

**HEARING ON PERSPECTIVES ON HOUSE REFORM:
LESSONS FROM THE PAST**

HEARING
BEFORE THE
SUBCOMMITTEE ON RULES
OF THE
SELECT COMMITTEE ON
HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
SECOND SESSION

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Monday, May 19, 2003

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON RULES,
Washington, D.C.

The committee met, pursuant to call, at 5:29 p.m., in Room 340, Cannon House Office Building, Hon. Lincoln Diaz-Balart [chairman of the subcommittee] presiding.

Present: Representatives Diaz-Balart, Dunn, Dreier, Goss, Linder, Slaughter, Sanchez, Lofgren, McCarthy, and Meek.

Also Present: Representatives Cox and Turner.

Mr. DIAZ-BALART. Good afternoon. I would like to begin this hearing welcoming Chairman Dreier. And I know other members, Louise Slaughter, our ranking member, sent a message that she would be just a little late but she intends to be here.

I would like to welcome not only our distinguished panelists, but all of our visitors to the first hearing of the Subcommittee on Rules of the Select Committee on Homeland Security. The mission of this subcommittee is an extraordinary one and it is difficult, but it is one that we do not shy away from.

Today the subcommittee begins a series of hearings. The overall objective for our hearings is to solicit the insights and recommendations of experts on Congress, including scholars, both current and former Members of the House and perhaps former administration officials.

The hearing today and the others that will follow are designed to help and, in turn help, the select committee fulfill the mandate given to it on the opening day of this Congress in H. Res. 5, and I will quote the most relevant part of H. Res. 5. "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."

More than a decade has passed since the operations and the organization of the House were last subjected to a major review. That last thorough study was undertaken precisely in 1993 by the Joint Committee on the Organization of Congress on which our own Rules chairman, a member of this subcommittee, David Dreier, served as vice chairman. The select committee's vice chairman, Jennifer Dunn, also served on the joint committee. Although Con-

gress was unable to enact a legislative reorganization act in 1994, some of the recommendations of the joint committee subsequently were adopted by the House.

As we all know, since the 1993 joint committee much has changed in the Congress, in our country and in the world. And like other extraordinary events in our history, such as the attack on Pearl Harbor or man's landing on the Moon, we will long remember what happened on September 11, 2001, when terrorists attacked the homeland of the United States. It is in response to September 11, 2001, that our being here can best be explained.

At the urging of Congress, President Bush signed legislation into law creating a new Department of Homeland Security, the largest reorganization of the executive branch since at least the establishment of the Department of Defense in 1947. Now, it is the responsibility of this subcommittee to assess whether the House and most especially its committee system is organized effectively to address the many issues associated with homeland security.

We undertake this assignment with no preconceived ideas or preferred outcomes. We are open to all ideas and recommendations. We may find, for example, that the current standing committee structure is functioning as we wish it to function, or we may come to the conclusion that the committee system as it exists needs perhaps minor tinkering or significant reform. There may be additional rules besides rule X that might require our attention. My point is that the subcommittee is willing and open to explore a wide range of options and questions as we undertake our review of the House rules as mandated by the House.

A fundamental objective of our hearings will be to provide the members with background information and analysis on several of the past House reorganization efforts. All of us need to know what lessons or insights can be learned from what has happened in the past. Were real reforms achieved or were some of the boxes simply shifted around or committees renamed with no significant improvement in how we conduct our business? We also need to hear from experts who can perhaps identify other major institutional reform areas that merit review and attention by this subcommittee.

Our ranking member Louise Slaughter and I plan to include a panel of former Cabinet Secretaries at today's hearing. We wanted to consider their views on how they worked with the Congress' committees. However, many of the people we invited were out of the country or had conflicting engagements and they could not be with us today, so we will try to schedule that panel at a later date.

At this point I would ask any members of the subcommittee for any opening statements. Mr. Dreier.

Mr. DREIER. Thank you, Mr. Chairman. Let me congratulate you and our friend Mrs. Slaughter, with whom I just attended the U.S.-Canada conference this weekend. She is coming back because she is actually participating in another subcommittee hearing of this committee in Canada now, or I guess it is in New York, where they are holding this meeting.

Let me say that this is obviously very, very important what we are undertaking here. The mandate of this subcommittee as well as the work of Mr. Linder, who chairs the Technology and the House Subcommittee of the Rules Committee, will be undergoing

a thorough and complete study of the operation and implementation of the rules of the House, including rule X, with respect to homeland security. That is actually the language as it was put forth that has led to the work of this effort. We all know that rule X deals with the basically the jurisdictional issue with the committee system. And Mr. Chairman, let me say that, and I know I said this at our opening meeting, and that is I think it is very important for to us remain as open-minded as we possibly can. A lot of people come with preconceived notions to this issue. And you mentioned back in 1993 we worked on this. That was one of the challenges we had then, was to try and be as open-minded as possible and we know it is challenging when you deal with a wide range of issues and, of course for all of us, personalities. So I hope very much that we will be able to do that.

As you correctly pointed out, since the attacks of September 11th our perception of national priorities has changed dramatically. Terrorist attacks on our homeland introduced a new sense of vulnerability to Americans and gave Congress an imperative to act to protect the American people. Congress responded with its passage of the Department of Homeland Security legislation last year and with its formation of homeland security appropriations subcommittees and in the House this Select Committee on Homeland Security. We know that our mission is to review all the rules and procedures of the House to ensure that we are dealing with homeland security in the best, most coherent way possible. And to that end let me just say that I am very pleased that we are joined—well, Mrs. Slaughter made it back. We are glad that she is here along with my colleague Mr. Goss. You are right over here, Louise. Not that I am in charge but it is hard for me to break that habit.

Let me say I am very, very pleased that we have the rare privilege of having the great Parliamentarian of the House Charlie Johnson as our first witness. As I said, I don't know of another instance when a Parliamentarian has come forward to testify before a committee in the House and I also want to say that the staff of the Parliamentarian are extraordinarily capable, extraordinarily knowledgeable, and I have a lot of fun with them, often late at night because the Rules Committee meets late at night. But I do want the record to show that I have a great appreciation for the expertise and the professionalism of the Parliamentarian and his staff.

I also want to say that two friends with whom I worked very closely a decade ago on the Joint Committee on the Organization of Congress are going to be testifying, Norm Ornstein and Tom Mann. I am looking forward to their thoughts on this and congratulate you for the leadership you are showing on this.

Mrs. Slaughter, I mentioned you before you came in. Thank you for your hard work on this. I want to again thank Mr. Linder, whose subcommittee is focusing on these issues as well.

Thank you, Mr. Chairman.

Mr. DIAZ-BARLART. Thank you, and we are very pleased to have our ranking member Louise Slaughter, who has joined us after having been present at another hearing today, and thank you, Louise. You are recognized.

Ms. SLAUGHTER. Thank you, Mr. Chairman. We did have a spectacular morning. We had a press conference looking over Niagara Falls on a glorious day this morning. So that was really quite nice. But I am happy to be here with all of you this afternoon.

Like the chairman, I am glad the work of the subcommittee is getting underway. We have several excellent witnesses who I have known for some time. Back in my old venture in trying to save the rules of the House, you were very helpful. I am anxious to hear what they have to say about whether or to what extent the House needs to revise its organization and its procedures and structures. As a veteran of past reform efforts, I know the subcommittee has been handed a difficult assignment. To change the procedures, practices or routines of the House is no easy matter.

Members often have a vested interest in the status quo or if not a vested interest, then members may have learned to accommodate whatever deficiencies they may encounter. For all the headaches and heartaches that advocates of reform often face, it is still a worthwhile endeavor for the House to step back and periodically study and review its organization.

There is always room for improvement in any institution, especially in a place as large and as complex as the House of Representatives. That is why I am particularly interested to hearing what today's witnesses have to say and what insights they can share with us about how they might improve the effectiveness of the House of Representatives.

Drs. Mann and Ornstein were the lead authors a decade ago of a major study entitled "Renewing Congress." Is renewal again a top priority for the House? And our Parliamentarian Charles Johnson just issued a new version of House Practice, a renewal project that may also stimulate in Mr. Johnson some ideas for change.

Our mandate under H. Res. 5 is broad, as the chairman indicated, a study to review House rules, especially rule X, dealing with our committee systems, to determine if they need change or revision so that the House can more effectively handle issues of homeland security.

This is a large assignment and our time is relatively short. We all have other assignments and many other duties and functions in the House. I suggest that as we begin our several rounds of hearings we also begin to think about what should be the principal focus of our attention. We cannot take on every reform area that our various witnesses might suggest. Simply dealing with the committee system is a huge undertaking. As we proceed in our work, I believe it is very important that we hear not only from outside experts and former Members, but also from sitting Members, a sitting Member who wants to testify or submit testimony for the record.

We all know that the House has many committees and subcommittees and scores of other work groups and a complex array of rules and procedures. Our colleagues know the strengths and weaknesses of this institution as few others do. We need to hear from them in this process. I know our chairman will invite all of them to appear at this point, but I want to underscore the contribution that they can make. At some point we might want to so-

licit their views through a questionnaire or conduct personal interviews with a selected number of them.

Mr. Chairman, the time we spend in hearings and study should provide the subcommittee with ideas on how to approach particular problems areas and how they may be resolved. Our hearings may very well lay down some important markers, the route that we should take to improving, strengthen the House.

Mr. DIAZ-BARLART. Thank you for your remarks, very thoughtful, and I appreciate them very much.

Mr. Goss.

Mr. GOSS. Thank you, Mr. Chairman. I actually came to hear what the witnesses had to say. So I will thank you very much for this great opportunity to come and hear some excellent witnesses on a matter that we care about. I appreciate the remarks that have been made by my other colleagues and associate myself with them and yield back.

Mr. DIAZ-BARLART. Ms. Lofgren.

Ms. LOFGREN. I would also like to hear from the witnesses, so I will defer a statement.

Mr. DIAZ-BARLART. Mr. Linder.

Mr. LINDER. Nothing.

PREPARED STATEMENT OF THE HONORABLE JIM TURNER

The Select Committee on Homeland Security will consider many matters over the coming months that will bear directly on the security of the American people. Nonetheless, one of most important responsibilities of this Committee will be the subject of this evening's hearing—changes that ought to be made to the Rules of the House in response the creation of the Department of Homeland Security.

One might ask how mere rules could possibly be as important as the substantive issues that have and will come before this Committee. The answer is that our rules will determine the character of relationship between Congress and the new Department. And this relationship may very well have a strong bearing on the success or failure of the Department.

Let us keep in mind the challenges facing the Department of Homeland Security. It must take 22 separate agencies, which all had different cultures and operational structures, and merge them into a coherent whole with a common mission of protecting the homeland. This will be no easy task. But this task is made even more difficult by the current congressional committee structure.

As the scholars on our panel will tell us tonight, the Department of Homeland Security must currently answer to dozens of House and Senate Committees and scores of subcommittees. This structure not only places a serious administrative burden on the Department's senior management, but it also pulls a department that is trying to unify itself, in multiple policy directions. This result is not good for the Department, for the Congress, and ultimately, for the country.

I am well aware that the history of congressional reform movements suggests that efforts to make radical changes to the House's committee structure have most often ended in failure. But we must all keep in mind that the September 11 attacks on our homeland require a new approach to governing. We have taken the first step by undertaking the largest reorganization of the Executive Branch in half a century. Congress must now take the next step of adapting to the reality of the new Department of Homeland Security. To its credit, the Appropriations Committee has already responded. The authorizing committees must now also respond. Tonight's hearing marks the beginning of that process and I welcome the distinguished panel.

Mr. DIAZ-BARLART. Thank you all very much. I am honored that our lead off witness is someone not only we all know but who has an institutional memory and expertise about the House that is probably unmatched, and that is Charles Johnson, the House Parliamentarian. Mr. Johnson has been the Parliamentarian since 1995, but has served in the Office of the Parliamentarian for four decades. It is truly a privilege to have you here before us, sir, and

without objection your remarks will be part of the record and you are recognized.

**STATEMENT OF CHARLES W. JOHNSON, PARLIAMENTARIAN
OF THE HOUSE OF REPRESENTATIVES**

Mr. JOHNSON. Thank you, Mr. Chairman. The five pages of remarks I hope are disseminated in a timely way. I don't plan to repeat much of that, just to highlight a few things and then, to maximize your time, Mr. Chairman, and the members, to be available for questions.

The chairman of the Rules Committee couldn't remember when anyone had ever testified from our office. My beloved predecessor William Brown testified almost 10 years ago to this day before his joint committee.

Mr. DREIER. I remember that now.

Mr. JOHNSON. So whether it was forgettable testimony, it shouldn't have been. Bill approached it with the same trepidation as I approach this, because our function is to serve all the Members in an advisory capacity, beginning with the Speaker clearly, and not necessarily to be advocates. As I was asked to give some background about past reorganization attempts, I have attempted through my submission, and particularly through the appendices A through G that I believe you all have, to give an indication of how difficult reorganization attempts have been, especially through select committees. Just to elaborate on some of that prepared testimony for a few minutes and then, as I say, to be available to questions, both about past jurisdictional and reorganization efforts and more precisely now about the enactment of the Homeland Security Act and the consequent reorganization efforts that you are mandated to conduct.

Let me just begin by going back to 1974 very quickly. Appendix A is a summary in 1993 of jurisdictional overlaps which we have updated to a certain extent. That is across-the-board jurisdictional overlaps. What I want the committee to understand is where we are in the referral process, where we have been since 1974. I use the word "inadvertent" in my prepared statement to suggest that the House on that watershed day of October 8th, 1974, rejected a major organizational attempt through the so-called Select Committee on Committees, chaired by Richard Bolling, later to become chairman of the Rules Committee, but maintained within the recommendation that was finally adopted a referral mechanism that has proven difficult, now with almost 30 years of precedent behind it. One of the submissions here is an excerpt from our most recent House Rules and Manual which shows the variations of referrals that Speakers have made. The whole premise of the Bolling select committee was that there be for the first time beginning in 1975 the authority for the Speaker to make multiple referrals. Until that point the Speakers were only required by tradition and by the rules of the House to make a referral to one committee.

My first 10 years as an Assistant Parliamentarian were spent to a great extent trying to discern primary jurisdiction on every bill referred. It wasn't always easy but we collected files, we had examples. We always made recommendations to the Speaker based on precedent if we could find similar bills, similarly referred. We had

guidelines indicating what were major committees and what were perhaps incidental or secondary committees. But when the organization came to the attention of the House, the House in its wisdom retained more or less the existing fragmentation of committee jurisdictions.

Submission B is a summary of those rules changes. It was summarized in a little red book prepared by the so-called Hansen-Burton coalition, primarily of the Democratic Caucus at the time. This OSR sub-unit of the Democratic Caucus served as the review entity of the Bolling select committee's recommendations, and they were more focused in their substitute. They retained this notion of multiple referral in their alternative recommendation, describing it as merely giving the Speaker discretion.

Now, the Speaker's discretion comes in various shapes and forms. It is not similar to the absolute power of discretionary recognition that the Speaker has on the floor, but it is guided by the language of clause 2 of rule XII that suggests that referrals must be made to the maximum extent practicable, that is where the motion of discretion comes in, to all committees with legitimate jurisdictional claims. The precedents that have evolved for the 30 years which are shown in our submission C, it is just an excerpt from the House Manual, show the variety over those 30 years of referrals that have been made. And the one constant, is that our advice has been based upon the consistent tradition of the House, which has been to depoliticize the referral process.

Now, the role of the Speaker is multifold, as you all know. He is the presiding officer of the House, he is the political leader of the majority party. But in his role as presiding officer he is required under the rules of the House to make referrals to committees. Both before the multiple referral change and since, all Speakers without exception have delegated to the Office of the Parliamentarian the authority to make, render advice which they will abide by on committee jurisdiction.

