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HEARING ON PERSPECTIVES ON HOUSE REFORM: COMMITTEES AND THE EXECUTIVE BRANCH

HEARING

BEFORE THE

SUBCOMMITTEE ON RULES

OF THE

SELECT COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

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HEARING ON PERSPECTIVES ON HOUSE REFORM: COMMITTEES AND THE EXECUTIVE BRANCH

Thursday, July 10, 2003

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

The subcommittee met, pursuant to call, at 10:35 a.m., in room 2247, Rayburn House Office Building, Hon. Lincoln Diaz-Balart [chairman of the subcommittee] presiding.

Present: Representatives Diaz-Balart, Dunn, Dreier, Linder, Sessions, Slaughter, Thompson, McCarthy, Meek, Cox, Turner also, present Rogers of Kentucky.

Mr. DIAZ-BALART. [Presiding.] I will go ahead and call the subcommittee to order. Good morning, everybody. On behalf of the Subcommittee on Rules of the Select Committee on Homeland Security, I am pleased to welcome a distinguished group of witnesses to this second in a series of hearings on homeland security and the House committee structure, and more generally to receive ideas and proposals from witnesses on ways to strengthen the effectiveness of the House of Representatives.

It is my understanding that Secretary Schlesinger must leave, in an hour or so, so in hopes of getting to testimony and questions and answers, I will certainly keep my remarks brief. We would ask those colleagues who will be joining us to do so, as well. All of us recognize the importance of the committee system and the vital role that committees play in this institution.

They are, in effect, mini-legislatures. Committees function as our centers of policy-making, oversight and education, through hearings, particularly, such as today's.

A principal assignment of this subcommittee is to try to ensure as much as possible continued vigor and competence in the committee system, specifically as that system addresses homeland security issues.

The subcommittee recognizes that the committee system interacts with and affects other important legislative functions and activities, such as scheduling in the work of conference committees, to help the subcommittee identify and sort through some of the key issues that confront the House.

And to suggest possible proposals or recommendations for change, we are pleased to begin today's hearing with one of the most distinguished and experienced Federal officials, Dr. James

Schlesinger, a man who certainly needs no introduction, but I will give him one anyway, brief.

The holder of a Ph.D. from Harvard, Dr. Schlesinger has been a high national governmental official in both Democrat and Republican administrations.

For example, he was chairman of the Atomic Energy Commission from 1971 to 1973, director of the Central Intelligence Agency in 1973, as well, Secretary of Defense between 1973 and 1975, and the first Secretary of the Department of Energy, between 1977 and 1979.

Clearly, Dr. Schlesinger brings an extraordinary wealth of experience, expertise and informed judgment to this hearing. We are particularly interested in Dr. Schlesinger's observations concerning his time as the first Energy Secretary in the United States, and any parallels that he may see with homeland security.

As Dr. Schlesinger certainly will recall, the Nation confronted an energy crisis during 1973 and 1974, and later in the decade, as well. There were long gasoline lines throughout the nation.

Neither the executive nor the legislative branches seemed really prepared at that time organizationally or procedurally to deal effectively with the crisis.

To many people, there seemed to be an absence of coherence or coordination in energy policy-making. The House of Representatives considered a number structural approaches to the energy issue, and in 1973 and 1974 the Bolling Committee on Committee Reorganization proposed an Energy and Environment Committee, an idea that never really got off the ground.

In 1977, Speaker O'Neill created an ad hoc Select Energy Committee to coordinate committee action on President Carter's National Energy Plan. Three years later, in 1980, the House rejected a proposal to consolidate energy jurisdiction in a new Energy Committee.

Instead, the House renamed the Commerce Committee the Energy and Commerce Committee. The House opted not to consolidate energy jurisdiction in one committee, and energy jurisdiction to this day remains somewhat decentralized among many standing committees.

Needless to say, from your perspective, sir, as Energy Secretary, this subcommittee welcomes your thoughts on how the decentralization of energy jurisdiction in the House affected your work in energy policy formulation and implementation.

