). It was forged from the merger of 22 federal entities with around 180,000 personnel. Two weeks after the President's recommendation, the House adopted a resolution (H. Res. 449) creating a nine-member Select Committee on Homeland Security. H. Res. 449 explicitly placed the select panel in a coordinative role. The resolution stated: "Each standing or permanent select committee to which the Speaker refers to a bill introduced by the Majority Leader or his designee (by request) that proposes to establish a department of homeland security may submit its recommendations on the bill only to the select committee."⁵

⁴ See *House Ad Hoc Select Committees with Legislative Authority: An Analysis*, CRS Report R40223, by Michael L. Koempel. This discussion excludes the House Permanent Select Intelligence Committee, established in 1977. It has legislative authority, broad jurisdiction over the intelligence community, a membership limited in tenure, and seats reserved for certain committees with overlapping jurisdiction.

⁵ *Congressional Record*, June 19, 2002, p. 10722.

Speaker J. Dennis Hastert named Majority Leader Richard Armey of Texas to chair the panel; Minority Leader Richard Gephardt named Minority Whip Nancy Pelosi to be the Ranking Member. The other seven Members all held party leadership positions. Armey introduced legislation (H.R. 5005) establishing the new department, which was referred to the Select Committee as well as twelve other committees. The Select Committee reported H.R. 5005 creating the new department and, in the end, the bill was signed into law by the President.

On the opening day (January 7, 2003) of the 108th Congress, the House established another Select Committee on Homeland Security. This panel had the responsibility, among other things, to determine whether to recommend to the Rules Committee the establishment of a new standing Committee on Homeland Security. The select panel did make that recommendation, which the House agreed to at the start of the 109th Congress.

Returning to the PNSR's proposal (p. 522, *Forging A New Shield*), the Select National Security Committee would exercise legislative and oversight jurisdiction over all interagency (1) operations and activities; (2) commands, other organizations, and embassies; (3) funding; (4) personnel policies; and (5) education and training. The select committee would also have jurisdiction for the consideration of a new national security act. The Senate select panel would have authority over "nominees for any Senate-confirmed interagency position that may be established."

This jurisdictional mandate raises at least three concerns for the Subcommittee's consideration: the definition of national security, the number of interagency groups, and the benefits and liabilities of select committees.

MATTERS FOR CONSIDERATION

Definition. The PNSR's definition of "national security" is quite expansive. The Project defines it as follows: "National security is the capacity of the United States to define, defend, and advance its position in a world that is being continuously reshaped by turbulent forces of change." The Project makes it clear that national security means more than security from aggression. It includes "security against the failure of major national infrastructure systems" and recognition that "national security depends on the sustained stewardship of the foundations of national power." And, as the Project rightfully notes, the national security system includes far more than military, diplomatic, intelligence, or homeland security matters. It includes activities of the Agriculture, Interior, Justice, Transportation, Treasury, and other departments and agencies. In short, this is a sweeping definition that would grant the Select Committee wide authority to legislate for and oversee scores of inter-agency activities that are also part of other committees' jurisdictional mandate.

Consider the number of House standing committees with jurisdiction for homeland security, a subject area whose scope somewhat matches that of national security. Even though the House has created a new standing Committee on Homeland Security, the panel's legislative history makes it clear that ten other committees retained authority for various homeland topics. The ten committees are: Agriculture; Armed Services; Energy and Commerce; Financial Services; Oversight and Government Reform; Intelligence; Judiciary; Science; Transportation and Infrastructure; and Ways and Means.⁶

Moreover, the broad definition of national security may create issues beyond jurisdictional overlap. It also raises concerns about the proposed select committee's sense of mission and purpose. If scores of issues relate to national security (terrorism, international organized crime, and so on), it is not especially clear how to distinguish the national security or even interagency dimensions of these topics from the issues themselves. And what would be the relevant expertise for membership on this select committee?