Now, that is not to say that there is no element of political consideration given on referrals. Certain elements may be injected. When it comes, for example, to determining the length of referrals, Speakers now have the ability to put time limits on all referrals. They often exercise the authority to put time limits on sequential referrals. The decision was made by those of us in the Parliamentarian's office, with the approval of Speaker Albert and then Speaker O'Neill, to defer decisions on referral to the committees that we discerned to be relatively incidental to the primary committees of jurisdiction.

So to a great extent referrals that you will read in the record on opening day do not reflect decisions that our office has made for the Speaker on sequential referrals where we feel a committee has a relatively incidental jurisdictional claim, waiting instead to discern whether or not the primary committee or committees will recommend a certain policy change. There are so many examples of sequential referrals where the decisions have first been deferred and then ultimately made that the work product of that primary committee should then be sequentially reviewed. That is basically the process today. I mention it not just from an historical perspec-

tive because it describes where we are right now in the referral process to your Select Committee on Homeland Security.

As you know, the Speaker has been mandated by the opening day rules to make referrals as determined by the Speaker of measures, bills and resolutions. So it is more than an oversight function that your full committee and by extension your various subcommittees will be performing.

Submissions F and G are summaries of the various elements of the Homeland Security Act of 2002 over which various standing committees of the House in this Congress and in last Congress can legitimately claim jurisdiction. So I will call your attention—as you have time to read those insertions, those appendices G and F, you will find that there is considerable overlap but it goes to the basic decision that the House made in the last Congress as it created the Select Committee on Homeland Security to receive recommendations from the various standing committees. That was about a month and a half period just about a year ago at this time when 12 standing committees—11 standing committees and the Permanent Select Committee on Intelligence submitted recommendations to the then five and four Select Committee on Homeland Security, comprised as you know primarily of leadership on both sides. Those recommendations, many of which were implemented in the House passed version and in the final version of the Act, are worthy of your perusal at this point, not only the recommendations that were implemented but the recommendations that were not, at least then, implemented.

We have also submitted an index, a table of contents, what is soon to be the very voluminous hearing record of last year's select committee on committees, because it will show the recommendations to the extreme detail of all of the standing committees and intelligence select committee to the Select Committee on Homeland Security, and analyses of those recommendations, as I say many of which were implemented, more of which were not.

So here you are today as a committee which has legislative jurisdiction over, quote, "matters relating to the Homeland Security Act of 2002." What do those words really mean as far as our responsibility through the Speaker to make referrals and submission? Appendix F will give you an indication of the 10 or so bills that have been referred so far in this session. There will be the Technical Corrections Act, for example, referred to the select committee which has been reported and which has not had to undergo a sequential referrals. There are other bills where the select committee is primary on the bill.

As the chairman knows, when the Republicans became the majority party in 1995, a mandate was placed on the Speaker to refer bills, to choose a primary committee. Only in this Congress was there an extraordinary exception written in where there are such jurisdictional overlaps that the notion of primacy really isn't that important. The notion of primacy isn't as essential as the lobbying community and others might believe because additional original committees can get started on oversight and on the legislative function of "matters within their respective jurisdictions." That admonition on every introduced bill is de facto a rule that governs various standing committees' considerations of matters within their respec-

tive jurisdictions. So as bills come in, consolidated, complicated bills where we may have had to choose a primary committee, yet committees B, C and D may be additional initial committees but they are not restricted in terms of time, conducting oversight or producing a legislative work product. Even if committee A, the so-called primary committee, reports, which would then force the Speaker to make sequential referrals or to impose time limits on the additional original committees, those times can be sufficiently long to in effect turn committee B's jurisdictional claim into truly a primary claim. So this notion of primacy, while it makes sense being in the rule, forces us to try to understand each bill as to where the primary emphasis is being placed, yet there is a whole lot of flexibility with respect to the other committees.

When you superimpose a new decision-making process; namely, a select committee which has jurisdiction over "matters relating", some may say, well, if it is not in last year's bill, if you are not directly amending language already in last year's law, it doesn't necessarily relate. Others, as reflected in referrals already made, suggest that matters which should have been consolidated into the department and even though they weren't, are still "matters relating to." There is a legitimate jurisdictional claim in that respect.

Where we are headed jurisdictionally, Mr. Chairman, is not for me to predict. There may be others, political scientists and certainly Members, who will want to focus on whether or not a standing committee with consolidated jurisdiction in this or the next Congress or in a future Congress makes more sense than the perpetuation, if at all, of a select committee with similar jurisdictions. There are clearly options.

Let me just invite all Members, whether it is the distinguished group here or any Member of the House, to understand that oversight is a difficult operation. There isn't enough time in the week. I have facetiously commented here on doing oversight on a Monday and with certainly a quorum present. This isn't just two members to take testimony, this participation is impressive. It needs to be kept in mind that oversight is painstaking and it is a collegial function that Members should conduct. Staff can compile and, can advise, but it is the Members' attention to detail and the way it dovetails into the need for a revitalization of the authorization process, not just confined to homeland security, all of those issues are going to be presented to you in considerable detail. But ultimately I believe whether you conduct oversight or whether you legislate, it becomes a matter of will. The rules currently allow sufficient oversight. You don't have to worry, I don't believe, about new rules empowering committees to conduct more oversight. The rules are there. It is a matter of will and finding the time.

Our office nonpartisan, we make referrals based on precedents, and the Speaker has taken a very personal interest in referrals of bills in this Congress. He made the extraordinary presentation, as you will recall, before he took the oath of office, reminding the Members that a rules package not even yet presented would create this select committee. He advised Members that the standing committees would retain oversight and legislative jurisdiction. So he laid down a marker before he even took the oath of office.

Then Chairman Dreier, managing the rule, supplemented that commitment both to the standing committees conducting oversight and legislative responsibility, but then inviting this new select committee to be the eyes and ears of the Congress and to exert legislative jurisdiction where appropriate, as determined by the Speaker. So those are terms of art where that I can't fully predict the patterns of referral—each bill obviously will be reviewed on its merits. Our office is available on a sustained basis to your panel and to all the Members to give advice, we hope consistent advice, but I can assure you nonpartisan advice, if not the best advice, but nonpartisan advice on patterns of referral because the referrals that are being made now may well become precedent in future Congresses.

So with that, I will certainly be available for questions.

PREPARED STATEMENT OF CHARLES W. JOHNSON

Mr. Chairman; It was almost precisely ten years ago (on May 18, 1993 to be exact) that my beloved predecessor as Parliamentarian, Mr. Wm. Holmes Brown, appeared before the Joint Committee on the Organization of Congress to testify regarding a broad range of issues relating to floor deliberations and scheduling. In appearing before your subcommittee today, I have been asked to bring to your attention some of the relatively recent difficulties that have confronted the House as it has considered committee jurisdictional reform, as well as observations concerning current jurisdictional overlaps relating to the issue of Homeland Security.

Included in Mr. Brown's prepared statement and oral testimony on that occasion were references to a complicated development in committee jurisdictions in the House as of that date, especially since House consideration of the Committee Reform Amendments of 1974 and the multiplicity of referrals which had resulted since the Speaker was mandated to begin multiple referrals. On that occasion Mr. Brown inserted in the Joint Committee's hearing record a chart depicting "major committee jurisdictional overlaps." I resubmit that chart (A) for your hearing record, with the reminder that many subsequent jurisdictional overlaps have emerged since 1993, too numerous to be documented here. I also submit a second chart (B) showing the minimal jurisdictional realignments resulting from the adoption on October 8, 1974, of the Democratic Caucus originated "Hansen" substitute for the "Bolling" select committee consolidations, for your committee's hearing record. Suffice it to say that on that occasion in 1974, the House retained fragmented committee jurisdictions within rule X, but almost by inadvertence included a multiple referral mandate on the Speaker which had been taken from the "Bolling" Committee's recommendation. The only change was to strike a mechanism for appeal of the Speaker's referrals to the Committee on Rules. There is no discernible legislative history to indicate that the House, by adopting the "Hansen" substitute deliberately chose to impose the requirement for multiple referrals while retaining essentially the same fragmentation and overlap of committee jurisdictions as had existed up to that point, beyond an intent to strip the Rules Committee of any appellate authority over Speaker's referrals. After all, the "Bolling" recommendation had suggested a procedure for multiple referrals only in the unlikely event that the consolidation and modernization of jurisdiction recommended by the select committee failed to fully place within one committee the jurisdictional issues presented by any particular bill. I also submit citations (C) from the House Rules and Manual (sec.816) showing the variety of referrals which have been made by Speakers since 1975, including three occasions in the 1970s when the House established ad hoc select committees to receive recommendations from standing committees on matters relating to energy and the outer continental shelf. It should also be noted that the use of "task forces" consisting of various House committees and reporting their work product to the Rules Committee became popular in recent years and is well documented in CRS Report for Congress RS20421, dated Dec.28, 1999.

On one subsequent occasion since 1974 the House in response to the recommendations of a select committee realigned standing committee jurisdictions, but not without some difficulty. In 1980, the House considered a resolution reported from a Select Committee on Committees which had recommended the creation of a new standing Committee on Energy, partially in response to the energy crisis and the establishment of the Department of Energy and consequent reorganization in the executive branch. The Select Committee's recommendation was amended on the

House floor to provide instead for an enlarged jurisdiction to be vested in the Committee on Interstate and Foreign Commerce, (renamed Energy and Commerce) with new referrals of jurisdiction as the primary energy committee including jurisdiction over “general management” of the Department as an entity, but this action was accompanied by a memorandum of understanding attempting to clarify the resulting jurisdictions of the Committees on Science and Technology, Interior and Insular Affairs, Armed Services and Foreign Affairs. In other words, the Select Committee’s recommendation to create a new standing committee on energy was replaced by retention of fragmented jurisdiction among several existing standing committees.

Other realignments of standing committee jurisdictions have occurred at the organization of new Congresses, where the majority party conference has recommended jurisdictional changes as part of the adoption of rules on opening day. I recall the creation of the Department of Transportation in the late 1960s. Incrementally there after, 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 rail roads 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. The House Rules and Manual (sec.739) shows the dates of those transfers as eventual responses to an executive reorganization.

The two most recent significant changes were in 1995, when the standing Committees on the District of Columbia, Merchant Marine and Fisheries, and Post Office and Civil Service were abolished and their functions transferred to other existing committees, and in 2001 when securities and insurance generally jurisdictions were transferred from the Committee on Energy and Commerce to the Committee on Financial Services. Neither of these recommendations emerged from a select or joint committee established by the House. In fact, the Joint Committee on the Organization of the Congress, in its wide ranging report to the House (H. Rept. 103–413) refrained from any suggestions as to House or Senate committee jurisdictional realignments, Rather, the joint committee only recommended that the Committee on Rules might consider subsequent abolitions of committees if “membership on a committee falls below half if its level during the 103rd Congress.”

In the last Congress a predecessor Select Committee on Homeland Security was established (H.Res.449) to receive recommendations from the several standing committees of legislative jurisdiction with respect to the creation of a new Department of Homeland Security. I submit for your record a table of contents (D) of the materials soon to be published as the hearings of that select committee, including the legislative recommendations of the eleven standing committee and one permanent select committee (on Intelligence). Your committee will be in possession of these hearings when they are published. From these extensive materials, as well as from the testimony in those hearings, you will be able to glean the respective jurisdictional concerns as expressed by those committees in the last Congress, which include concerns about dual missions of agencies such as the Coast Guard, Customs Service, and Immigration and Naturalization Service. As you know, the Select Committee on Homeland Security in the last Congress incorporated some of those legislative recommendations into the bill H .R. 5005, while leaving other recommendations for possible subsequent consideration. I also submit a list (E) of the various committee activity reports in the last Congress which further express the concerns of those committees.

On the opening day of this Congress Speaker-elect Hastert made the following statement to the House before taking the oath of office: “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.”

Later on opening day Rep. Dreier, in debating the proposed rules package, stated: “Mr. Speaker, section 4 of the resolution is very important and significant, and is aimed at ensuring effective oversight of a crucial national priority, and that is what was discussed in the Speaker’s address to us namely, homeland security. The security threats to our Nation are real and dangerous, Every branch of government, including the Congress, must be an integral part of the homeland security effort.

“In that regard, section 4 of the resolution establishes a Select Committee on Homeland Security for the 108th Congress with both legislative and oversight responsibilities.

“The select committee would have legislative jurisdiction over matters that relate to the Homeland Security Act of 2002 PL 107-296. As the Act is the organic statute creating the new Department of Homeland Security, it is anticipated that the select committee would be the committee of jurisdiction over bills dealing with the new Department.

“Further, the select committee would have jurisdiction over legislation amending the Act such as a bill making technical corrections to that Act. In addition to the committee of primary jurisdiction, the Speaker would have the authority to refer bills to the select committee as an additional committee, either initially or sequentially. Otherwise, the existing jurisdictional rules of the House would continue to apply during the 108th Congress.

“The select committee would have oversight responsibility over laws, programs and government activities relating to homeland security and is intended to serve as the primary coordinating committee of the House.

“Mr. Speaker, until the new Department of Homeland Security is up and running, it is difficult to predict how best to reflect legislative oversight and authorization functions for the Department in the House. Furthermore, during this transitional period, it is crucial that the White House and the new Department’s leadership have a central point of contact with the House.

This new select committee will provide this interim capacity.”

Mr. Chairman, this recitation of the recent jurisdictional history of the House, while underscoring the complexities of multiple referrals, should be read in light of the consistent tradition of the House to depoliticize the referral process. To this end all recent Speakers have delegated to the Parliamentarian the authority to determine the validity of committees’ jurisdictional claims, based on consistent interpretations of Rule X and upon the application of past referrals as precedent. It is apparent that Rule X (which establishes standing committees’ jurisdictions) does not at this time textually mirror executive branch reorganizations in the second half of the twentieth century or substantive issues arising in the modern world! Precedent, practice and understandings recommended by the Parliamentarian in consultation with all the committees of the House have managed this disparity or asymmetry through a mechanism of multiple referrals in a nonpartisan way.

At this point I would include a chart (F) showing the few referrals made in the 108th Congress of bills to the new Select Committee. On May 15, 2003, the Select Committee filed its initial report with the House on HR. 1416, making technical corrections in the 2002 Homeland Security Act, which bill was not referred to any other committee. I also include a chart (G) showing some of the jurisdictional oversight and legislative authorities retained by the various standing committees over functions and organizations of the new Department of Homeland Security. It should be emphasized, as stated by Rep. Dreier, that under the Speaker’s referral authority both as stated in the standing rules and specifically in section 4 of H.Res.5, the Speaker has discretion to refer matters either initially or sequentially to the select committee. Each introduced bill will continue to be scrutinized to discern the legitimate jurisdictional claims of the standing committees and of the select committee, either on an initial or sequential referral basis.

To this end, five permanent committees of the House have reorganized themselves in this Congress to create subcommittees specifically having jurisdiction over matters relating to homeland security. They include the standing Committees on Appropriations, Armed Services, International Relations, and the Judiciary and the Permanent Select Committee on Intelligence.

I believe that the rules of the House provide adequate authority for all committees to conduct effective oversight over matters within their respective jurisdictions. Section 4(c) of H. Res. 5 in the 108th Congress incorporates by reference those provisions of rule X which govern standing committees and subcommittees and makes them applicable to the select committee. Therefore effective oversight becomes a matter of institutional and ultimately political will. I congratulate the subcommittee for beginning this hearing on a Monday, and in a collegial fashion with a proper quorum present. Clearly committees can gather information in the pursuit of oversight by staff and electronic means, but proper oversight by Congress remains a collegial function to be conducted by Members. The scheduling of votes only on certain days in the House, and Members’ desire to be in their districts work as a counterforce to the conduct of oversight. Oversight, and the proper restructuring and implementation of the authorization process, require time and attention, especially in the face of competing priorities toward consolidation and modernization of standing committee jurisdiction on the one hand with retention of legitimate juris-

dictions over non-homeland security related missions of some of those same entities within the new Department on the other.