And certainly as you reflect on your experience as Energy Secretary, as well as your many other forms of public service, we would ask that you look at any parallels with today's concern on homeland security.

Like homeland security energy is an issue which certainly clearly affects national security, economic security and international security. Both produced a sense of crisis in the country. Both led to the creation of new Cabinet departments, and both are truly consequential issues that will certainly affect the Nation for decades. Yet on energy, the House chose not to overhaul its committee system, but to make incremental adjustments and employ other devices to address the issue.

On the issue of homeland security, a main question before this subcommittee is what options should it consider with respect to the committee structure. So we are delighted that you have agreed to be before us today, sir, and obviously look forward to hearing your thoughts about such issues as the interrelationships between the committee structure and the administrative structure and congressional oversight, the need or lack of need for, in your view, alterations in the committee system.

We have a second panel, a very distinguished panel, which we will introduce subsequently. And at this point, before I ask Dr. Schlesinger to proceed, let me turn to my distinguished ranking member, Louise Slaughter of New York, and ask her for any opening statement or comment.

Ms. SLAUGHTER. Thank you very much, Mr. Chairman.

I will be very brief, Mr. Schlesinger. It is a delight to see you. Certainly, if anybody knows what it is like to create a new agency, you do.

You have had a very significant career in Washington, working for both Republican and Democratic administrations. And I can't think of anybody who could help us talk about these complexities.

Welcome. We are happy to have you here.

Mr. DIAZ-BALART. Mr. Chairman of the full select committee.

Mr. COX. Thank you, Mr. Chairman.

And welcome Dr. Schlesinger.

Welcome to our additional witnesses.

I would like to thank you, Mr. Chairman, for convening this hearing and taking the lead on this important examination of the rules of the House as they relate to the issue of homeland security.

The recommendations that this subcommittee makes will become the recommendations of the full committee to the House of Representatives in fulfillment of our charter given by House resolution.

I am especially pleased to welcome Secretary Schlesinger. Many of us know him as a friend, colleague and an extraordinarily capable leader and public servant. I can think of no individual who has had such a profound on the development of key United States government agencies as Jim Schlesinger, who ably led the Department of Energy, the Central Intelligence Agency and the Department of Defense.

I am particularly eager to hear your thoughts, Mr. Secretary, on the challenge you faced in setting up the Department of Energy and on how you interacted with various congressional committees in the process.

Since the attacks of September 11, our nation has awakened to the global terrorist threat, which is why the Congress early this year established the Select Committee on Homeland Security and the Homeland Security Appropriations Subcommittee. It was to give focus to our previously diverse and disparate homeland security activities.

Today, Dr. Schlesinger and other witnesses will help us understand the challenges we face in Congress as DHS has organized.

The past is not always prologued, but we can always learn from the distinguished leaders who have gone before us. On the opening day of the 108th Congress, Speaker Hastert charged the select com-

mittee to be the eyes and ears of Congress itself as DHS has organized.

The Speaker noted that Congress itself needed to adapt to the largest reorganization of the executive branch in 50 years. This need to adapt and to integrate disparate functions is a permanent, not a temporary, requirement.

This Select Committee on Homeland Security already has demonstrated that if we are to succeed in the pursuit of the President's goal to make the American people safer, the critical coordination function with which our committee has been challenged must become a permanent condition for the way we do business.

A central recommendation of the recent report on homeland security from the Council on Foreign Relations is that the Select Committee on Homeland Security be made a permanent standing committee of the House of Representatives, with authority over all authorizing legislation for the department.

Currently, there is no other way to bring focus to the multiple homeland security activities within and beyond DHS in the Federal Government or across multiple committees and subcommittees of this Congress.

And I don't need to remind anyone here that there are 88 committees and subcommittees of the House and the Senate that claim jurisdiction.

In the House alone, 13 standing committees and 38 subcommittees claim a piece of the DHS pie. This is simply too many. It is not going to work.

We need to move beyond jurisdictional turf and partisan politics to establish a central point for substantive jurisdiction over DHS. Without it, we will have continuing problems with oversight, legislation and authorization for the department.