By contrast, the four most recent House select panels with legislative jurisdiction, mentioned above, all had a rather circumscribed jurisdictional focus.⁷ The Outer Continental Shelf Committee was directed to report a specific bill (H.R. 6218) to the House on management of oil and natural gas in the OCS while ensuring protection of the marine and coastal environment. The Ad hoc Energy Committee's mission was to develop a comprehensive energy policy. Its authorizing resolution directed the panel "to consider and report to the House on the message of the President dated April 20, 1977." The 2002 Select Homeland Security Committee had one goal: consider the President's proposal to create a new Department of Homeland Security (DHS). Significantly, this panel played an important coordinative role in that the standing committees of jurisdiction were directed to report their recommendations to the select panel. And the 2005 Select Homeland Security Committee's mission was to determine whether the House should establish a new standing Committee on Homeland Security that could authorize and oversee various components and programs of the DHS. (This panel had specific jurisdiction over matters related to the Homeland Security Act of 2002, P.L. 107-296).

Number of Interagency Groups. It is unclear how many interagency coordinative mechanisms have been established in the national security arena. Some, of course, are especially prominent, such as the National Security Council, which President Obama recently expanded to include a larger number of participants than those originally named as members by the 1947 National Security Act.⁸ President Obama has also named a number of "czars" to oversee and coordinate the policy process in various areas, such as energy and the economy. There are probably hundreds of little known, and perhaps

⁶ *Congressional Record*, January 4, 2005, pp. H25-H26.

⁷ In each case, the standing committees of jurisdiction had large input in the final product of the select committees.

⁸ Karen DeYoung, "National Security Structure Is Set," *The Washington Post*, February 27, 2009, p. A3.

short-lived, interagency working groups or task forces that cover a broad spectrum of policy categories.

Benefits. The fundamental benefit of select committees is that they provide a basis for coordination and integration of policy matters that cross-cut the jurisdictional responsibilities of several standing committees. Given the inter-related complexity of so many of today's public policies, select committees can pull together issues whose consideration is scattered among numerous committees and subcommittees. The result could be greater policy coherency.

Moreover, select committees might be better able than standing committees to take a comprehensive and innovative look at new and old problems. Standing committees have their own history, traditions, and culture, as well as well-established relationships with various federal agencies and outside groups. A new select committee--which starts *de novo* and whose membership reflects a diversity of experiences from a variety of committees--could bring fresh insights and perspectives to the resolution of multidimensional national security problems.

Liabilities. There are several potential issues with the formation of select committees, but one stands out among all the others. "Turf" reflects power on Capitol Hill. Members and committees do clash over their jurisdictional prerogatives. Committee jurisdictions are a "lawmaker's power base. It is no wonder that committee boundaries are hotly contested."⁹ A related issue is how much consolidation of jurisdiction may be too much? An example from DHS might be relevant here. Some observers might suggest that the Federal Emergency Management Administration's (FEMA) response to Hurricane Katrina was less than adequate. Why? Because the integrative impulse that prompted creation of DHS resulted in FEMA's losing substantial competence in its traditional mission (natural disasters) compared to a new and dominant responsibility (anti-terrorism).

Any broad subject area (national security, homeland security, transportation, energy, health, and so on) touches the jurisdiction of several panels. Shared policy interests can sometimes spark inter-committee controversies. The lack of bright jurisdictional lines separating one substantive area from another can trigger disputes between or among committees. **Importantly**, "turf wars" can still occur even with jurisdictional consolidation. Scores of issues, such as homeland security, are simply too complex to be placed in watertight jurisdiction compartments.

What all this means in practical terms is that proposals to establish select committees—especially those with legislative authority—are generally viewed negatively by many lawmakers. Select committees are often viewed as "trespassers," intruding on the jurisdiction of the standing committees. When the 2003 Select Homeland Security Committee was created, mindful of Members' concerns about losing jurisdictional turf, Speaker Hastert assured the relevant standing committees that they "will maintain their

⁹ David C. King, *Turf Wars: How Congressional Committees Claim Jurisdiction* (Chicago: University of Chicago Press, 1997), p. 12.