I commend to the attention of the subcommittee the book entitled "Congress Against Itself" written by Mr. Roger H Davidson and Mr. Walter J. Oleszek in 1976 as an analysis of the efforts taken by the House in 1974 on committee jurisdictional reform and earlier jurisdictional reforms. The committee is to be commended for obtaining the services of Mr. Oleszek. His preface to that book could serve as an inspiration and guide to your committee.

ATTACHMENT A: MAJOR COMMITTEE JURISDICTIONAL OVERLAPS

Agriculture (Agri)

- with NB on forests, multiple use areas
- with BF and EC on commodities exchanges and futures regulation
- with EC on food purity; poultry inspections with EL on food nutrition and feeding programs
- with PA on CCC food distribution abroad with EC and PIMP on fish inspection, fish farming
- with PW on stream and soil erosion

Appropriations

Armed Services (AS)

- with BC on naval petroleum reserves
- with EC, NR or ST on nuclear issues (where military applications at issue)
- with EC on Superfund clean of military bases
- with FA on arms control inspections, NATO (and status of forces), export licenses
- with VA on educational programs
- with BF and EL on defense economic conversion
- with BF on defense production

Banking, Finance and Urban Affairs (BF)

- with EC on bank powers in new fields like securities and insurance; insurance industry regulation generally
- with WM on government securities initial issuance
- with PW on regional commissions; disaster insurance
- with ST on earthquake insurance
- with AS on defense production

Budget

District of Columbia (DC)

- with PW on regional transportation (Metro)

Education and Labor (EL)

- with Ways & Means on ERISA
- with Agri on certain feeding programs; land grant colleges
- with WM on workfare (work incentive) requirements
- with EC and PW on labor disputes also involving railway or airline labor laws (where EC and PW now exclusive)
- with Jud on prison labor

Energy and Commerce (EC)

- with AS, NR, ST on energy policy, authorizations for Dept of Energy
- with NB on regulation of commercial nuclear industry, nuclear waste disposal.
- with PW on Superfund, transportation issues involving rail roads, magnetic levitation, automobile and other commercial vehicle safety standards
- with WM on health (part B medicare especially)
- with Agri and MMF on fish and food inspection
- with Agri on FIFRA; Food, Drug and Cosmetic Act with ST on research and development "commercialization"; standardization
- with PA and BF on foreign investment in US

Foreign Affairs (PA)

- with SST and MMF on global environmental issues
- with MMF on fishing and whaling agreements with Agri on food distribution overseas
- with AS on arms control, export licenses, weapons inspection, NATO
- with NR on status of Micronesia and trust territories

Government operations (GO)

- with any committee on new commissions, subdepartmental reorganizations
- with Rules on budget process changes
- with PW on public buildings regulation
- with EC on indoor clean air

- with JU on “takings” and administrative procedure
 - with AS on defense contracting procedures and standards
- House Administration (HA)**
- with EL or PO on labor issues involving House employees
 - with EC or Po on broad campaign reform
 - with Rules on Rule 51
- Judiciary (Jud)**
- with EC on copyright issues in cable, digital audio, drug patents
 - with EC on telecommunications regulation: antitrust; insurance regulation anti-trust; insurance regulation (McCarran Ferguson)
 - with PW on certain interstate compacts
- Merchant Marine (MM)**
- with NR on outer continental shelf, endangered species, Alaska; oil exploration
 - with PW on clean water, ocean dumping, oil spill, wetlands, coastal zone management; intermodal transportation
 - with EC, AG, PW, ST on EPA
 - with NR and FA deep seabed mining
- Natural Resources (NR)**
- with EL or EC on Indian issues
 - with Agri on forests
 - with MMF on OCS, public domain wildlife refuges
- Post Office and Civil Service (PC)**
- with JUD on judicial branch salaries
 - with HA On legislative branch salaries
 - with others on new departmental positions
- Public Works and Transportation (PW)**
- with MM on clean water, ocean dumping, oil spill, wetlands, intermodal transportation
 - with EC on maglev, commercial vehicle safety, Superfund
 - with NR on Kennedy Center
- Rules**
- bills with expedited procedures
- with GO on budget process
 - with HA on Rule 51
- Science, Space and Technology (ST)**
- with EL on science education and scholarships, technical training, etc
 - with EC on commercialization of research and development
 - with EC and NR on Dept of Energy
 - with PA and MMF on Antarctica
 - with Jud on antitrust protection for r&d businesses
- Small Business (SB)**
- with AS and GO on contracting set-asides (and other committees on agency specific basis)
- Veterans Affairs (VA)**
- with AS on educational benefits
- Ways and Means (WM)**
- with EC on health and domestic content
 - with EL on ERISA, welfare
 - with BF on public debt management, issuance of notes
 - with BF, MMF, NR, PW and others on fees and assessments (revenue)
- Addendum to “Major committee jurisdictional overlaps”
- Committee re-designations:
- Banking, Finance, and Urban Affairs was re-designated as Financial Services.
 Education and Labor was re-designated as Education and the Workforce.
 Foreign Affairs was re-designated as International Relations.
 Government Operations was re-designated as Government Reform.
 Natural Resources was re-designated as Resources.
 Public Works and Transportation was re-designated as Transportation and Infrastructure.
 Science, Space and Technology was re-designated as Science.
- Committee re-alignments:
- District of Columbia abolished. Its jurisdiction was transferred to Government Reform.

Merchant Marine was abolished. Its jurisdiction was transferred to, among others, Armed Services, Resources, and Transportation and Infrastructure.

Post Office and Civil Service was abolished. Its jurisdiction was transferred to Government Reform.

Major jurisdictional transfers:

Jurisdiction over "securities and exchanges" was transferred from Energy and Commerce to Financial Services.

Jurisdiction over various budget proceedings was transferred from Government Operations to Budget.

Jurisdiction over "insurance generally" was vested in Financial Services.

ATTACHMENT B: SUMMARY OF MAJOR CHANGES IN RULES X AND XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

Dated: October 10, 1974

A copy is maintained in the Committee Files.

ATTACHMENT C: RULE XII RECEIPT AND REFERRAL OF MEASURES AND MATTERS

A copy is maintained in the Committee Files.

ATTACHMENT D:

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Testimony of:

The Honorable CW. Bill Young, Chairman, Committee on Appropriations

The Honorable David B. Obey, Ranking Minority Member, Committee on Appropriations

The Honorable Ike Skelton, Ranking Minority Member, Committee on Armed Services

The Honorable W.J. (Billy) Tauzin, Chairman, Committee on Energy and Commerce

The Honorable John D. Dingell, Ranking Minority Member, Committee on Energy and Commerce

The Honorable Dan Burton Chairman, Committee on Government Reform

The Honorable Henry A. Waxman, Ranking Minority Member, Committee on Government Reform

The Honorable Porter J. Cogs, Chairman, Permanent Select Committee on Intelligence

The Honorable Nancy Pelosi, Ranking Minority Member, Permanent Select Committee on Intelligence

The Honorable Henry Hyde Chairmen, Committee on International Relations

The Honorable Tom Lantos Ranking Minority Member, Committee on International Relations

The Honorable Sherwood L. Boehlert, Chairman, Committee on Science

The Honorable Ralph M. Hall, Ranking Minority Member, Committee on Science

The Honorable Don Young, Chairman, Committee on Transportation and Infrastructure

The Honorable James I. Oberstar, Ranking Minority Member, Committee on Transportation and Infrastructure

The Honorable William M. Thomas, Chairman, Committee on Ways and Means

The Honorable David M. Walker, Comptroller General, General Accounting Office

Material Submitted for the Record:

Opening Statements of Select Committee Members

Statement of the Honorable Michael C. Oxley, Chairman, Committee on Financial Services

Appendix Recommendations of the Standing Committees:

Committee on Agriculture

Committee on Appropriations

Committee on Armed Services

Committee on Energy and Commerce

Committee on Financial Services

Committee on Government Reform

Permanent Select Committee on Intelligence

Committee on International Relations
 Committee on the Judiciary
 Committee on Science
 Committee on Transportation and Infrastructure
 Committee on Ways and Means

ATTACHMENT E: LEGISLATIVE HISTORY OF H.R. 5005

Department of Homeland Security (DHS)

H.R. 5005, a bill to establish the Department of Homeland Security, was referred to the Select Committee on Homeland Security and in addition to 12 committees (Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence (Permanent Select), International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means) in each case for consideration of such matters as fall within their jurisdiction. Pursuant to House Resolution 449, the additional committees provided recommendations on the bill to the Select Committee. The Select Committee then reported the bill to the House (H. Rept. 107-609). The recommendations of the additional committees are to be compiled into an appendix to a Select Committee hearing transcript. In the interim, the following materials may be helpful to tracking individual committee action on the bill.

Document Type	Number/Record Cite	Committee
Committee Report on HR. 5005	107-609, pt. 1	Select Committee on Homeland Security
Activities Report	December 16, 2002	Select Committee on Homeland Security
Activities Report	107-793	Committee on Transportation and Infrastructure
Activities Report	107-807	Committee on the Judiciary
Activities Report	107-802	Committee on Energy and Commerce
Activities Report	107-801	Committee on Ways and Means
Activities Report	107-796	Committee on Agriculture
Activities Report	107-809	Committee on Science
Activities Report	107-805	Committee on Government Reform
Activities Report	107-803	Committee on International Relations
Activities Report	107-791	Committee on Armed Services

*The Committees on Appropriations and Financial Services, and the Permanent Select Committee on Intelligence forwarded recommendations to the Select Committee without formal meetings.

ATTACHMENT F: BILLS REFERRED TO THE SELECT COMMITTEE ON HOMELAND SECURITY AS OF MAY 15, 2003.

Bills amending the Homeland Security Act of 2002

H.R. 1416, introduced by Rep. Cox, was referred to the Select Committee on Homeland Security. It made various technical corrections to the Act.

H.R. 484, introduced by Rep. Ose, was referred primarily to the Select Committee on Homeland Security, and additionally to the Committees on Energy and Commerce, Science, and Government Reform. It amended the Homeland Security Act of 2002 in several respects regarding a homeland security research program, a vaccine injury program, and procurement for the Department of Homeland Security.

H.R. 853, introduced by Rep. Slaughter, was referred primarily to the Select Committee on Homeland Security, and additionally to the Committee on the Judiciary, Transportation and Infrastructure, and Ways and Means. It established a Northern Border Coordinator with the Department of Homeland Security to increase border security.

H.R. 1355, introduced by Rep. DeLauro, was referred primarily to the Committee on Government Reform, and additionally to the Select Committee on Homeland Security. It addressed restrictions on the Department of Homeland Security contracting with certain foreign incorporated entities.

H.R. 1389, introduced by Rep. Crowley, was referred primarily to the Committee on Transportation and Infrastructure, and additionally to the Select Committee on Homeland Security and the Committees on Science and the Judiciary. It required, among other matters, a program of assistance by the Secretary of Homeland Security to state and local first responders.

H.R. 1449, introduced by Rep. Millender-McDonald, was referred primarily to the Committee on Transportation and Infrastructure, and additionally to the Select Committee on Homeland Security. It expanded the role of the Office for Domestic Preparedness to include making grants to local first responders.

Bills not amending the Homeland Security Act of 2002

H.R. 277, introduced by Rep. Goode, was referred primarily to the Committee on Armed Services, and additionally to the Select Committee on Homeland Security. It amended Title 10, United States Code, to allow the assignment of members of the armed forces to assist various bureaus of the Department of Homeland Security in border security. It also required the Secretary of Homeland Security, along with the Secretary of Defense, to provide training for such members.

H.R. 1007, introduced by Rep. McNulty, was referred primarily to the Committee on Transportation and Infrastructure, and additionally to the Select Committee on Homeland Security and the Committees on the Judiciary and Energy and Commerce. It directed the Secretary of Homeland Security to make homeland security grants to localities for firefighters, first responders, and law enforcement.

H.R. 1010, introduced by Rep. Nadler, was referred primarily to the Committee on Transportation and Infrastructure, and additionally to the Select Committee on Homeland Security and the Committee on Ways and Means. It required the Department of Homeland Security and the Customs Service to inspect cargo on vessels entering domestic ports.

H.R. 2122, introduced by Rep. Tauzin, was referred primarily to the Committee on Energy and Commerce, and additionally to the Select Committee on Homeland Security and the Committee on Government Reform. It established a program of research, procurement, and deployment of biomedical countermeasures managed primarily by the Departments of Homeland Security and Health and Human Services.

ATTACHMENT G: DEPARTMENT OF HOMELAND SECURITY (DHS)

Pursuant to section 4 to Public Law 107-296, the Department of Homeland Security (DHS) was established on January 24, 2003. P.L. 107-296 provided for the transfer of several disparate government entities into the new department and allowed the President to submit a reorganization plan and subsequent modifications thereof. This jurisdictional breakdown is limited to the major entities transferred under the law, the Reorganization Plan, and subsequent modifications (House Documents 108-16 and 108-32). Interested parties should consult those documents for specific details on entities being transferred.

Reporting directly to the Secretary

Secret Service - Committee on the Judiciary and Committee on Transportation and Infrastructure

Coast Guard - Committee on Transportation and Infrastructure

Border and Transportation Security directorate

Customs - Committee on Ways and Means

Immigration and Naturalization Service (INS) - Committee on the Judiciary

Federal Protective Service - Committee on Transportation and Infrastructure

Transportation Security Administration (TSA) - Committee on Transportation and Infrastructure

Federal Law Enforcement Training Center - Committee on the Judiciary
Animal and Plant Health Inspection Service (APHIS) - Committee on

Agriculture

Office for Domestic Preparedness - Committee on the Judiciary

Emergency Preparedness and Response directorate

Federal Emergency Management Agency (FEMA) - Committee on Transportation and Infrastructure

Strategic National Stockpile and the National Disaster Medical System - Committee on Energy and Commerce

Nuclear Incident Response Team - Committee on Energy and Commerce

Domestic Emergency Support Teams - Committee on the Judiciary

Science and Technology directorate

CBRN Countermeasures Programs - Committee on Science

Environmental Measurements Laboratory - Committee on Science

National BW Defense Analysis Center - Committee on Armed Services

Plum Island Animal Disease Center - Committee on Agriculture

Information Analysis and Infrastructure Protection directorate

Critical Infrastructure Assurance Office - Committee on Science

Federal Computer Incident Response Center - Committee on Science

National Communications System - Committee on Armed Services

National Infrastructure Protection Center - Committee on the Judiciary

Energy Security and Assurance Program - Committee on Science

Department of Homeland Security (DI-IS)

Pursuant to section 4 of Public Law 107-296, the Department of Homeland Security (DI-IS) was established on January 24, 2003. P.L. 107-296 provided for the transfer of several disparate government entities into the new department and allowed the President to submit a reorganization plan and subsequent modifications thereof. This jurisdictional breakdown is limited to the major entities transferred under the law, the Reorganization Plan, and subsequent modifications (House Documents 108-16 and 108-32). Interested parties should consult those documents for specific details on entities being transferred.

Committee on Agriculture

Animal and Plant Health Inspection Service (APHIS) - responsible for protecting and promoting U.S. agricultural health, administering the Animal Welfare Act, and carrying out wildlife damage management activities.

Committee on Armed Services

National Bio-Weapons Defense Analysis Center - information source for chemical warfare (CW) and chemical and biological defense (CBD) science and technology.

National Communications System (DOD) - national security and emergency preparedness communication.

Committee on Energy and Commerce

Strategic National Stockpile and the National Disaster Medical System

(HHS) - public health emergency readiness.

Nuclear Incident Response Team (DOE) - expert personnel that deal with nuclear emergencies, nuclear accidents, and nuclear terrorism.

Committee on the Judiciary

Secret Service - protection of persons, see also Transportation and Infrastructure.