Today's hearing I hope will provide insight for those of us who are committed to this objective.

Finally, the Homeland Security Act states that each house of Congress should review its committee structures in light of the reorganization of responsibilities within the executive branch.

So that is the purpose for your testimony today, and I look forward to hearing from our witnesses and their thoughts about how the House's efforts to evaluate committee structure compare with those of the Senate.

I thank all of our witnesses for being with us.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER COX

Good morning. I would like to thank the subcommittee chairman and ranking member for taking the lead on this important examination of the rules of the House as they relate to the issue of Homeland security. The recommendations of this subcommittee will help to determine the future of this Committee and how Congress, as a whole, carries out its responsibilities for homeland security.

I am especially pleased to welcome Secretary Schlesinger. Many of us know him as a friend, colleague, and an extraordinarily capable leader and public servant. I can think of no individual who has had such a profound impact on the development of key United States government agencies as has Jim Schlesinger, who ably led the Department of Energy, the Central Intelligence Agency, and the Department of Defense. I am particularly eager to hear your thoughts, Mr. Secretary, on the challenges you faced in setting up a new agency, the Department of Energy, and on how you interacted with various Congressional Committees in the process.

Since the attacks of September 11th, our nation has awakened to the global terrorist threat. No longer can we rely upon two oceans to protect us from attack. Driven by a new sense of vulnerability and increased awareness of terrorist threats, Congress acted to protect the American people. The President created the Department of Homeland Security (DHS) to enhance our capabilities to prevent terrorism, to protect our infrastructures, and to respond effectively to any attack that—despite our increased vigilance - might occur. The Congress early this year stood up the Select Committee on Homeland Security and the Homeland Security Appropriations Subcommittee to help focus our diverse and disparate homeland security activities on this critical counter-terrorist mission.

Today, we will hear from Secretary Schlesinger and other witnesses who can help us to understand the challenges we face in Congress as DHS is organized. The past is not always prologue, but surely we can always learn from past experiences and from the inspired leaders who have gone before us. On the opening day of the 108th Congress, Speaker Hastert charged the Select Committee to be the eyes and ears of Congress itself as DHS is organized. The Speaker noted, too, that Congress needed to adapt to the largest reorganization of the executive branch in 50 years. The need to adapt, to integrate disparate functions behind a new mission is a permanent, not a temporary, requirement. This Select Committee on Homeland Security already has demonstrated that, if we are to succeed on the pursuit of the President's goal to make the American people safer, the critical coordination function with which our Committee has been challenged must become a permanent condition for the way we do business. Currently, there is no other way to bring focus to the multiple homeland security activities within and beyond DHS in the Federal government or across multiple committees and subcommittees of the Congress.

With the creation of DHS, we brought together 22 agencies and over 170,000 federal employees. Between both Houses of Congress, there are 88 separate panels, committees, and subcommittees that claim some jurisdictional authority over DHS. In the House alone, there are 13 standing committees and 38 subcommittees that claim a piece of the DHS pie. Of those 13, six have major claims to jurisdiction over DHS. This is still too many. Simply put, no servant can answer to so many different masters. Not only does the proliferation of committees lead to excessive committee assignments for the members, this "balkanization" of jurisdiction can only lead to a weakening of institutional expertise and memory. Imagine, too, the amount of time Secretary Ridge would spend testifying before six, let alone 88 separate panels or committees. When would he possibly have time to address his responsibilities as head of DHS?

As I understand it, during consideration of the creation of the Department of Energy, there were 83 separate panels or committees that dealt with energy matters. I am eager to hear from Secretary Schlesinger on how he managed this challenge in his day.

As members of this House, we must fulfill our Constitutional mandate as a coequal branch of government. We must speak with one voice, not 88 or 13 or six. Countless experts have warned us that another terrorist attack is a matter of "when," and not "if." When that time comes, the American people will want to know what concrete steps we took after September 11 to prevent terrorism, to protect our infrastructure and to enhance our response to any possible terrorist attack. Congress needs to be answering this question every day in the work we are doing to exercise responsible oversight over the Department of Homeland Security and otherwise to strengthen the broader homeland security mission.