[homeland security] jurisdiction and will still have authorization and oversight responsibilities.”¹⁰

Furthermore, Members and committee staff who oppose the formation of select committees may work to mobilize allies inside and outside the House to prevent their creation. If it is evident that formation of a select panel is a foregone conclusion, opponents may work to ensure that the responsibilities of a select committee are constricted, limited to study and review only.

There are other potential **liability** issues. For instance, there may be issues of cost, office space, funding, staff, duration, and friction—lawmakers and committees jockeying for representation on the select committee. There could be referral issues if the select committee is granted legislative authority. Select committees could also introduce new rivals and inefficiencies in the committee system. There is also a bicameral element because the PNSR recommends that both chambers should create select committees. If only one chamber acts on the recommendation, might this lead to additional complexities in reconciling bicameral differences involving interagency national security issues?

Factors in Successful Creation. Legislative history suggests that three key factors need to be present if a select committee with significant jurisdiction (the Select National Security Committee, e.g.) is to be constituted. They include:

- Significant support from the party leadership, especially the Speaker and the Minority Leader. After all, the Speaker will influence the authority of any select committee and determine its majority membership.
- Bipartisan cooperation in the select panel’s formation to demonstrate broad chamber agreement on its creation.
- Support of the standing committees. Assignments to select committees often come from the members who serve on the relevant standing committees of jurisdiction.

ALTERNATIVE INTEGRATIVE APPROACHES

Congress is an adaptable institution. It has a number of means by which it can coordinate dispersed policymaking and better anticipate emerging issues. Among them are seven that I will mention to illustrate the point.¹¹ There are advantages and

¹⁰ *Congressional Record*, January 7, 2003, p. H5.

¹¹ Informally, House committee chairs who share jurisdiction over a policy domain might agree to coordinate and produce legislation that exhibits a high degree of policy coherency. For example, three House chairs whose panels have overlapping jurisdiction over the health care system stated: “As chairs of these committees and veterans of past health reform debates, we have agreed to coordinate our efforts. Our intention is to bring similar legislation before our committees and to work from a harmonized approach to achieve success.” The chairs headed the Committees on Education and Labor, Energy and Commerce, and

disadvantages to each approach, but the purpose here is simply to highlight several that the House and its committees might employ to encourage policy integration and discourage jurisdictional strife.

Task Forces and Working Groups. Informal task forces or working groups have long been created by committee leaders and Democratic or Republican Speakers. They may be either partisan or bipartisan in composition, with the membership commonly drawn from multiple committees. These informal entities are established for various reasons, including the drafting of measures that cut across committees' jurisdictional lines. Former Speaker Newt Gingrich formed a number of party task forces in the early days of the 104th Congress, so many that one newspaper article was titled "Government by Task Force: The Gingrich Model."¹²

Nine days after the terrorist attacks of 9/11, Speaker J. Dennis Hastert announced that a bipartisan Working Group on Terrorism and Homeland Security would be converted into a subcommittee of the Permanent Select Committee on Intelligence. The Working Group was established in January 2001 by Speaker Hastert and Minority Leader Richard Gephardt in response to numerous hearings and high-level commission reports urging development of a national strategy to combat domestic terrorism. The new subcommittee, said Speaker Hastert, would be "the lead Congressional entity on this issue, and will examine all aspects of these terrorist attacks, including the vulnerability of America's infrastructure and our counter-terrorism preparedness and response capabilities."¹³

Committee Composition. Overlapping committee memberships might facilitate inter-committee cooperation on shared policy interests. The party assignment panels would each have to make a concerted and strategic effort to assign selected Members to serve on committees with overlapping policy responsibilities. Lawmakers who serve on "exclusive" panels might need waivers from party rules to serve on two standing committees, something that is fairly common today. Currently, two House committees—Budget and Intelligence—are required by House rule to have Members drawn from other standing committees. This rule might be broadened to include other panels. Two outcomes might result from this change: the cross-pollination of Member views on a wider spectrum of policy topics and the minimization of turf concerns. Worth mention is that the Speaker and Minority Leader serve as ex officio members of the Intelligence Committee and each designates a leadership member to serve on the Budget Committee.