Immigration and Naturalization Service (INS) - immigration and naturalization issues
Federal Law Enforcement Training Center (Treasury) - law-enforcement training.

Office for Domestic Preparedness (DOJ) - responsible for state and local jurisdictions response to incidents of domestic terrorism.

Domestic Emergency Response Teams (DOJ) - stand-by interagency team that provides advice and support to FBI commanders at crisis scene
National Infrastructure Protection Center (FBI) - terror threat evaluation and public warning.

Committee on Science

CBRN Countermeasures Programs (DOE) research on chemical, biological, radiological, and nuclear countermeasures.

Environmental Measurements Laboratory (DOE) - advances and applies the science and technology required for preventing, protecting against, and responding to radiological and nuclear events in the service of Homeland and National Security.

Critical Infrastructure Assurance Office (Commerce) - general cybersecurity.
Federal Computer Incident Response Center (GSA) - federal government cybersecurity.

Energy Security and Assurance Program (DOE) - using science and technology to secure energy infrastructure.

Committee on Transportation and Infrastructure

Secret Service - protection of certain foreign missions and other buildings within D.C., see also Judiciary.Coast Guard - maritime responsibilities ranging from maritime safety to national defense.

Federal Protective Service - protection of federal buildings.

Transportation Security Administration (ISA) - provides security across all modes of transportation.

Federal Emergency Management Agency (FEMA) - disaster preparedness, management, and relief.

Committee on Ways and Means

Customs Service - enforcer of trade laws and treaties and certain law-enforcement responsibilities.

Mr. DIAZ-BARLART. Very instructive. Enjoyed your testimony very much. I want to welcome the distinguished chairman and ranking member of the full committee for joining us, Mr. Cox and Mr. Turner. We are honored with your presence. Thank you very much for joining us as we learn and think out loud.

Mr. Johnson, you mentioned what has become pretty evident in terms of the, let's say, the weakening of the authorizing process. Do you have any ideas on how we could revitalize the authorizing process?

Mr. JOHNSON. We are a bicameral system, and to a certain extent I would have to observe that efforts made on the House side to perpetuate and validate the authorizing process have not been matched on the Senate side. It is easier for the Senate to incorporate legislative provisions into must pass appropriation bills, than to enter a full blown consideration of Senate and then conference authorization matters. Beyond that, the timetable contemplated in the rules, contemplate authorizations enacted into law, not just passed by the House. The Rules Committee often grants waivers of points of order, very often on appropriation bills, where all or some of the funding in those bills has not yet been authorized by law for the fiscal year in question. I know this dovetails into the issue of biennial budgeting. There are a lot of different approaches to it, I don't advocate one necessarily over the other, but I think there needs to be more attention paid to the work product of authorizing committees, consistent with the multiplicity of referrals that we often get on authorization bills, but also consistent with the leadership's desire to program bills throughout the year as they become available.

Now, prior to the Republicans being in the majority, I can remember in the late 1980s, early 1990s, the Democratic whip saying we need to have a full schedule in the early part of the year. The pattern began to be set of bills coming out of the authorizing committees and going quickly to the floor without timely or lengthy sequential referrals but with so-called task forces. Speaker Wright become enamored of the notion of "task force" recommendations. I would mention there is a good paper from CRS on what was then the proliferation of task forces in the early 1990s. But it has given way I think more often these days to an exchange of correspondence between the primary committee and various potential sequential committees while foregoing jurisdictional claims. Virtually every authorization bill that is initially reported is accompanied by some correspondence between the various committees temporarily

relinquishing a jurisdictional claim but still asserting it and asking to be considered as conferees. The notion of the authorization process being a legitimate separate decision-making tier in the process of decision-making, when the budget process was superimposed as a separate level of decision-making in addition to the authorization process, it just really compressed the available time that Members have over the course of the year to give full attention to the authorization process. Part of it is a House-Senate relationship, part it was perhaps the leadership being more sensitive to allowing the authorization process to play out if they could started in a timely way, to consider whether the 3-day availability rule should be routinely waived as opposed to allowing Members legitimate time to review the authorizing committees' reports.

In other words, Mr. Chairman, I have no complete answer. It is a matter of planning through the leadership and the various committees, both in conducting oversight and legislative responsibilities, to systematically and properly schedule over the course of the 2-year period.

Mr. DIAZ-BARLART. You spoke at some length about multiple referrals. In your view, are there ways to strengthen the Speaker's referral authority or does he have as much authority as he needs?

Mr. JOHNSON. I think he has all the authority he needs. I mean we have seen it reflected, as I say, in the many sequential referrals where decisions are deferred until the primary committee has a work product. We have seen three examples of an ad hoc select subcommittee, first Energy and then twice regarding the Continental Shelf, where the House endorsed the notion of bringing the standing committees immediately together within an ad hoc select committee to consider a certain bill. The notion of joint referrals giving way to primary plus additional allows all kinds of flexibility. I think it is more a planning issue within the majority party in consultation with the minority so that effective oversight can precede effective authorizing. That planning has to go on far in advance.

I think I would suggest to your committee, as you decide on the extent of your own oversight with the mandate to report to the Rules Committee a year from September, while you have got some time but don't consider that you have so much time that you can go backload it all.

Mr. DIAZ-BARLART. If we look at the pattern of multiple referrals in a specific area, for example, Homeland Security or Energy or Health, does that tell us anything about whether there is too much committee fragmentation?

Mr. JOHNSON. Well, that is precisely the kind of question that I might be sensitive about answering. Clearly committee fragmentation has remained in the rules, and this pamphlet, which is exhibit B, shows that. In the area of Homeland Security submissions F and G will show fragmentation. Whether it is, quote, "too much" is a difficult question because a lot of these jurisdictional concerns; for example, the Customs Service, the Immigration and Naturalization Service, there are homeland and nonhomeland aspects of those agencies remaining. There are legitimate reasons for a standing committee to retain jurisdiction in perhaps more of a nonhomeland environment than to focus it all under one umbrella. But time is

the key question. Is there time for all these committees to coordinate their legislative and oversight efforts in a meaningful way to bring them to the attention of the House? The recent attempts at reorganization, at master consolidation were inspired to minimize overlapping jurisdictions and Speaker's multiple referrals. That was the whole premise of the Bolling effort in 1974. But if you ask to put a political explanation on it, once that package was reported from the select committee it was not called up for 6 months. In the meantime other Members were very active convincing their colleagues that more stood to lose power and influence than to gain by a huge consolidation into—for example, energy and environment into one committee, combining six or seven committees' jurisdictions.

I think that is the ultimate political test that you face. If you do come up with recommendations, how do you present those recommendations to the Rules Committee and to other Members? That is, I think, your biggest challenge.

Mr. DIAZ-BARLART. Ms. Slaughter.

Ms. SLAUGHTER. Thank you, Mr. Chairman. I look forward to really poring over your statement. I had a cursory view of it. It is very interesting.

Let me ask about multiple referrals. Have they complicated, in your opinion, the conferee selection process?

Mr. JOHNSON. Yes.

Ms. SLAUGHTER. In what ways?

Mr. JOHNSON. Because there is a track record, we used to have major tax bills or civil rights bills where the Senate would add something non germane and the only House people going to conference were the Ways and Means members; for example, if there was a civil rights amendment tacked on in the Senate. So when there is an institutional record of jurisdictional referrals, although the Speaker has some flexibility on conference appointments, he is not a free agent because committees can legitimately say we were additional, original, joint, or sequential, we deserve representation at the conference table both with respect to the House version and with respect very often to nongermane Senate versions that have been added in an attempt to bypass a House committee.

So Speakers since Speaker O'Neill have been forced to recognize that in appointment of conferees. Speaker Foley made a statement on the floor one day that he was determined to simplify conference appointments. He was working in the face of some very entrenched committee interests in those days. Speakers Hastert and Gingrich have found it a little easier to simplify conference appointments, but because of multiple referrals, are still forced to take into account legitimate jurisdictional claims, perhaps the numbers will be focused more toward the primary committee, but clearly subconferences with additional or even exclusive areas of conference jurisdiction have proliferated since multiple referral.

Ms. SLAUGHTER. Has that damaged, do you think, the bargaining process in the House itself among committees?

Mr. JOHNSON. Conference reports then can emerge as the work product of a more representative group. The question then is does the House take cognizance of that and have time to review some of those very complicated conference reports. You asked "does the

House suffer?" Potentially no. If they are being presented the input of a majority of the signatures from Members with expertise and a variety of jurisdictions, presumably the House benefits. I would just suggest that the House would benefit even more if it has the ability to understand the full complexity of what is being sent to conference and what emerges as a conference report.

Ms. SLAUGHTER. What effect does it have on the Senate's bargaining ability?

Mr. JOHNSON. Well, the Senate normally does not go to the extent the House does in dividing committee jurisdictions. They stay pretty close to the primary committee.

Ms. SLAUGHTER. Do you think that helps them to bargain together as a unit?

Mr. JOHNSON. Probably. I have never really attended. I guess I could discern that and have more information for you. With each House getting one vote, the Senate conferees often go with proxies. The committee anti-proxy rule does not necessarily keep House conferees from using proxies if the two conferees groups together decide to allow proxies. But I think properly most House conferees go with members in attendance and obviously their signatures are required for final approval of a conference report. Signatures are always required. That is the bottom line. But my guess is that it is easier for the Senate, which very often uses proxies in conference, to facilitate, to come to a position on a particular issue more readily than the House, which has subgroups of conferees.

Ms. SLAUGHTER. This is my 17th year. I have been appointed to three conferences mostly before I came onto the Rules Committee. In every case within 24 hours it was settled with very little input or any consultation or, frankly, we didn't know what was happening in most cases. And that was always difficult because I think all of us want very much to be conferees and to be able to leave some mark on legislation on which we have worked. But that is a concern of mine that having so many House conferees, whether some committees carry so much more weight than others might, and that the decisions are made so quickly and most of us, in my view anyway, most of us conferees never participate at all except to show up and answer roll call.

Mr. JOHNSON. The appropriations process is rather unique still because the Speakers have consistently appointed only appropriators to appropriations conferences. Even though the House and Senate versions may be loaded with legislation and other policy provisions, there is an unwritten rule and expectation that the committees of important jurisdiction will be at least advisers to the appropriation conferees, to influence their eventual bargaining on what are purely policy or legislative issues. So perhaps from the simplification standpoint, the House has acknowledged institutionally those bills are must-go bills, let's try to expedite conference procedures, but still allow the legislative committee's input through the appointed members. Whether that is a model to be followed in overall simplification is certainly worth the examination.

Ms. SLAUGHTER. I think the theory is good, but I don't think in practice, Mr. Johnson, it always worked that way.

Mr. DIAZ-BARLART. Ms. Dunn.

Ms. DUNN. Thank you, Mr. Chairman. Thanks for holding this hearing. It is interesting to get back into motion on reorganization. I recall 10 years ago having served on a committee and I remember Mr. Ornstein and Mr. Mann testifying then and David Dreier's involvement. I think what stands out the most in my mind is the complete frustration of Chairman Hamilton as we tried to take our committee's recommendations to the floor and we really had very little opportunity to debate those provisions that we believed would create a bipartisan Congress in much better shape. As it turned out, Republicans took over control and on opening day and thereafter we were able to implement one of those many reforms, proxy voting being just one of those, but the open meetings act, which I was particularly interested in, being a very important one to bring openness to the Congress. That is why we can always have press now in our meetings unless they deal with national security or people's reputations.

So I have somewhat of a sense of the limitations of what you can do when you reform the committees of Congress. I am one who would like to see broader reform come at a time when we have a speaker behind our effort and we have an opportunity for the first time in ages to create a new department that is up to date and in tune with today's needs, the Homeland Security Department. I know we have options. We don't have to move forward and create a new standing committee. My mind is far beyond that. So it is interesting to even read that that would be one of our options. I certainly hope we do move forward and create a committee that broadens jurisdiction over issues having to do with homeland security.

I have a couple of questions, and one of those I guess is can we create a committee with meaningful jurisdiction considering the difficulties we already have had in putting this one together with jurisdictional concerns. What do you think?

Mr. JOHNSON. A black letter rewrite of rule X to say, yes, there shall be a standing committee on homeland security either would have to literally transfer very much jurisdiction, and those concerns were expressed at last Congress' Homeland Security Committee, or create an additional layer as another standing committee. But do the other committees retain current jurisdictions? For the time being under the Speaker's mandate they do. Whether eventually more Members stand to lose power and influence by a consolidation than to gain, that is perhaps or realistic approach to the eventual creation of a permanent standing committee.

The rules of the House have never completely matched the executive department reorganizations. We tried to do it, as my statement said, in the Department of Transportation area and the Department of Energy area, and incrementally some of those changes have come to pass where, for instance, the Public Works Committee is now the Committee on Transportation, but it took 20 years to get there from the creation of the department.

With respect to Energy, there is still not an Energy Committee. The Energy and Commerce Committee is certainly primary, they have a statement of jurisdiction over management, but there are five or six other jurisdictional claims that other committees retain. Whether it is possible politically and institutionally to wrap homeland security-related functions of the new department while retain-

ing separate nonhomeland security functions in standing committees, Customs, Immigration, Food Inspection, Public Health, other transportation aspects, Coast Guard, those are all examples where there are clearly overlaps. If you had to draw a new rule X you would have to be very conscious of whether you were bifurcating those current statements of jurisdiction.

Ms. DUNN. Do you think that having a specific standing committee on homeland security is the best way for us to oversee that department, newly formed department in the administration?

Mr. JOHNSON. Well, oversight, as I pointed out, is within all committees' authorities. The rules of the House say, for example, the Government Reform Committee can specifically conduct oversight on any subject notwithstanding the fact that one or more of the other standing committees has legislative and oversight jurisdiction. So the the potential for repetition in oversight is the question. All the standing committees can conduct oversight in their respective areas of concern right now, as can your Select Committee on Homeland Security. Does it make sense to have those potentially competing authorities for oversight or must it eventually become a leadership driven coordination effort to try to simplify oversight, to parcel out, if you will, to get understandings? I suppose that is partly the reason that so many standing committee chairmen and some ranking members are on this committee, to know the extent to which the select committee will conduct oversight in addition to or in lieu of the standing committees.

Again, Ms. Dunn, you can tell I don't have an easy answer to it.

Ms. DUNN. To add to your answer, I think focus is a major reason that we have this particular committee and are thinking about extending it to a standing committee. What would you suggest we do in areas over which we do not have oversight like FBI and CIA. We have Porter Goss on our committee and others who sit on committees, Judiciary chairman is on our committee. How would you suggest that we handle that sort of responsibility that certainly has a huge bearing on homeland security but isn't within the 22 agencies over which our committee has jurisdiction?

Mr. JOHNSON. Well, it is an interesting question. You say you don't think you have the jurisdiction. Legislatively perhaps not because that did not become part of the structure of the new department. There was a decision made to keep FBI and CIA within an entity—there was an office, a center, I think, proposed in the House version that was ultimately dropped in the final version. I am not sure that necessarily translates into the conclusion that this committee has no jurisdiction, no oversight jurisdiction over intelligence. You have an Intelligence and Counterterrorism Subcommittee created. Now, I think you can point to the rules of the House and say you can conduct oversight in this area, but there obviously are security and other concerns with the Permanent Select Committee on Intelligence, which clearly has that very strong mandate in the House rules. The extent to which you as a subcommittee consider that potential inconsistency is a legitimate concern. But I wouldn't necessarily say that you have no oversight in this area. I think the threshold is the extent which you want to exercise it consistent with the strong mandate for the Intelligence Committee.

Ms. DUNN. Thank you. Thank you, Mr. Chairman.

Mr. DIAZ-BARLART. Ms. Sanchez.

Ms. SANCHEZ. Thank you, Mr. Chairman. And thank you, Mr. Johnson, for being here today.