We need to move beyond jurisdictional turf and partisan politics to establish a central point for substantive jurisdiction over DHS. Without it, we will have continuing problems with oversight, legislation, and authorization for the Department. Today's hearing will provide insight for those of us who are committed to this objective.

Finally, the Homeland Security Act states that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch. I hope to hear from our witnesses on their thoughts about how the House's efforts to evaluate committee structure compares with those of the Senate.

I thank all our witnesses for being with us and look forward to your testimony.

Mr. DIAZ-BALART. Thank you, Mr. Chairman.

At this time, I would like to recognize the distinguished ranking member of the full committee who is also with us this morning, Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman.

Welcome, Dr. Schlesinger.

We appreciate you being here and assisting us in our task this morning.

I think during the testimony today, as well as other hearings that have been held by our subcommittee we hear a great deal of discussion about the many technical procedural issues such as jurisdiction and referrals and reorganizations.

But I think the work of this subcommittee and this committee as a whole boils down to one essential question and that is: Does the Congress take the matter of homeland security seriously?

If the answer is yes, and I sincerely expect that it is, then many of the other answers to the questions before this subcommittee become apparent.

First, I think the Select Committee should be made a permanent committee.

Second, I think this committee should have, at a minimum, legislative jurisdiction over all matters pertaining to the Department of Homeland Security.

And third, the committee should have oversight jurisdiction over the entire Federal Government's approach to homeland security matters.

In spite of some grumbling about jurisdictional turf, it is undeniable that this committee to date is making an important contribution to both oversight of the Homeland Security Department and homeland security in general.

To date, our critique of the new department has been both probing and bipartisan.

The Project BioShield legislation that we marked up last month is a perfect example of the work of this committee.

Recognizing the importance of that issue, Chairman Cox arranged for numerous discussions and briefings with administration officials. We held four hearings. We requested a classified briefing on the bioterror threat, and we reported out a comprehensive substitute amendment.

While other House committees contributed their particular expertises, this committee thoroughly examined the Department of Homeland Security's capacity to fulfill its duties under that legislation. And we seriously explored the issue of whether the BioShield legislation is a sufficient response to the bioterror threat.

Furthermore, if you take homeland security seriously, you cannot believe the oversight of this mammoth department can properly be conducted by dozens of House committees and subcommittees of varying jurisdictions.

The Select Committee is the single most appropriate authorizing committee in the House to oversee the department as a whole and focus on departmental management issues.

Without a single committee dedicated to oversight, important issues will not get the attention they deserve.

Homeland security is a full-time job, it requires a full-time committee.

Does this mean that the Homeland Security Committee would take over all responsibility for any matter that touches on homeland security and usurp the traditional functions of other committees?

I think not. It would be inappropriate to think about considering bioterrorism legislation without the input of the Energy and Commerce Committee, or rail security legislation without the input of Transportation and Infrastructure Committee. Homeland security is such a multidimensional topic that it lends itself to shared jurisdiction.

It is the task of this particular subcommittee to begin sorting out those details and to come out with a concrete proposal to present to the House.

And Dr. Schlesinger, we appreciate your presence here today to assist in that very, very difficult task.

Thank you, Mr. Chairman.

Mr. DIAZ-BALART. Thank you, Mr. Ranking Member of the Full Select Committee.

At this time I would like to recognize the chairman of the House Rules Committee, Mr. Dreier.

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

Let me say at the outset, I am particularly pleased, we could almost have a quorum of the Rules Committee here in this gathering with Mr. Linder and Chairman Diaz-Balart and Ms. Slaughter, who are here. In fact, I guess there are more Rules Committee members here than there are members of committee. Well, it is about even now, I see.

But let me just say that this is a very, very important issue. As I walked into the room and looked at my friend, Jim Schlesinger, I was reminded that when I was elected in 1980 with Ronald Reagan, the first piece of legislation that I introduced was a bill calling for the elimination of the Departments of Energy and Education. And I have got to say that we, obviously, did not succeed in doing those.