Specialized Subcommittees. Informally or by action of the House, lawmakers from two or more subcommittees of standing committees with shared policy

Ways and Means. See Alex Wayne, "House Chairmen Promise to Move Similar Health Care Overhaul Bills," *CQ Today*, March 12, 2009, p. 16.

¹² Deborah Kalb, "Government by Task Force: The Gingrich Model," *The Hill*, February 22, 1995, p. 3.

¹³ Office of the Speaker, Press Release, "Speaker Dennis Hastert Announces Creation of Subcommittee on Terrorism and Homeland Security," September 20, 2001, p. 1. During the 110th Congress, the Subcommittee on Oversight and Investigations of the House Armed Services Committee created a Working Group on National Security Interagency Reform, and the full Committee established a Roles and Missions Panel to consider the future of national security issues.

responsibilities might be constituted as a permanent Subcommittee on National Security. A relevant model might be the Select Intelligence Oversight Panel on the House Appropriations Committee. It was created in the 110th Congress and reestablished in the 111th. It is composed of lawmakers from both Appropriations and the Permanent Select Intelligence Committee: an example of the cooperative sharing of jurisdiction.

Another approach might be for the House to designate an existing subcommittee of a standing committee as the coordinative unit for interagency national security issues. Its membership could be composed of lawmakers who serve on the relevant standing committees of jurisdiction. Worth mention is that House Rule X, which establishes limits on the number of subcommittees per standing committee, contains an exemption for the Committee on Armed Services. This Committee can establish “a special oversight panel” that might function as the coordinative oversight unit for interagency national security issues.

Multiple Referrals. Since 1975, the House has permitted the multiple referral of legislation: one bill, many committees. Under the rule, the Speaker has open-ended authority to involve several committees in the consideration of legislation, including the designation of a primary committee.¹⁴ An objective of multiple referrals is to accommodate the prerogatives of the various standing committees that share jurisdiction over a policy domain. Use of multiple referrals also encourages integration by bringing the expertise of several committees to bear on complex issues.¹⁵

Integration By Party Leaders. Committees fundamentally contribute to policy fragmentation; party leaders are the principal policymaking coordinators. They are strategically positioned to weaken jurisdictional rigidities and encourage policy development from a broader perspective. The Majority Leader, as an example, meets weekly with the committee chairs. This forum might be employed to foster coordinated decisionmaking among the committees that share policy interests, including the review of interagency security matters. Or the Speaker could encourage committees with overlapping national security jurisdiction to conduct joint hearings, including with panels of the other chamber.

Foresight. The report of the PNSR highlights the importance of foresight in responding to an unpredictable world. Under House Rule X, every standing committee (except Appropriations) has the authority and responsibility to conduct “future research and forecasting on subjects within its jurisdiction.” Little is known about how committees comply with this requirement, no doubt in multiple formal and informal ways. Consideration might be given to strengthening committees’ anticipatory capacities so lawmakers are mindful of trends underway—globalization, climate change, population growth, etc.—that seem likely to require integrated policy action. Understandably,

¹⁴ If a permanent select national security panel is created, then the likelihood would be that this committee would be primary on matters involving interagency national security issues. On the other hand, several committees might still seek the primary designation from the Speaker, who has formal responsibility for the reference of legislation. The House Parliamentarian, however, refers measures on behalf of the Speaker.

lawmakers and committees focus on the major issues of the moment. In a complex world, however, it is important for Congress to be sensitive to long-term threats, challenges, or changes so it will not be caught unprepared to meet them.

An NSC for the House. The National Security Council was established as an advisory body to the President—to weigh the views of various agencies, evaluate them, and play the role of “honest broker” in presenting alternative viewpoints to the chief executive. Something analogous might be devised for the House. For example, a body with a bipartisan membership—or two partisan units—could be established to forward advice to the Speaker, the Minority Leader, and other lawmakers. This House unit could employ a limited number of highly qualified professional staff who bring intellectual breadth to the business of analyzing and synthesizing an array of interrelated issues.

Let me now make a few observations about PNSR’s other recommendations for Congress.