Ms. SANCHEZ. I begin by thinking that the more I look into things, the more I think that there might be a case made for having a standing committee for homeland security. And I come to that reason, and let me first sort of lay out what I am thinking and then ask you some, I think, pertinent questions to that.

My biggest problem with what is going on with homeland security is that I think it can be a very black hole with respect for resources spent in protecting this homeland, and that when there is jurisdiction, authorizing jurisdiction, I guess, between different committees, that maybe there isn't somebody really taking the whole picture of what is the—what are the limited resources and what are really the priorities that we have to do. And when you have something in Transportation and something in Intelligence and something in Commerce and other issues, then everybody is trying to solve a problem, but nobody is really taking a look at the overall picture. And I have a feeling that, from an authorizing standpoint as well as from a spending standpoint, that this committee can become a pretty large money committee in a sense.

On the other hand, when I took a look at some of the real policy issues that this committee might be addressing, they seem to be, quite frankly, taken pretty well care of within some of the standing committees. In other words, there is— Government Reform and Judiciary have done a pretty good job in looking at and addressing more policy rather than the money issues that come along with this problem.

I want to ask you a couple questions with respect to the Commerce Committee and the reorganization that happened 20 years ago, or whenever it happened, because that is the last real indication we have here. First of all, where would I go to find some of the discussion that happened with respect to what people were thinking when they were looking at the jurisdictional issues of Commerce and Energy Committee? And, secondly, Commerce, when I look at it, is a committee that really does more policy rather than money. So maybe it doesn't really apply as well to what I am asking of you. What would you say were some of the biggest issues that were worked through when that reorganization was going on and things that we should be taking a look at from an overall standpoint?

Mr. JOHNSON. Well, that was in 1980 when a similar select committee on committees chaired by then Representative Patterson from California, Jerry Patterson, was established in the wake of the creation of the Department of Energy, which was in turn a response to the energy crisis of the late 1970s. The House in its wisdom adopted a substitute offered by one of the most respected Members of the House, Jonathan Bingham of New York. He saw the jurisdiction which had been in five or six committees going to a new Energy Committee which would be separate from the remaining jurisdiction of what was then called the Interstate and Foreign Commerce Committee.

They are committee reports and summaries, and certainly the debates in 1980 are instructive because the day—similar to the day the Bolling recommendations were rejected, the day the Jonathan Bingham substitute overcame the recommendations of the select committee was another watershed day in the House. It was yet another indication that a select committee's recommendations, unless there is a lot of work done to encourage Members to appreciate and vote for them, may not prevail on the House floor when, as it turned out, six committees, including then Interior, Science, Armed Services-nuclear energy was a huge issue then, still is. Armed Services, Resources, Science committees together perhaps felt that they were going to stand to lose more power and influence than would remain with them, so it was a tough sell.

A memorandum of understanding finally emerged when the continued fragmentation among the committees was adopted, the five or six committee chairmen got together. It is very instructive for you to read that memorandum of understanding. They basically agreed by signing a piece of paper that no one lost anything jurisdictionally. They agreed that the Speaker could make multiple referrals as he had begun to make over those preceding 4 years to honor every committee's retained jurisdiction, and that is where it stood. I think that is a valuable lesson, as you ponder this potential reorganization, that there has been such a proliferation of referrals that it does enhance the status quo arguments for retention of existing jurisdictions.

But when you focus on money as distinguished from policy. The authorization process is really both. In its traditional form, it is supposed to recommend levels of spending above which the appropriators should not go in conjunction with new policy, whether it is permanent or whether it is sunsetted after a few years. So a true authorization in the traditional sense is both. The question is, given the compression of scheduling in the current-day reality on establishing the Congressional budget, meeting the October 1st fiscal year deadlines, with a budget resolution or without one, does the reauthorization process, which is potentially there to set limits on spending, is it relevant anymore, or could it be made more relevant once again?

So, policy and spending issues really intersect in a true authorization environment.

Mr. DIAZ-BARLART. Ms. Sanchez, please feel free to continue; but since we have been interrupted by this nasty business called democracy, why don't we go and vote. And then, if the witnesses would be so kind, Mr. Johnson and the two subsequent witnesses, to return, then we can continue. So we will resume. Thank you very much.

Ms. SANCHEZ. Mr. Johnson, I didn't mean that—I realize that a good authorizing bill, you know, does involve the money perspective. That is what I mean that I think this committee could become a money committee, probably just right behind defense, in my opinion. There are so many issues that people are approaching us about in order to protect the homeland. I am interested to ask you what you think about the whole issue of having one place to really take a look at limited resources and where one places them versus the

situation that we have now, which is spread over almost every committee in the Congress.

Mr. DIAZ-BARLART. Why don't we do this: The committee will be in recess. If you can hold your answer, then you can continue; please feel free to continue your line of questions, and we will be back. If you could hold your answer until we come back, Mr. Johnson. Thank you very much.

[Recess.]

Mr. DIAZ-BARLART. The subcommittee hearing will reconvene.

I recall that Ms. Sanchez was asking some questions. As a matter of fact, the last she had asked some questions, and before, Mr. Johnson, you had an opportunity to reply, we had the interruptions. Perhaps you could reply, and then if there are any questions from Members present, we will have them—. And, again, we thank you so much for waiting.

Mr. Johnson.

Mr. JOHNSON. Mr. Chairman, I did have a follow-up conversation with Ms. Sanchez before she left, and she was using her membership on the Armed Services Committee as an example, as probably the most vivid example, of the House authorization process being honored on an annual basis, because the defense authorization bill, while it has undergone unique procedural nuances in recent years, as you know, Mr. Chairman, as a member of the Rules Committee, they have gone to issue clusters, so-called, as they allowed amendments. But invariably the Armed Services Committee has been able to report and have considered on the House floor their authorization bill before the defense appropriation bill is considered. Now, that doesn't mean the appropriation bill doesn't need a waiver of points of order; it does, because the authorization doesn't become law in time. To the extent that they have been able to sanctify the authorization process with debate on policy and funding levels on an annual basis, a framework for appropriations has been developed.

So I think in her mind she was asking can this same guarantee, if you will—I don't want to put words in her mouth—translate over into this area of homeland security. It is perhaps more difficult because you have entrenched established areas of jurisdiction within the various standing committees as opposed to clearly delineated jurisdictional areas that have existed for some time within the Committee on Armed Services. So I think that was the model she using.

There is not a clear answer as to whether there is time and the willpower to sanctify, if you will, an authorization process within the homeland security area. I don't think the Armed Services Committee is an exact model, but, again, it is instructive to the dilemma that your committee faces as you submit recommendations to the Rules Committee.

Mr. DIAZ-BARLART. Thank you, Mr. Johnson.

Do you have any follow-up questions?

Ms. SLAUGHTER. No, I don't.

Mr. DIAZ-BARLART. I have found your testimony extremely helpful, and again feel it has been an honor that you have gotten us off to a wonderful start. So thank you for testifying.

Mr. JOHNSON. Mr. Chairman, if I might just say that our office remains available to any of your Members and staff in an ongoing way to furnish information or to be helpful.

Mr. DIAZ-BARLART. Thank you so very much.

Following Mr. Johnson, we will hear from two very well-known legislative and political experts: Thomas Mann of the Brookings Institution, and Norman Ornstein of the American Enterprise Institute. Each is highly regarded for sharp analysis and their prolific writing on Congress and other important matters. Each, too, has testified many times on reform issues before diverse House and Senate panels, and we are honored to have Mr. Ornstein and Mr. Mann here.

Your entire testimony will be included in the record without objection, and so, as you wish to proceed in the order that you wish, you are very welcome.

**STATEMENT OF THOMAS E. MANN, SENIOR FELLOW,
GOVERNANCE STUDIES, THE BROOKINGS INSTITUTION**

Mr. MANN. Mr. Chairman, thank you very much. Ms. Slaughter, I am delighted to be here, delighted to join once again with my friend and colleague Norman Ornstein in collaborating on our testimony and reflecting back on the experience of a decade ago with our Renewing Congress project and the efforts surrounding the Joint Committee on the Organization of Congress. We also had occasion to work with the Rules Committee on a number of changes, and am very pleased to be asked to participate in your deliberation on this question.

Let me say that there is a natural temptation for a political scientist, student of Congress, who has watched major jurisdictional reform efforts in the past, to simply avoid the whole question. Congressional history is littered with the failure of jurisdictional reform. Mr. Johnson referred to much of that history, the Bolling Committee, the Patterson Committee, the Joint Committee on the Organization of Congress. We can look at the formation of new executive departments, whether it be Energy, Education, Transportation, and see that in the past that hasn't been sufficient to prompt a rethinking of rule 10 here in the House of Representatives. You probably have to go all the way back to the formation of the Department of Defense to find a really positive story, but that was relatively easy, because there were separate service committees that could easily be combined into the Armed Services Committee up here in the Congress. So, lots of failure in the past.

Secondly, mechanisms have been developed over time to cope with jurisdictional sprawl. And again, Mr. Johnson was very informative in discussing the referrals. He could have talked about special rules, of scheduling, of moral situation that has been used to try to deal with the multiple jurisdictions across committees that exist.

It is also the case that there are some real advantages in allowing this jurisdictional sprawl, or at least advantages in not eliminating it radically. There are little oases of historical memory, of expertise among Members and staff on various committees and subcommittees. There are alternative perspectives brought to bear

on similar problems that provides the House and the Congress with some real advantage.

So you could make a pretty powerful case that, let well enough alone; if you try to build a permanent standing committee on homeland security, you will fail; and if you succeed, you may end up doing some damage.

Now, that would have been the easy thing to say before your committee today, but we are going to acknowledge the truth of everything that I have just said, but take it one step forward: That we believe your goal should be the establishment of a permanent standing committee on homeland security. That these are not ordinary times. September 11th doesn't happen every month or year or decade or century.

Right now, Norman and I are involved in another project called the Continuity of Congress project in which commissioned members have concluded that replenishing the House in the face of a catastrophic terrorist attack is virtually impossible under our constitutional arrangements, and they will recommend to you very shortly a constitutional amendment. And yet virtually every member of the commission, ourselves included, always argue against constitutional amendments. But extraordinary circumstances call for extraordinary measures, and I think this is one of those measures that—those times when your committee should set as a goal the establishment of a permanent standing committee on homeland security with jurisdiction spelled out in rule 10.

Now, that doesn't mean it is absolutely comprehensive and it is all exclusive jurisdiction. There are many areas in which some shared jurisdiction are only natural. There are areas within the Department of Homeland Security that have nothing to do with homeland security. There are important activities in the intelligence, the FBI, defense communities that are not within the Department of Homeland Security. So of course it is not a neat one-to-one mapping, but the problem is so central, the experience has been so traumatic, that if Congress can't make one substantial change in its jurisdictions under these conditions, I suspect it never will be able to do so. So for you to accept this as an impossible task at the outset, I think, is to not give proper deference to the experiences we have gone through in the last couple of years.

But our recommendation is that you move gradually and strategically; that if you try to establish a permanent standing committee with substantial jurisdiction that takes away from other committees at once, you will fail. But one could imagine moving incrementally and strategically with several areas of jurisdiction, and maybe even enticing some members on those committees to move to the new standing committee on homeland security. It might be possible with the support of the Speaker to pull it off. It is also clear that this effort would have to be combined with all the other efforts of coordination to make it work, because there never could be one-to-one mapping.

Let me make one final comment before turning it over to Norm. Congress throughout its history goes through periods of centralization and decentralization. Right now we are in the midst of an extraordinary centralization of power and authority and procedures. The committees have suffered vis-a-vis the leadership, and delib-

eration within a division of labor has suffered to some extent. And there are advantages to that. There are also disadvantages for the House as an institution.

My own view is that centralization is well-suited to a pattern of dispersed jurisdiction, where the Speaker and his agents can organize the effort to bring to the House, while establishing a stronger standing committee with some original jurisdiction acknowledges the advantages of division of labor and genuine specialization. I think there is something to be said for if only a slight move back in the direction of some division of labor, specialization, decentralization in a House whose great strength is its ability to deliberate one colleague with another. Thank you.

Mr. DIAZ-BARLART. Thank you very much.

Mr. Ornstein.

**STATEMENT OF NORMAN J. ORNSTEIN, RESIDENT SCHOLAR,
AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY
RESEARCH**

Mr. ORNSTEIN. Thank you, Mr. Chairman. And thank you for the honor of appearing in front of you. And thanks to Ms. Slaughter for the yeoman efforts to make it back for this hearing.

We have been around the block on these issues for a long time, I must tell you. Both of us were involved with the Bolling Committee. You have other people in this room who were as well. We don't look that old, I know. And we carried through with the successor committees in the House up to and including the Patterson Committee and beyond that. We both worked very closely with Mr. Dreier and his counterpart Lee Hamilton in the creation of the select committee 10 years ago and its efforts. And I also was very proud to be a significant part of the most successful effort at reorganization in Congress in a very long time, which was the reorganization of the Senate in 1976, 1977, where we actually had some greater success, although not what we had hoped for.

Let me raise three larger questions that it seems to me we should deal with. The first is, should this now be an occasion for a full-scale reconception of the committee system as a whole, something that we have done before, and unsuccessfully? And one can certainly make the case both for Congress and for the executive branch that the late great Daniel Patrick Moynihan called for the creation of a new Hoover Commission to look at the executive branch. The idea that we have moved from the industrial age to the information age, and we have institutions of government that are really set back in the post-World War II industrial age should make us think through whether we are organized appropriately to deal with the issues and problems that lie ahead. And that is true of Congress as a whole.

Desirable as that goal may be, it is a fool's errand right now. It is not going to happen. We don't have any great sense of urgency that this system is entirely broken, and the resistance to it is so overwhelming that, unless you have a much, much larger feeling out there that it has got to be done, it is an important exercise, an interesting exercise, one that may help us down the road, just as we know that a lot of things that we have written, that others here have written you could pull out now, 30 years later, and change a

few words here and there and they would apply, the same problems, maybe even the same analysis may be useful at a later stage, but we are not going to do that right now.

So we get to the second question, which is, when you have the emergence of a new and powerful large-scale national problem that cuts across existing lines, should that emergence lead to the creation of a new, powerful, and comprehensive standing committee to take it into account? And of course there is a corollary there. If the executive branch responds to this new, powerful, large-scale national problem by creating an executive department, should Congress act in a parallel fashion so that you have a comparable committee as much of the committee system is organized along those lines?

Here, of course, is where the example of the energy problem becomes an instructive one, and we have written about it a little bit, and I will come back to it in just a second.

Then there is the third issue or the third question: Can we find other mechanisms, including some creative ones, that can work at least in part as a solution to this problem if it turns out that, for a variety of reasons, we either don't believe it is a good idea to create a sweeping new committee or we simply can't? And that is where some of the things that we have briefly touched on in our testimony, I think, become relevant, and also some of the previous examples do.

Now, I want to talk about the energy issue just briefly for a minute. But let me say, my own feeling is that we have a problem now that does call out for a standing committee which has very considerable jurisdiction over this problem area, and as we suggest in the testimony, at least a little bit, I think the parallels with the executive branch in this case are important, powerful, and instructive.

The President started out with the equivalent of a select committee, really, by putting the Office of Homeland Security in the White House without significant line authority, substantive authority; really the power of proximity to the President, the power of having a very prestigious and influential and important person appointed to that post in Tom Ridge, and relied on his ability to coordinate matters to make it work. It didn't work very well, and over time he came, I think, inexorably to the conclusion that what he had originally rejected, a department that is the equivalent of a powerful standing committee, was a better way to go.

Now, I am not sure that I would have created a department as sweeping as this one. I early on had thought that the initial recommendation of the Hart-Rudman Commission that would focus particularly on the border security areas was a good way to start this process and basically pull together those agencies that have a piece of the border and then move from there. But I could understand what drove him to that larger department.