You recall that those were among the priorities that Ronald Reagan set forward in his campaign back in 1980. And we are in a much different world today, and the idea of the elimination of Cabinet-level agencies does not have a lot of appeal.

And one of the main reasons is that we have tremendous needs that must be addressed.

And we have seen these decisions made, the United States Congress established this new Cabinet-level agency, the Department of Homeland Security. But to have the input from Secretary Schlesinger as well as the other witnesses on this issue of ensuring that the United States Congress does it right in looking at oversight, using, quite frankly, the last model that we have, which was the establishment of the Department of Energy as an example of how we should effectively proceed with that oversight is a very important, a very, very serious matter.

And that frankly is the reason that under Mr. Cox's leadership we established a subcommittee of the Select Committee on Homeland Security specifically charged with looking at these jurisdictional questions.

And so I want to express my appreciation to all who have been involved in this. And I, quite frankly, believe that from an institutional perspective this is probably the most important thing that we will do as we look at the challenge of the multifarious committees that have been involved in this issue.

And so I am going to begin by expressing my apologies because I am going to have to leave. But I assure you that I am going to be looking very, very closely at the testimony of al the witnesses.

And I personally thank you, Jim, very much for taking the time and effort to be here. And we thank you for your very dedicated work and service to the United States of America.

Mr. DIAZ-BALART. Thank you, Mr. Dreier.

Mr. Thompson?

Mr. THOMPSON. Mr. Chairman, I will defer comment until later.

Mr. DIAZ-BALART. Ms. Dunn?

Ms. DUNN. I am so pleased you are here, Dr. Schlesinger. I have read your testimony, and comes from a set of experiences that span decades. And I think we will gain a lot today from hearing what you have to say.

I, too, have a conflict. The Ways and Means Committee is having a markup today, and I am going to have to back and forth.

I want to thank you for the opportunity, Mr. Chairman, to make a few remarks this morning.

We are here today continuing to investigate how this group, as an oversight committee, can most effectively and efficiently serve our constituents.

The creation of the Department of Homeland Security is an unprecedented undertaking. It is hard enough to oversee the coordination of one Federal agency, let alone 22 Federal agencies, as you stated, all with different cultures and different perspectives and different sets of jurisdiction, with their own missions, their own procedures.

Add to this the competition for oversight, whether it is overfunding or operations, and the result is major jurisdictional battles among congressional leaders.

We are involved in the most significant jurisdictional reform in the House since the creation of the Department of Energy in the 1970's, of which you are well aware, and today we have the opportunity to hear from the first Secretary of Energy and glean important information from the lessons learned through that experience.

Our job through this process is to make sure that inefficiencies and duplications are limited, if not nonexistent. The department will only be successful if it is empowered to truly coordinate. This means Secretary Ridge should not constantly be faced with competing and contradictory guidance.

In my view, it makes the most sense that a department the size of Homeland Security will most efficiently carry out its mandate only if Congress presents a truly unified message about the vision we have for the department, the department charged with carrying out the most honorable mission of ensuring the safety of the American public.

Thank you, Mr. Chairman.

Mr. DIAZ-BALART. Thank you. Thank you very much.

Ms. McCarthy?

Ms. MCCARTHY. Mr. Chairman, I thank you for calling this hearing today. I thank Secretary Schlesinger and all of our experts for giving of their time and sharing their wisdom.

I want to yield back my time in deference to their limited time so that we might proceed.

Mr. DIAZ-BALART. Thank you very much.

Mr. LINDER? Thank you very much.

Dr. Schlesinger, thank you very much for your presence, and we look forward to your testimony.

STATEMENT OF HONORABLE JAMES SCHLESINGER, CHAIRMAN, MITRE CORPORATION

Mr. SCHLESINGER. Thank you, Mr. Chairman. And thank you, members of the committee, Chairman Cox.