CONSOLIDATE OVERSIGHT OF DHS

Consolidated oversight of DHS is something that is underway, but overlaps cannot be eliminated entirely. Other committees have an interest in reviewing the activities of DHS.¹⁶ The Legislative Reorganization Act of 1946 contributed to multiple committee reviews by implicitly dividing oversight into three overlapping categories: “legislative,” “investigative,” and “fiscal.” Legislative oversight is the purview of the authorizing committees: reviewing programs and agencies under their jurisdiction. Investigative oversight is the wide-ranging oversight authority granted to the House and Senate government operations panels. And “fiscal” oversight is the responsibility of the Appropriations Committees.

The House also has something called “special oversight.” For specific topics, certain named authorizing committees have the right to oversee programs and agencies that are under the jurisdiction of other standing committees. At the start of the 111th Congress, the House amended its rules to grant the Committee on Homeland Security special oversight authority. The Committee “shall review and study on a continuing basis all Government activities, programs, and organizations related to homeland security that fall within its primary legislative jurisdiction.” This change is a step toward implementing the PNSR’s oversight recommendation for the DHS.

Even with the rules change, there will continue to be oversight overlaps for DHS programs and entities, because other panels also have review authority for specific DHS programs and entities. When the House created the new Committee on Homeland

¹⁶ As one House committee chairman explained, “Homeland security is too diffuse and important a government activity to rest with one committee. Almost every activity of every Federal agency has some relationship to homeland security, and almost every activity of the Department of Homeland Security impinges on the activities of other agencies A structure that overly centralized homeland security oversight would make it harder to evaluate the Department of Homeland Security in the context of other activities of the Federal Government. An overcentralized structure could also make a congressional committee a captive of the agency that it oversees.” See *Congressional Record*, January 4, 2005, p. H19.

Security, Rules Chairman David Dreier underscored that the new panel reflected “a delicately crafted architecture. It creates a primary committee while recognizing the other legitimate oversight roles of the existing committees. We envision a system of purposeful redundancy.”¹⁷

DHS officials often complain that they have to testify before too many committees and receive contradictory signals from different House and Senate panels. Many of their staff are consumed with writing testimony and responding to follow-up questions posed during the hearings. This bureaucratic lament has been voiced many times over the years. It has to be weighed carefully, however, against Congress’s vital “watchdog,” lawmaking, and informing functions.

Another concern is that competing committees often jockey to get priority in having top DHS officials testify first before their committee rather than other panels. This type of inter-committee conflict or tension might be allayed through the intervention of the Speaker or written or verbal agreement among the key committees. For example, in the 110th Congress an informal agreement was reached that the Energy and Commerce Committee would have priority over the select global warming committee in receiving the testimony of top energy officials.¹⁸

As for the consolidation of all budget authority for homeland security in one Appropriations Subcommittee in each chamber, there are at least two issues that bear mention. First is the jurisdictional issue—protection of turf--discussed in reference to the creation of select committees. Five agencies, which receive funding from different House Appropriations Subcommittees, “account for approximately \$60.7 billion (91 percent) of total Government-wide gross discretionary homeland security funding in 2009.”¹⁹ The five are DHS, Defense, Health and Human Services, Justice, and Energy. Suffice it to say that jurisdictional reshuffling among the dozen Appropriations subcommittees would not be an easy assignment. Second, the House and Senate Appropriations Committees prefer that their subcommittee structures are similar in jurisdiction. This arrangement facilitates the bicameral negotiation process when there are funding disagreements between the two chambers. Thus, this PNSR proposal would appear to require the concurrence of both chambers if it is to be effective.

EMPOWER THE HOUSE FOREIGN AFFAIRS COMMITTEE

It is unclear to me how the recommendations of the PNSR empower the House Foreign Affairs Committee. One of their proposals is to amend Section 302(a) of the

¹⁷ *Congressional Record*, January 4, 2005, p. H14.