And I think Congress will come and should come inexorably to the conclusion that even though you have a tremendously prestigious, intelligent leadership for this committee, and even though you have the imprimatur of the Speaker, and even though you have a lot of powerful Members, that if you don't end up with some substantive jurisdiction, over the long run we are going to have

continuing problems overseeing and legislating on and authorizing this huge new department that represents the largest reorganization, I would argue, anywhere in history. And we are already seeing the difficulties of pulling that together, and having good, tough congressional oversight becomes important.

So I am for that, while I recognize that it is simply not practical or possible to do the kind of sweeping reorganization in the Congress that was done in the executive branch, which would do great violence to the jurisdictions of a significant number of committees. And it is not going to happen. And there, again, the example of Energy does become instructive, because it wasn't just the efforts of the Patterson Committee and then the Bingham substitute here. You could go back to the 1975, 1976, when we had this strong emerging sense of a crisis in energy. We had an effort by Speaker O'Neill to try to create an energy committee and met fierce resistance by all the other committees. He was unable to do it. We had another effort after the Energy Department was created by President Carter, and it failed, of course, all this following on the Bolling Committee's efforts before we ended up with the fairly minor tinkering along the way.

But I don't think we are in much of a different situation now, and clearly we are not in a position in the short term to go ahead and move forward with a full-scale reorganization.

One element of the energy issue, though, that becomes instructive here, I think, is worth mentioning, and that is that after it became clear we weren't going to get a full-scale committee, we did have President Carter move forward with his chief priority early in his administration. It was a comprehensive energy plan. And what Speaker O'Neill did at the time was a very creative approach to move that piece of legislation along. He created an ad hoc energy committee with fairly widespread representation, kept the substantive jurisdiction in the existing standing committees, but set very firm deadlines for them to report out their pieces of this legislation, and held them to those deadlines, moved it along. And then the ad hoc committee coordinated the pieces. As they took it to the floor, you actually had a sort of sharing of responsibility on the floor between the standing committees and the ad hoc committee. The ad hoc committee which pulled those pieces together had some significant impact on the legislation. They actually were able to build in elements that the standing committees would not or could not, and helped to expedite it through the process, and then also played some role a long time down the road in the conference committee.

Because the bill as it passed through the House rather quickly was then brought to a standstill by a filibuster in the Senate for months, I think this ad hoc committee got no credit for what it did, and at least the creative elements of this process that engaged the Speaker got lost in the shuffle. And it was not a process that was applied on any kind of a regular basis later on. And I am not suggesting that you have a single piece of legislation moving forward or that it should become the process along the way, but what it did for me and what I think it should lead you to do is to think through ways as we move, perhaps gradually, and we hope towards, in fact, the creation of a standing committee with some sub-

stantive jurisdiction. Some additional elements, including the more creative use of the referral process, and including perhaps a more active involvement of the Speaker in that process and in designating lead actors when important pieces of legislation move forward, and maybe doing the same thing through an oversight process, could help us along.

Now, let me say finally that we have also come to the conclusion—there are actually two other quick pieces—that we should look at shared referrals in this case, and that it may be more appropriate to look at shared jurisdiction and shared referrals—shared jurisdiction is what I meant—than in many other cases. If you really think about the rationale for the creation of a Department of Homeland Security and go back to what the Hart-Rudman people used as their rationale when they first recommended it, it really was the idea that we had a group of agencies and bureaus and departments that had missions and had had them for decades, were focused around those missions, as with any organization built cultures to reinforce those missions, and now they had a new and important mission, and unless you moved them away from their cultures, they were not likely to fulfill those missions. And they came to the conclusion that the only way to do that was to forcibly move them physically and otherwise out of their cultures. But that ignored in some ways the reality that those old missions would continue in place.

We have the same thing now with every single element of the new Department of Homeland Security. They have a homeland security mission. They also have additional missions. And we have the same problem on a different scale with the intelligence process in other areas where they have a homeland security mission, but they are not a part of the new Department. We have, obviously, a challenge coordinating those things.

It would seem to me that having some shared jurisdictions in these areas would be very useful. It would enable you to make sure that the homeland security element of the mission of those different bureaus is maintained while the committees that have responsibility for the other elements, including the Agriculture Committee for animal and plant inspection, would retain some ability to make sure that those functions are carried out and not lost in the shuffle either. So we can think through some creative things there.

And, finally, I want to come back to something that we had recommended a long time ago that I also think really needs serious consideration. There really is a problem with executive agencies and their top officials having to deal with demands from 20 or 30 or 40 committees and subcommittees to come up and testify, often saying the same things or on the same subjects. Everybody wants a piece of the action, and if you say no, you create a huge problem. This is an area where it just seems to me the Speaker needs to be given the authority and the encouragement to step in and create a process of prioritizing for those top officials. In this area especially, where there is such a political attraction to homeland security, the temptation for dozens of committees up here to want to get the top officials of the Department to come and testify will be

very, very large, and that will leave them no time to focus on what they should be focusing on, which is homeland security.

We have got to set priorities and have it come from the Congress where you say, no, you can't; or, you will have to come to us and give us a compelling reason for why testimony in front of your subcommittee by Tom Ridge or Asa Hutchinson or any of these other top officials is an appropriate thing to do when they have testified six other times elsewhere. That is true for every department, it seems to me, and for every one of these top officials, and ought to be another area that the Rules Committee, that this subcommittee, considers as well. Thank you.

Mr. DIAZ-BARLART. Thank you. Thank you both very much. I am very impressed with the crispness and the clarity as well as the candor of your testimony, and I think it is extremely helpful as this subcommittee begins to build a record for ultimately coming to decisions.

PREPARED STATEMENT OF THOMAS E. MANN AND NORMAN J. ORNSTEIN

The views expressed in this statement are those of the authors and should not be ascribed to the trustees, officers, or staff members of the American Enterprise Institute or The Brookings Institution.

Thank you for inviting us to testify before your subcommittee on whether the existing committee structure in the House is adequately organized to address the policy and oversight issues associated with homeland security. A decade ago the two of us and our respective institutions collaborated on a Renewing Congress Project, which was designed to offer recommendations for improving the effectiveness of Congress and restoring its legitimacy within the American political system. As part of that effort, we testified before the Joint Committee on the Organization of Congress on problems with the committee system and made a number of suggestions regarding the number, size, assignments to, jurisdictions, processes, and coordination of committees. Some significant changes took place in the House committee system in the years thereafter, thanks largely to the efforts of David Dreier in 1994-95. But many of the same problems and issues remain. So do the basic principles of congressional committee organization and practice we articulated in 1993. We are pleased to collaborate once again on a question central to our earlier deliberation: how might the Congress best organize itself to deal with a new and pressing issue, one that is exceedingly complex and multi-faceted.

September 11 and its aftermath generated tumultuous changes in American government, including the most complex government reorganization in American history. The new Department of Homeland Security (DHS), a behemoth struggling to combine twenty-two agencies employing nearly 200,000 workers, faces daunting managerial challenges as well as immediate demands to deal with high-priority risks. While its responsibilities extend well beyond homeland security, many critical elements of the federal government's homeland security activities continue to reside in other departments and agencies. The new department will need all the help it can get "adequate funding, a clear sense of priorities, coordination of government-wide efforts by the Office of Homeland Security, strong presidential support, and an effective working relationship with Congress.

Just as importantly, the country needs strong, active and informed congressional oversight of DHS and of the broader homeland security mission of the federal government. Congress has taken some initial steps in this direction, by creating new appropriations subcommittees with responsibility for the homeland security budget, and by creating the House Select Committee to begin the process of focusing and coordinating congressional oversight of DHS and the broader strategy for protecting the nation's security at home. The critical question that must now be addressed by the House is whether the Select Committee should be a steppingstone to a major permanent standing committee of the House, with primary jurisdiction over both the department and the areas of policy it encompasses, and with its areas of jurisdiction spelled out in Rule X.

The reason for creating a permanent standing committee with primary jurisdiction is clear. Currently, according to the Administration, 13 full committees in each house, along with more than 60 subcommittees (a total of 88 panels overall) share some jurisdiction or responsibility for homeland security. Of course, for many of

these panels the piece of jurisdiction or the centrality of the focus is very limited. Nonetheless, many major pieces of responsibility for the new department are central to at least four authorizing committees in the House (Agriculture, Judiciary, Transportation and Infrastructure, and Ways and Means.) These four committees have primary jurisdiction and oversight authority for the Animal and Plant Inspection Service, the INS, the Coast Guard, FEMA, the Transportation Security Administration, and the Customs Service, which combined make up the lion's share of the new department. To leave this fragmentation means that the central motivation to create a new department -- to merge functions and change cultures and outlook in these areas to focus on homeland security -- will be seriously compromised.

There is certainly a case to be made for addressing an even broader question. The basic structure of the committee system, one designed in the aftermath of World War II to fit its era, including focus on the issues that dominated the times; to fit oversight of the executive branch by having committees in many cases parallel the agencies; and to be sensitive to representation of important groups like veterans and small business, has not changed in nearly 60 years. Should the committee system designed for the industrial age and the Cold War era be replaced by one designed to fit the information age and the post-Cold War era, with its problems of rogue states and terrorism?

We would be delighted if Congress used this opportunity to rethink the basics. But we know that such an ambitious reform, or even such focus, is not in the cards. Congress has too many other things to do, and changes in the committee system, even of a small variety, are excruciatingly difficult to achieve. We are painfully aware of what has happened to other efforts at fundamental reform, including especially the fate of recommendations of the Bolling Committee thirty years ago and of the Joint Committee on the Organization of Congress a decade ago.

We also know well that the emergence of a major national problem or creation of a massive new cabinet department is usually not enough to overcome turf considerations, power relationships, and the electoral interests of Members to create major new authorizing committees. The case of energy is particularly instructive. As many as 83 committees and subcommittees had jurisdiction over energy policy and related agencies in the 1970s. Among its sweeping changes, the Bolling Committee had recommended creation of a new energy committee in 1974. That proposal failed along with the other major recommendations. As the energy problem deepened, Speaker O'Neill in late 1976 (before the proposal for a Department of Energy) pledged to work for the creation of a new standing committee on energy. The fierce reaction from committee elders forced him to retreat from that pledge.

When President Carter made his energy plan the centerpiece of his first year in office, in 1977, Speaker O'Neill created an ad hoc committee to help shepherd the Carter plan through the House on an expedited basis. He was unable to give this ad hoc committee primary jurisdiction over the omnibus energy plan. Instead, the Speaker crafted a plan allowing existing standing committees to work on their pieces of the action, but under time deadlines. Their marked-up legislative products were then given to the ad hoc committee to pull together into a comprehensive plan. On the House floor, the leaders of the standing committees managed their relevant portions of the bill, and these same standing committee leaders were primary figures in the subsequent conference committee. The ad hoc committee, under Thomas "Lud" Ashley of Ohio and with a broad representation of senior members, had a real impact, including, among other things, allowing passage of a gasoline tax that had been opposed by the committee of original jurisdiction, Ways and Means, and giving the overall product enough legitimacy that it survived attacks by amendment on the House floor.

As a model to manage a major bill cutting across several committees' jurisdiction, the Ad Hoc Select Committee on Energy was a strong one. It worked" but then was disbanded. No comparable efforts followed. The problem with fragmented jurisdictions in the energy area remained. The House came back to this continuing problem a few years later, after the second OPEC-driven oil embargo. In 1979, a successor to the Bolling Committee, chaired by Jerry Patterson of California, had as its major recommendation a consolidation of energy jurisdiction into a new standing committee. The result was *déjà vu* all over again. Fierce opposition from entrenched powerhouses on existing standing committees doomed the proposal. A more modest alternative, crafted by Rep. Jonathan Bingham of New York, was implemented, enhancing the coordinating role of the Interstate and Commerce Committee (renaming it Energy and Commerce) and giving it jurisdiction over "national energy policy generally." It also maintained jurisdiction and primary oversight authority for the Department of Energy. At the same time, the Bingham plan underscored the primary role of the Committee on Interior and Insular Affairs over nuclear issues and of other committees in separate areas of research and policy.

Both sweeping comprehensive reform of the Bolling variety, and narrower, single-issue committee reform of the Patterson variety, faltered. The energy experience is instructive, but it should not suggest to you that changes in Rule X are hopeless. Given the reality—a major new problem for the nation that will not diminish, much less disappear, in the foreseeable future and a massive new executive department requiring both a regular authorization and serious oversight—you must grapple with the need for jurisdictional review and change.

In some important respects, the problem facing Congress on homeland security is the same as the problem that faced the president in the immediate aftermath of 9/11. He initially eschewed the recommendation of the Hart/Rudman Commission to create a full-fledged agency of homeland security and opted for an office inside the White House—the equivalent, in many ways, of choosing a select committee over a standing committee. The office lacked line authority or budget power over the various agencies, bureaus, offices and departments dealing with facets of homeland security, relying instead on the importance of the issue, the stature of its director, Tom Ridge, and on his physical proximity to the Oval Office. Within months, the president realized that those assets were not enough. Following proposals developed in Congress, he recommended a large and far-reaching Cabinet-level department to deal with homeland security issues.

The House opted to create a select committee, with no primary legislative or oversight jurisdiction, relying for its authority on the importance of the issue, the stature of its chair, Chris Cox, and ranking member, Jim Turner, the assignment to the select committee of chairs of committees with Rule X jurisdiction, and the imprimatur of the Speaker and the Minority Leader. These assets, too, will not be enough for the long term. Things a select committee can do—highlight a problem, look at the bigger picture, coordinate the work and reconcile differences among other committees, prod the executive branch to implement reforms or focus on new areas, educate the public—will not sustain it over the long run and do not solve the fundamental problem. Some entity must provide the broader supervision for the massive DHS and pull the jurisdictional pieces together in a substantive way for Congress. Congress, of course, was explicit in this realization; the Homeland Security Act says that 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.” In our judgment, there is no way out of the logic that there should eventually be a permanent standing committee on homeland security.

That said, we do not necessarily mean that the permanent standing committee should be exactly parallel to the executive department—that the House should create a colossus and in the process do violence to the very fabric of its committee system. Instead, we recommend that the House adopt a measured and multi-pronged strategy, including an incremental approach to jurisdictional change, done in stages so the new committee can absorb areas gradually and all the relevant committees can adjust to change. This strategy will also involve some overlapping jurisdiction (for example, sharing responsibility with Agriculture for the Animal and Plant Inspection Service, or with Transportation and Infrastructure for the Coast Guard). It also suggests that leaders may want to rethink their initial decision to populate a homeland security committee with chairs of other committees.

Shared and overlapping jurisdiction, in this case, is not just to avoid opposition to change from existing committees. Historical memory, expertise and competing perspectives on homeland security matters are valuable commodities that should not be lightly dismissed. In addition, the fact is that entities like the Customs Service, the Coast Guard and the Animal and Plant Inspection Service have dual responsibilities. It was the president’s judgment, as it had been that of the Hart-Rudman Commission beforehand, that the homeland security responsibility, previously a secondary or non-existent one, must now be primary in all these areas. To make it so means changing the bureaucratic cultures of all these agencies and bureaus, which can only be done by moving them into a new department with a new mission.

But the old missions do not disappear. The Customs Service still must facilitate trade, keep traffic moving efficiently at borders, and raise customs revenues. The Coast Guard must still facilitate transportation and promote safety in our coastal waters. The Animal and Plant Inspection Service must still protect sanitary conditions in meat and food processing plants. The Transportation Security Administration must still make sure that the aviation industry functions and that travelers can get from place to place without undue inconvenience. If homeland security is the only consideration, these functions can get lost or perverted along the way. So keeping shared jurisdiction in Congress can help make the dual functions work in the new department.