I don't know how best to proceed. I can go through my written testimony. It may be that you prefer that I just go through it selectively.

Mr. DIAZ-BALART. As you prefer.

Mr. SCHLESINGER. Okay. Let me make some introductory comments, then, in response to the earlier comments by members of the committee, because they have laid out the problem from an intimate knowledge of the House of Representatives, indeed of the Congress as a whole. I cannot improve on what Chairman Cox has said or Mr. Turner has said or what Congresswoman Dunn has said. You well know what the problem is.

Let me cast my net widely. Go back to 1947 and the creation of the Department of Defense. That was easy, congressionally. You put together two committees. You put together the Committee on the Navy and the Committee on the Department of Army and, with the National Security Act, you created a Department of Air Force within the new Department of Defense. That was just a few committees, and you combined them to create the Armed Services Committee. That was easy.

It was not easy on the other side of the river. If one talks about cultural differences, one has really got to understand putting the United States Navy together with the United States Army, and then throwing in a new Department of the Air Force, was an uphill fight. Indeed it took, in a sense, 20 years, indeed, going down to Goldwater-Nichols before that department settled down. But up here on the Hill it was relatively easy.

It was more difficult with the Department of Energy, in that we brought in a larger number of components. But once again, it was relatively easy because most of the money came from what had been the Atomic Energy Commission. We took over the personnel system of the Atomic Energy Commission, we took over the budgetary system, the acquisition system, from the Atomic Energy Commission.

This time you are gathering together many more components, much more equal in size, and in a sense with a greater historical tradition.

Now, up here on the Hill it is immensely more difficult because you now have 88 committees with a piece of the action, and it will be a burden for the incoming department unless you simplify its obligations to the Congress.

It is not only a question of dealing with 88 committees that have some degree of jurisdiction. Those 88 committees have staffs, those staffs like individual briefings, they don't like to put together the briefings for four or five committees.

As a result, you are absorbing the time, unnecessarily absorbing the time, of people in the new department. You have talked in your introductory comments about jurisdictional turf.

There is no question that that is the problem, and you have got to face it. Otherwise, you will burden this new department with more weight than it should have.

Well, let me mention two other things. First, Osama bin Laden. Osama bin Laden came out of the war against the Soviet Union, and he was convinced that his forces had defeated the Soviet Union.

There were some other contributing factors. But not in his mind. In fact, when Saddam Hussein invaded Kuwait in 1990, Osama said, Keep these infidel forces out, he told the Saudi government. I and my troops from Afghanistan will liberate Kuwait.

A high official of the Saudi government at that point burst out laughing, which did not endear the Saudi government to Osama.

But what he has said more recently, since he formed Al Qaida, is that—the people will look at the strong horse and the weak horse, and they will naturally gravitate to the strong horse.

They will do so naturally, and he assumed that the United States of America was a weak horse, based upon our withdrawal from Lebanon, based upon our withdrawal from Somalia, based upon some faltering efforts in Haiti, based upon our failure to support the Iranian government in 1979, and so on.

I think what he subsequently discovered was that the United States was not that weak horse. Between the events in Afghanistan and the events in Iraq, we have persuaded not only Osama but many of his followers that this country is no pushover, that the United States is the most powerful country in the world.

I mention this because we are a democracy. We have a constitutional government, we have a Congress, we must adapt to demonstrate that not only in terms of military power, but in terms of our ability to organize ourselves to respond to a threat effectively within the framework of the Constitution that we are not a weak horse.

That, ladies and gentlemen, is your responsibility, facing up to this question of jurisdictional turf. Of course, you will only deal with half of the problem: There is also the Senate, the Senate, as you know, is a rule unto itself.

Second, going back to the chairman's introductory comments, Speaker O'Neill in 1977 established a Select Committee. The Senate did nothing like that. As a result, jurisdiction stayed with each of the original standing committees, and that led to a very slow response in the Senate to the then-President's requests.

As a result, we had a delay of 18 months before we passed the components of the National Energy Act. That was not the responsibility of the House; that was the responsibility of the Senate.