¹⁸ House Energy and Commerce Chairman John Dingell reportedly stated that he received assurances from Speaker Nancy Pelosi that “his committee will get first dibs to call witnesses where there could be potential conflict and that Pelosi will be consulted before the exercise of any compulsory powers by the select committee to ensure the appropriate coordination of efforts.” See Jonathan Kaplan, *The Hill*, February 6, 2007, p. 1.

¹⁹ *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2009* (Washington, G.P.O. 2008), p. 19.

1974 Budget Act to require the Budget Committees to “recommend allocations for all national security budget function components.” [Section 302(a) deals with committee spending allocations for total budget authority and total budget outlays.] As I understand the budget functions, they are for informational purposes and not enforceable by parliamentary means.

A second PNSR proposal is to reenact “firewalls” that first cap discretionary spending for different categories of programs, and, second, prevent the transferring of discretionary funds from international or defense programs to domestic programs. Firewalls were part of the Budget Enforcement Act of 1990. However, my understanding of the firewalls is that they have only an indirect effect on the authorizing committees, because the firewalls apply to appropriations bills.

Third, the PNSR recommends a supermajority requirement to waive the requirement of House rules that the authorization for a program or agency must be enacted into law prior to the consideration of appropriations for that program or agency.²⁰ My sense is that this provision would empower a minority to block defense and foreign policy authorizations and not empower the Foreign Affairs Committee. There are many times, too, that authorizers will both ask the Appropriations Committee to carry their legislation and support a waiver of House Rule XXI, which also is designed to prohibit legislation on appropriations bills.

SENATE CHANGES

Nominations. The PNSR recommends that ten most senior positions in a national security department or agency--recall that this could be a large number given PNSR’s definition of national security—should be placed on the Senate’s executive calendar, with or without a recommendation, after no more than 30 days of legislative session.” This proposal tracks P.L. 108-458, The Intelligence Reform and Terrorism Prevention Act of 2004—which has a “sense of the Senate” provision regarding expedited consideration of national security nominees. However, as we have seen with many administrations, including President Obama’s, speedy nominations may come at a cost, such as the withdrawal of various nominees. The vetting of nominees is a slow process. On the other hand, it makes it difficult for a new administration to govern without many of its top people in place.

²⁰ The PNSR’s recommendation states: “Require a supermajority vote in the House to waive the current rule requiring passage of authorizing legislation prior to consideration of appropriations bills for defense and foreign policy.” House Rule XXI, clause 2, stipulates more than passage of legislation. It requires that an “appropriation may not be reported in a general appropriation bill, and may not be in order as an amendment thereto, for an expenditure not previously authorized by law.” Moreover, it is quite unusual for the House to specify supermajority requirements in its rulebook. Currently, there are only four instances: suspend the rules; dispense with the call of the Private Calendar; consider a special rule on the same day it is reported from the Rules Committee; and to approve a measure, amendment, or conference report carrying a federal income tax rate increase.

Holds. The PNSR recommends the abolition of holds on national security nominees. Holds are an informal practice of the Senate, although an effort was made in the Honest Leadership and Open Government Act of 2007 to end the practice of secret holds. My sense is that most Senators do not want to end the practice of holds. It gives every Senator bargaining leverage with the administration, which is a valuable resource to accomplish various goals. Moreover, holds serve an “early warning” function for party leaders, indicating opposition to certain nominations.

Thank you for the opportunity to testify, and I will be pleased to try and answer your questions.

BIOSKETCH

Walter J. Oleszek is a senior specialist in American national government at the Congressional Research Service, where he has worked since 1968. He has served as either a full-time professional staff aide or consultant to a number of House and Senate legislative reform efforts, such as the House Select Committee on Committees (1973-1975). In 1993, he was policy director of the Joint Committee on the Organization of Congress.

He is the author or co-author of a number of books on the Congress, including *Congressional Procedures and the Policy Process*, 7th ed. (2007), *Congress and Its Members*, 11th ed. (2008), and *Congress Under Fire: Reform Politics and the Republican Majority* (1997). A long-time adjunct faculty member at The American University, he holds a doctorate degree in political science from the Graduate School of Public Affairs, State University of New York, Albany.