We also strongly recommend that the House, with the active participation of the Speaker, the Parliamentarian and the Committee on Rules, make full use of joint

and sequential referrals, special rules, scheduling and moral suasion to establish effective coordination among committees and to ensure timely consideration of legislation. These mechanisms will be especially important in coordinating authorizers and appropriators of DHS activities with those overseeing the related homeland security activities in the FBI, the intelligence agencies, the Defense Department and other agencies. Finally, we recommend that the Speaker establish his own coordination mechanism regulating the required testimony of DHS officials before committees and subcommittees. This will be necessary to prevent the debacle of executives facing demands to testify in front of dozens of panels, often on the same subjects, draining valuable time from their efforts to protect the home front without any incremental addition to Congress's knowledge base or ability to fulfill its own responsibilities.

Mr. DIAZ-BARLART. You have so much experience, let me ask you, in your studies you have pointed to the extraordinary difficulty of actually accomplishing these types of reforms. Could you address, maybe give us some advice from your study of the history of these efforts, perhaps some obvious lessons learned in terms of overcoming or potentially overcoming the inevitable turf wars or pressures for maintenance of the status quo? Do you have some advice to give us, if the subcommittee were to come to that conclusion, that we might want to share then with our Members?

Mr. ORNSTEIN. Kevlar.

Mr. DIAZ-BARLART. Excuse me?

Mr. ORNSTEIN. Kevlar. Bulletproof vests we start with.

Mr. MANN. Listen, one of the most—the clearest and most obvious constraints here is that Members of the House, most Members of the House build their careers through congressional committees. They make a commitment. They are usually on several committees. They develop expertise, they build seniority, they establish relationships with interest groups that work with those committees. Both the Members and the groups that have developed patterns of communication, access, deliberation are very reluctant to see those disrupted in any way, which a full-scale jurisdictional realignment almost inevitably does. So that is behind our suggestion that you initially develop joint jurisdictions, that you move gradually and incrementally over time with pieces of exclusive jurisdiction in ways that make the committee attractive and could lead to some committee transfers.

Now, one would have to do a calculation on the votes and how that would work out, but I really believe you have to think in these very practical terms. So you have got to come at it from the bottom up, but at the same time you have to have a larger strategy. And in this case it really is September 11th, and what it has done to this country, the government, the priority that the battle against terrorism will have for the foreseeable future, it seems to me you have a claim, a public claim, a moral claim.

There have been some statements from the leadership in support of that priority and mission. There have also been other statements from the leadership that all current standing committees shall retain their primary jurisdiction on these matters. So there is sort of conflicting messages from the leadership. But I think my lesson in looking at this experience is you have to do it intelligently and eyes wide open to the clear political constraints, and try to work with those constraints rather than to deny them; and, secondly, to have a macrostrategy that plays off the fact that we have a whole new set of problems on our hands that will require the attention of the

Congress as well as the executive branch in the years ahead, and Congress has a responsibility to organize itself appropriately to deal with that.

Mr. ORNSTEIN. Let me make a couple of comments, Mr. Chairman. I mean, first, to be very candid here—and since most of the Chairs of the other committees are not here, I can speak openly knowing they won't know it—that, you know, you have an uphill battle that started with the creation of the committee. It makes a lot of sense in many ways in a substantive way to have a lot of other senior Chairs on the committee and Ranking Members, but they are going to fiercely resist having pieces of their jurisdiction taken away. And I have seen this up close and personal in a lot of ways. Tom and I will never forget when we were called on the carpet by the Chair, by many of the Chairs, 10 years ago when we sat in a room with Dan Rostenkowski, John Dingell, Jack Brooks, and others wanting to know what we thought we were doing, having recommended, among other things, that we move the trade jurisdiction out of the Ways and Means Committee to create a broader focus.

So—and these things don't change. It is actually the one way you could bring bipartisanship back to the Congress; you get all the members of the committees joining together.

So we know that this is difficult, and the way in which the committee was created makes it more difficult to move expeditiously in this direction.

The one lesson that I have learned looking at both the House and Senate is that any kind of significant jurisdictional change can't take place without the extremely strong backing of the leadership on both sides; that unless you have the Speaker and the Minority Leader willing to stand up and provide some protection and take some of the hits for you, it just isn't going to happen. We managed to get that in the Senate in 1977, and without it, Adlai Stevenson, who was the Chair of our committee, and Bill Brock, and then Bob Packwood, who was the Ranking Member, would have failed miserably, and we got something done. We got rolled as well.

I think the lack of really enthusiastic backing from the leadership has doomed other efforts here in the House. And, you know, surface backing but not real backing isn't enough. So you have a constituency there that you have to reach, and it is both Speaker Hastert and Ms. Pelosi, to convince them of the necessity to make these things happen. I think even with that, if you move to basically take very substantial pieces simply out of the jurisdiction of committees like Commerce and Judiciary and Agriculture, it wouldn't work, probably not now, probably not for a long time. And that is why you have got to be creative here to try to figure out how you can gain some considerable jurisdiction, and you are still going to get significant opposition, but that is probably the only way to make this happen.

Mr. DIAZ-BARLART. Let us talk a little bit for the record, if you could give us a sense of how much jurisdictional overlap exists in the homeland security area. Could you talk about that?

Mr. ORNSTEIN. Sure. I mean, the first is, of course, an enormous amount. The administration, and it is probably a slight exaggeration, has said that we have 88 panels, committees and subcommit-

tees, in both houses, that have a piece of the homeland security jurisdiction. Now, I would guess we do have 88 that would claim—maybe even more—that would claim some piece of this jurisdiction, because it is natural to want to have a piece of it, but a lot of that is very small pieces.

I mean, the fundamental reality is that we have got obviously Appropriations, and then we have got four committees, Agriculture, Judiciary, Transportation and Infrastructure, and Ways and Means, that have a considerable piece of the jurisdiction over the major components of the new Department, and those major components of the new Department, which are Plant and Animal Inspection Service, the INS, the Coast Guard, FEMA, Transportation Security Administration, the Customs Service, those together make up about 80 percent of the Department of Homeland Security. And so that is really where the lion's share of jurisdiction is, and that is where I think the major challenges are in terms of—other than the intelligence process, which obviously is a separate but critically important part of this process—the major challenges for you lie as well.

And I would hope, by the way, that if there is any success at moving forward the creation of a permanent standing committee, and one that does have jurisdiction, including a lot of shared jurisdiction, that there would be a serious effort to bring the intelligence component into it, even if it isn't in the executive department. It makes for me even a more compelling reason to make a joint or at least some shared jurisdiction in the Congress, because we have to have some formal mechanism for coordinating and thinking through ways in which we can bring those elements together.

Mr. MANN. Mr. Chairman, I just mention as a resource for your committee a book published by Brookings just in the last couple of weeks called *Protecting the American Homeland One Year On*, which really provides a lot of detail on the very questions that you asked. They also argue that between the problems of Homeland Security having non-homeland security matters to deal with and the important homeland security matters outside the Department, the challenge of the latter is much greater than the former. And as you think about possible reorganization within the House, I think you need to give primary attention to how to coordinate the intelligence activities that are now overseen elsewhere with key elements of the homeland security agenda.

Mr. DIAZ-BARLART. How much and how well is the fragmentation that exists in jurisdiction—jurisdictional fragmentation that exists in the area of homeland security, how well is that balanced, offset if you will, by the consolidated authority lodged in the Appropriations Subcommittee on Homeland Security?

Mr. MANN. I think that was an important move taken by both the House and the Senate to create separate homeland security subcommittees on the Appropriations Committee, so a critical step that was taken. But appropriators are not authorizers. The kind of questions they ask, the concerns that they have are oftentimes different. It is driven in many respects by the budget process and the imperatives of the budget resolution. The kind of questions that get asked tend not to be the larger strategic questions, but more the

questions about just how dollars are being spent here and there. So I thought it was a necessary step for the Congress, and certainly important, especially important given the absence of consolidated jurisdiction on the authorizing side, but not sufficient.

Mr. ORNSTEIN. Let me reinforce what Tom said. Actually the appropriations process is a good spot for oversight, and in many respects in many areas it may be the best place for which oversight occurs, because it occurs through that annual process.

But the fact is that the culture of the Appropriations Committee, which is to spread money around and to satisfy a lot of different Members, can work very much against the imperatives of homeland security. You can imagine, and we have seen this, of course, before, where you have a budget to deal with some area that ought to be concentrated in the places where we have the most risk, and we spread it around every district in the country or to a very large number of districts, not with any prioritizing. And I don't think the appropriations process is the best place to make those priority determinations.

So you have got to have some strong entity outside. 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.

So it is really necessary, it seems to me, to make sure that we have a counterweight that appropriations will not provide and that only you can provide, but you are not going to provide it over the long run without having some standing status.

Mr. DIAZ-BARLART. To what extent should the House's committee system parallel the organization of the executive branch?

Mr. MANN. I don't think there is any need for there to be an absolute one-to-one mapping, but when the relationship between the committees and the executive departments is hard to fathom, when so much change has occurred over time that they bear little direct relationship, then I think some problematics exist.

There is an advantage in having an Armed Services Committee with the responsibility for an—in this case, an annual authorization bill, and I think there would be advantages to the House in having a Homeland Security Committee. That is not to say, however, that every executive department needs to have an exclusive committee dealing with it. That is impossible. And, frankly, the reality is that problems cross departmental boundaries. Much of government is about trying to join up agencies and staffs across departments.

The most important function of the Cabinet today is not the meeting of the Cabinet, but it is the Cabinet councils that are created under the authority of the Cabinet to allow departments to work with one another in an effective and authoritative way. So, no one-to-one relationship.

Mr. ORNSTEIN. I certainly agree with that. You can't ignore the executive branch's organization, or you would have chaos around here in terms of figuring out who had authority for what and making sure you could have effective oversight. But you don't want to parallel it entirely. And there are indeed going to be areas where, if the executive branch has failed to bring areas together under the same rubric, you may want to bring them together so that you can be sure that there is appropriate sensitivity paid, getting back to the example of intelligence and homeland security now, where I am not sure—I am not convinced at this point that the way the executive branch is now organized or the coordinating mechanisms that they are implementing are sufficient to make sure that we will have the intelligence information carried out in the right way, accumulated in the right way, or distributed around to the appropriate people at the appropriate time. And I would love to see Congress weigh in on this and make sure that it is done.

Mr. DIAZ-BARLART. Mr. Dreier.

Mr. DREIER. Thank you very much, Mr. Chairman.

Great to see both of you, and it brings back a lot of memories sort of in a delayed Ground Hog Day or something. It has been 10 years since we have gotten together. I was recalling that we had 243 witnesses and 37 different hearings a decade ago when we had this; and maybe that was one of the reasons that it took me a moment to remember that the Parliamentarian was the last Parliamentarian to testify. And Mr. Pitts just reminded me that I guess it was 10 years ago almost to the day when Mr. Brown testified before us.

You know, I, in my opening remarks, commented on the fact that I want to keep an open mind, but when I think about—and I remember the two of you were recounting to me that famous Rostenkowski meeting that took place. And I have always had a bias towards trying to consolidate and fewer committees, and you remember the joke that we used to always tell; that if you walk down the hall and saw a Democrat whose name you didn't know, it was just, hey, how you doing, Mr. Chairman, because chances are he chaired some committee or subcommittee in the place.

And, you know, then in 1994 we were able to take more than a few of those recommendations and put into place a consolidation, which, quite frankly, I believe has worked a lot better, a hell of a lot better than many people had anticipated. And now obviously we are in the wake of September 11th, looking at the prospect of this. And I want to keep an open mind on this issue, but I think back. You know, you mentioned, Norm, the fact that there were 88—the White House has 88 committees in the House and Senate dealing with this issue. In the 1970s, there were 83 on the issue of energy.

Mr. DREIER. And Charlie proceeded to talk about incrementalism and how over the years we saw much of that absorbed. So I guess the question that I would pose to you on this, with my bias towards reducing the number of committees and subcommittees, obviously wanting to enhance the deliberative nature of the institution, I don't want to do anything that undermines our very important oversight responsibility, I want to do what I can to encourage that—it was interesting, you know, the Parliamentarian was proud of the fact that there were—I guess 11 members we

were. He thought it was for his testimony. We had votes on the House floor. That is frankly what brought people back here in the numbers that were here, even though he and the two of you were offering very thoughtful input. I guess my question would be what is the argument against our establishing this as a standing committee? I mean, other than very personally. You know, Dave Bourne and I always joke that we dine alone because of the fact that people would rather give up their spouse or a child than they would jurisdiction in a committee, because there was such a high level of frustration over that and we know we are dealing with all these powerful committee jurisdictions. Other than the obvious there, which we could assuage some of those concerns that are out there, what would be the benefits to our not putting in place a separate standing committee?

Mr. MANN. 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. I suppose the biggest advantage is you don't have to go through the bloody process of replacing it and establishing a standing committee.

Now, I sort of acknowledge those, I offer those in the spirit of honestly answering your question, and yet at the same time on balance everything I know tells me in spite of past failures that establishing one new committee, standing committee on homeland security, or setting that as a goal to move towards over time is a sensible thing to do in that some of the advantages that I have just given you from jurisdictional sprawl can be retained in a system that still has a focal point of a standing committee on homeland security.

Mr. ORNSTEIN. You know, in your question was the seeds of an answer to it, Mr. Dreier, and that is adding a committee will mean adding a lot of subcommittees, and it becomes even more of an additive process. We end up with more members spread thinner and end up more fragmented. Probably you are not going to have people who go on this committees who will not give up other committee assignments or at least they won't give up everything and we will end up with bigger institutional problems.

If you remember back 10 years ago, one of the things we recommended most strongly and we recommended it as strongly as jurisdictional change was to get a handle on the total number of assignments that Members have, which has proliferated enormously and which have led to the reality, as we were saying earlier, that in the dozens of times we have testified the vast majority of them have been in front of one person because people have many, many

other things to do, and that doesn't enhance the deliberative process.

So you have to be very careful every time a new problem comes up that you don't want to simply create a new committee and add it on to what you have done. Ideally if we were doing this, we would make some other changes in this process. A little less than ideally, but close to it would be that if we go ahead and do this we really do get rules and leadership action that begins to clamp down on the proliferation of assignments that people have so that you don't have a lot of people with three, four and five major committees, because everybody likes to add them on. It looks good on the masthead, the letterhead. You don't have to be there often to be able to have more clout. Given what you have done with the proxy, the more you expand the number of assignments the greater problem comes in in each of the committees anyhow. But it makes it a little bit easier to cut down on some of those numbers and maybe you are not going to going to do that.

Even with that I think this problem is so big and is clearly so enduring, this is not a 3 or 4-year problem that is just going to disappear, weapons of mass destruction that are easily and readily available to all kinds of actors out there, the fact that Iran it appears is very close to having lots of different ways of getting nuclear weapons that will spread through the region and that will create another set of problems, all of those things argue that homeland security is a critically important problem that will be with us for a long time. It is going to require coordination across a lot of areas. And if Congress doesn't find a way itself to coordinate and to oversee what the executive branch does in a coordinated fashion it will be a mistake.

Mr. DREIER. Let me tell you my letterhead has three words when it comes to that department. It says Committee on Rules and nobody knows what the heck that is any way. So I don't get a lot of play on that.

Mr. ORNSTEIN. We know.

Mr. DREIER. Let me thank you all very much for your very, very thoughtful presentation and the time and energy that you have spent on this. I appreciate it. I apologize for the fact that there will be one fewer member now at this hearing because I have to leave myself. But thank you all very much.

Mr. DIAZ-BARLART. Mr. Meek.

Mr. MEEK. Thank you so very much, Mr. Chairman. I am excited about being on this subcommittee because as a freshman I am just glad to be on something that says Rules. That is wonderful. It is a great thing.

Let me move this mike here. You don't look attractive with a mike coming out of your ear. I thought I would share that with you.

That was really the question that I think is going to not only plague this committee but this Congress, especially the House, on how we are going to oversee one of the largest agencies in the Federal Government. And when we created this select committee we had so many people, not only back home but here in the Capitol feeling a sense of this committee is going to have so much responsibility and oversight and direction and finally there is a committee

that is going to question the executive branch for whatever knee-jerk reaction, good or bad, that it may make. And the department will have some sense of patience and may move hastily and in a direction if we were to have a terrorist attack.

Now knowing that we have this effort against terrorism nationally, internationally, this is going to be an agency that needs preventative maintenance. I am trying to form the correct argument, Mr. Chairman. I am so glad that we are—chairman of this committee and the full committee—I am glad that we are having this discussion because we are going to have to not only explain in the different cloakrooms but also as it relates to members who have power now, I am on X committee and it says Homeland. Like I said, I am glad to be on the Rules Committee. They don't want to let that go. That may not necessarily be the best way to not only maintain but have oversight over such a huge agency. And I know that you have already commented on it is easier said than done but needed.

I don't see this—you know, Norm, you mentioned this—it is not a going away kind of situation. This is like Social Security, Medicaid, Medicare. That is the way I am looking at Homeland now. I don't know how we argue that to our colleagues because you have chairmen that are on this committee that are fighting for their turf. How do you get them to relinquish that turf and move forward on behalf of the country?

That is to both of you.

Mr. ORNSTEIN. This is not going to be easy. It is going to take a sustained effort. It isn't going to happen this Congress. I am hopeful that we can build toward having something at the beginning of the next Congress. It is going to take some work in public education and making this a larger public issue, in which I hope we can help. But as I said earlier, it is also going to take some work with the leadership.

One example here is an issue area I followed for different reasons. We clearly have a problem with—a telecommunications problem in homeland security with something we saw on September 11th, when we had all of these at the Pentagon, we had all of these emergency rescue teams come in from Montgomery and Prince George's County in Maryland and Arlington and Fairfax Counties in Virginia and they couldn't communicate with one another. We have got a larger problem with different slices of the spectrum allocated in ways that make emergency communication difficult and also have ended up freezing the cell phone system so nobody can communicate at the time of an emergency, and it requires a serious rethinking.

Some of that responsibility falls with the new department. They got a million things that they are doing. Obviously it is within the jurisdiction of the Commerce Committee. But they are not necessarily going to start thinking along homeland security lines. They have got other things that they are doing. This is a place where having some kind of shared jurisdiction or having the focus of a department can make a difference, but just the select committee focus, the oversight focus probably isn't enough to use the bully pulpit in that area.

So it is a whole number of areas where obviously some level of jurisdictional clout could matter here. And maybe as we raise some of those, we can get some larger understanding of this and maybe overcome some of the misgivings of the old bulls otherwise. But we should, you know, we should go into this with a very clear-headed understanding that just as with every example we have had in the past, it is a steeply uphill battle.

Mr. MEEK. Let me on the shared jurisdiction part, if you were—the bulk of you were to really look at it, what would you take, not cherry picking, but there is a sense of responsibility. I hate to say this and God forbid if something happens here in the homeland. The chairman is going to be front and center on every news channel that is available: You are Chairman of Homeland Security, how could this happen? What is the oversight? What has the committee done? Well, we kind of share this with other committees. It is almost like who has responsibility over homeland security and you can do one of these numbers: Well, it is him or it is them or they had oversight, we really don't but we are called Homeland.

If we can push the leadership in that direction, I think would be helpful. But once again very powerful individuals in this process will have to give up something for that to happen.

I had a town hall meeting recently in my district and a lot of the front line people, cities, counties, we have made all these changes but we haven't seen any difference in those changes. We haven't heard from the department. I think it is good that we have this committee because we are able to give the department input that they probably won't get because they don't have representation in 100—is it 435, 535 or so districts throughout the Nation. So as we move along, I think you are right this will not happen tomorrow but on behalf—maybe an event here in the homeland may spearhead a little more targeting.

I hate to say it, I used to be a state trooper. We don't get a street light until we have five casualties at that intersection and all of a sudden we need a street light.

I am glad to serve on this committee so that we can hopefully share with our colleagues and lobby our colleagues in the leadership to be able to make this happen.

Mr. ORNSTEIN. Let me add one thing, Mr. Meek, and that is if we think about how this could work in practice, it seems to me we have to revise rule X and certainly you need a committee that would have authorizing authority—oversight authority for the new department, but obviously authorizing authority would immediately challenge those who authorize, have authorization authority over the INS and these other major agencies. Here is where some serious thought into the way in which the ad hoc Energy Committee that Speaker O'Neill created may be worth doing. It may be that we can create a kind of new process with a Speaker playing a very considerable role where you handle the overall authorization but the other departments also take primary jurisdiction over the authorization for the individual agencies under time deadlines set by the Speaker and then you get together in a coordinating fashion and you have some shared responsibility as they did when the authorization comes to the floor. And that might be at least one way to think about rewriting the rule to create this flexible process.

Mr. DIAZ-BARLART. Thank you very much.

Mr. Cox.

Mr. COX. Thank you, Mr. Chairman. Thank you very much, as always, for your attention to the way that Congress operates and the way that we might improve the institution. Your testimony I think was very clear on the main point before us. Your joint testimony that you formally submitted that states the reason for creating a permanent standing committee with primary jurisdiction is clear. I just want to make sure that I understand for the record with respect to each of your testimonies, do you favor creating a permanent standing committee with primary jurisdiction over homeland security?

Mr. ORNSTEIN. Yes.

Mr. MANN. Yes.

Mr. COX. I didn't think there was any question about that. I wanted to be sure, particularly because you did such an excellent job of responding to Chairman Dreier, who asked you to play devil's advocate and argue against the proposition you came to testify in support of.

Second, you point out that the Homeland Security Act states, reading from the act, each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch. Now, that was an instruction not only to the House, the sense of the Congress, but an instruction quite serious nonetheless because it was enacted by Congress, instruction to the House and to the Senate. How do you believe, how do you evaluate the job that the Senate is doing?

Mr. MANN. Sort of my view is not particularly well.

Mr. COX. I guess I would make it more clear. Are they doing anything formally that we know of?

Mr. MANN. No. All they have done is refer, if you will, a sort of—as I understand it, the primary jurisdiction for the law establishing the Department of Homeland Security to the Governmental Affairs Committee, but haven't in any way reorganized jurisdictions from other committees to set up joint jurisdictions. As best as I can tell, the only real change in the Senate is the parallel to the House on the Appropriation Subcommittee.

Mr. ORNSTEIN. Unless they are acting as the White House did and going to some secret situation room every night to plot their plan for reorganizing the committee system, which I doubt, there is no action. There has been no effort made that I can see to get either the Rules Committee or some new entity, a select committee, going to think this process through. No Senator has suggested that I know of that they act in this area, and it is frankly not good. It is distressing. You have created a mechanism at least for coordinating, focusing on things, being able to do what Congress should be doing right now, at least as we get a new department under way, and make sure there aren't things lost between the cracks or problems across agency lines that are highlighted and a venue for people to come and talk about such things or to offer complaints or problem areas, and they have been. I don't know it frankly.

Mr. COX. Of course the Appropriations Committee in the Senate has restructured itself. So it is the authorizing side that remains to be dealt with. I wanted to ask you, given that state of affairs

in the Senate, what, if any, impact do you think that has on our effort here in the House?

Mr. ORNSTEIN. At one level in the short run it will make it more complicated for you and it will make it harder for you. But at the same time my guess is that as we see the Senate fall very far short of its responsibilities in oversight or in coordination, it will underscore the need to do what you have started to do and have been working toward. But obviously if you created a committee and began the process of coordinating the authorization of the new department and the Senate did nothing, it would make for a very weird set of conferences that would be even stranger than some of the ones we have seen before with a floating group of people coming in and out for each of the different pieces it has, which can't be good for making policy.

Mr. COX. I think that is destined to happen if we don't change because the mission of the Department of Homeland Security and indeed the mission of the Federal Government now as it pertains to fighting terrorism on our domestic turf is to restructure the executive branch so that a responsibility that right now is merely defined by the margins of the responsibilities of multiple agencies is the bureaucratic equivalent of that ball that drops in the middle of the outfield while all the fielders meet in areas where they are right field, center field, left field, might have them be limited to where they can run to catch the ball. So we are trying to get agencies that have worked in parallel in the past to start talking to each other and share. Every bit of legislation that we enact with respect to homeland security almost certainly is going to be redefining those margins.

Therefore, if we don't restructure Congress because of the nature of our work here and the nature of the problem in the executive branch, we are going to have a half dozen or more congressional committees that all say that is me, that is me, that is me. Most pointedly we are going to go out to NORTHCOM on the way out to Los Angeles mid-June and take a look at DOD's effort to address the domestic terror threat, but you know we have in the middle of the Homeland Security Act a statement that the Department of Homeland Security is not responsible for warfighting and it is not responsible for the military defense of the United States. Now, I think what people have in mind is that we are not going to have a contest in the chain of command between the Secretary of Defense and the Secretary of Homeland Security, and that is a good thing that we put that in the statute. But to say that Homeland Security is not responsible for warfighting, we got to push a little bit on that definition and say what happens now is if the war is fought here and what happens if it is not fought using tanks and soldiers. What happens if instead the opening day of the war is 23 shopping centers are blown up in 23 different cities in the United States. Is that a war we are in? Is DHS prevented from waging that war on our behalf? Does NORTHCOM or the Department of Defense think they are in charge of fighting it? If so, how do they fight it, posse comitatus and so on? We have all these questions that we have to start asking ourselves. But they literally define the margins of everyone's responsibility.

So if Congress doesn't redefine itself so that this is the center lane of somebody's concern rather than everybody's marginal concern, I think we are going to have a hell of a time passing any decent legislation or, worse yet, conducting any thorough oversight.

I want to conclude by commending you on your recommendation that the Speaker establish his own coordination mechanism regulating the required testimony of DHS officials before committees and subcommittees because obviously 88 on the Hill is too many. In the House what we are doing to address this problem at the request of the Speaker and the majority leader is to use this select committee as the coordinating mechanism. That doesn't mean that other committees might not under appropriate circumstances have department personnel come testify there instead of in front of this committee. What it means though is we are the clearinghouse for all those requests and there won't be replication of effort among multiple committees.

So I think thus far I think that has been working very well. It may not be evident to the naked eye, but behind the scenes there is coordination is going on. It is one of the first dividends that is being paid to us from having all these committee chairs on this committee. So your recommendation is very sound. I don't know what we are doing on the Senate side to achieve that result.

Mr. MANN. If I may say that your discussion of the, if you will, the war making authority in the example of the shopping centers is precisely the kind of question that I believe will get asked only by having a focus of sustained attention built into the organization of Congress where members like yourselves ask such questions and then proceed to get the follow up and get answers so that we think through in advance of the need to respond appropriately.

Mr. ORNSTEIN. You also, I think, have highlighted another very interesting issue, which is that for the Speaker the headaches that exist trying to create a standing committee in dealing with the committee chairs might very well be exceeded if we don't move in that direction and we have these kinds of problems and all these competing claimants. So this may be a part of the process of making the leaders understand that not acting could prove even more frustrating than biting the bullet and going ahead and making sure we have an entity with real importance and reach and clout.

Mr. COX. I think Congressman Meek stated that very clearly. It is inevitable if there is an attack on the country the fingers are going to be pointing everywhere. The first place is the President and the next place is the Secretary and the next place is to us, and there is no escaping that. It shouldn't be, however, the political downside risk that concern us most but rather the fact that there might well be some credibility in such charges if we don't occupy the center ground of what is now the new jurisdiction, the new turf of Homeland Security with an oversight committee and a legislative committee that has the power to go in and get the job done right.

Mr. DIAZ-BARLART. It doesn't seem like a possibility, but should there be a Joint Committee on Homeland Security?

Mr. ORNSTEIN. No, they never work. You know, we ended up in 1976 basically abolishing the joint committees because it simply can't when you have 100 Senators and 435 House members create

the right kind of balance. Rotating chairmanships. If you look back at the history of joint committees, the Joint Economic Committee is basically—it did have an authorization, but it basically is a select committee in effect. Worked well for a while but eventually it lost its focus. The same was true of the Joint Committee on Atomic Energy.

Frankly to have joint committees on taxation and the like, they are just devices. They are not really joint committees. They might just as well be—we ought to shift the Joint Committee on Taxation into a Congressional Tax Office like the Congressional Budget Office, but that is not the way to go.

Mr. MANN. I agree with that.

Mr. DIAZ-BARLART. Thank you so much. Your testimony has been extraordinarily helpful and we are very, very thankful. The hearing is hereby closed.

SUPPLEMENTAL INFORMATION FROM CHARLES W. JOHNSON

July 10, 2003

Hon. Lincoln Diaz Chairman
Subcommittee on Rules, Select Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your recent inquiry regarding the referral of measures to the Select Committee on Homeland Security. There are many issues that need to be addressed by the House regarding jurisdiction over the Department of Homeland Security. Many of those issues might be addressed by the various entities tasked with that responsibility, such as the Select Committee on Homeland Security. For example, any proposal to establish a new standing committee would also include a proposed jurisdictional statement in clause 1 of rule X that would guide the Speaker's future referrals. Such a grant of affirmative jurisdiction within the rule X rubric would supplant the Speaker's current unique discretionary referral authority.

The starting point for the Select Committee's jurisdiction is section 4 of House Resolution 5. It states, in pertinent part, that the Select Committee may develop recommendations on "such matters that relate to the Homeland Security Act of 2002 (P.L. 107-296) as may be referred to it by the Speaker." Informing this jurisdictional statement were the Speaker's remarks preceding the adoption of House Resolution 5. In that statement, the Speaker indicated his belief that the creation of the Select Committee would not perturb the existing areas of jurisdiction of the standing committees and the Permanent Select Committee on Intelligence. See 149 Cong. Rec. H5 (daily ed. January 7, 2003). The putative chairman of the Committee on Rules echoed this sentiment. See *Id.* at H15.

This dichotomy between acknowledging the jurisdictional interest of a new select committee and maintaining the jurisdiction of the existing standing committees and the Permanent Select Committee on Intelligence can be seen in the referrals that have been made thus far to the Select Committee. It would seem that the category of bills you refer to as addressing "first responder grants" (H.R. 1007, 1389, 1449, 1803, and 1915) exemplifies this jurisdictional overlap. Other categories of bills you have cited, namely those addressing agencies and offices that have been transferred into the Department of Homeland Security, such as the Coast Guard or the Immigration and Naturalization Service, would seem to indicate a choice by the Speaker to allow the committee with jurisdiction over the matter an initial opportunity to review the bill. Under clause 1 of rule X, the Committee on Transportation and Infrastructure has jurisdiction over the "Coast Guard" and the Committee on the Judiciary over "immigration and naturalization."

In an appropriate case, the Speaker retains the power to make a sequential referral to the Select Committee of a bill not referred there on the date of introduction. Thus it is important to note that the Speaker's referrals to date do not necessarily indicate the breadth or depth of the Select Committee's jurisdiction to review the work product of the standing committees and the Permanent Select Committee on Intelligence. At the time the committee of initial referral reports a bill to the House, the Speaker may respond to a request by the chairman of the Select Committee for a sequential referral to review the recommendations of that committee. In this way,

the Speaker might navigate the very dichotomy that has prompted your insightful questions.

Lastly, would note the Speaker's referral of H.R. 1416, the Homeland Security Technical Corrections Act of 2003. The Select Committee received the referral of that measure, reported it to the House, and then managed it on the House floor under suspension of the rules. In addition to its being a measure that "relate to the Homeland Security Act of 2002," this referral calls to mind a statement by the putative chairman of the Committee on Rules on the day the Select Committee was created. On that day, he projected that the Select Committee might have jurisdiction over a bill making technical corrections to the Homeland Security Act of 2002. See 149 Cong. Rec. H12 (daily ed. January 7, 2003). The Select Committee subsequently reported the measure and managed it on the House floor.

I hope you find this helpful.

Sincerely,
Charles W. Johnson, Parliamentarian

[Whereupon, at 8:25 p.m., the subcommittee was adjourned.]