You cannot solve the problems of the Senate, but you can solve, I think, the problems of the House.

You have 30 subcommittees and 13 standing committees of jurisdiction. I trust that you will be able to narrow down what the Department of Homeland Security must respond to on Capitol Hill.

I mentioned in my statement that when I started as a government official in 1969, government officials were called upon infre-

quently to testify on Capitol Hill. That has changed. When I became Secretary of Energy, I discovered that I was spending half my time up here on the Hill, dealing with one problem or another. And I suspect that Secretary Ridge and his principal aids are forced to do that as well. It would be desirable if you could cut back on the time that they are obligated to deal, not only with the committees, but with the staffs of the committees.

In the old days, the director of Central Intelligence was rarely called upon to testify. When I was director, it was the job of the oversight committee and the eyes of the chairman to keep the director up there at Langley, Virginia, and keep him off the Hill. That changed, once again, with the Watergate and its ramifications. And as a result, the director now spends a considerable time up here on Capitol Hill.

There are advantages and there are disadvantages in consolidation. But that decision is beyond us now. We have decided to consolidate in the Department of Homeland Security. And it behooves all of us to make that decision work. The decision is not to be reargued. I have not heard anyone reargue it.

But the underpinnings for making that new department effective are still under dispute. And I trust that this subcommittee and the full committee will be able to deal with some of the problems.

As I have indicated in my testimony, creating the Department of Energy was child's play compared to creating this new department simply because the bulk of the resources came from one previously existing agency. Some of the responsibilities, particularly in area of price control, were shed over the course of the next 3 years. And as a result, we have a compact, relatively compact, department.

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

I close my testimony with this observation: energy is something that is divisive. It is divisive in that there are consumers, there are producers, there are consuming states, there are producing states, and their interests are not in common.

Moreover, on the international scene, you cannot rely on foreign governments to cooperate fully, because of their disparate interests.

The advantage that we have here is that, unlike energy, homeland security is an issue that should unite us all. It even unites us with most countries abroad, at least with our traditional allies who will cooperate with is in attempting to reduce the terrorist threat.

That is different from the divisive tendencies that exist in energy. That is an advantage. But just as homeland security should unite us all, it also poses a upon the Congress the responsibility of helping that unification process.

Mr. Chairman, I think that those observations will substitute for my formal statement.

PREPARED STATEMENT OF THE HONORABLE JAMES SCHLESINGER

Mr. Chairman, Members of the Committee:

I thank the Committee for this opportunity to discuss the challenges of creating a new department, relevant to the Department of Homeland Security—as the House

of Representatives considers possible adjustments in the jurisdictions of its standing committees.

Let me start with this observation. In the 35 years since I first became a government official, relations between the Congress and executive agencies have changed markedly, indeed, one might say radically. In the earlier era, a senior official was called on far less frequently to testify. There would be a number of budget hearings—and from time to time testimony on some prominent issues. To an extent that may seem surprising today, agencies were left to manage themselves. Inquiries about specific issues tended to be on an informal basis—rather than testimony in public session. When I was Chairman of the Atomic Energy Commission, all issues were handled by the Joint Committee. When I became the Director of Central Intelligence, the director was rarely called upon to testify—at least up until the time of Watergate—and that was primarily in closed session. In the intervening years, that has changed significantly, as congressional committees have become more deeply involved in the management of executive agencies.

When we created the Department of Energy, in contrast to those older conditions, I found that half my time or more was spent on Capitol Hill testifying before various committees. Of course, the creation of the Department had involved the jurisdictions of several standing committees. In the circumstances of the day, with repeated energy events or "crises" like the shutdown of oil production in Iran, rising gasoline prices, the nuclear trauma at Three Mile Island, these committees legitimately wanted a piece of the action—*and testimony*. Moreover, in these last twenty-odd years, the continued proliferation of subcommittees has only made the problem worse.

Subsequent to the dramatic terrorist attack on the United States in September of 2001, the decision has been taken to consolidate a whole range of security-related activities into the new Department of Homeland Security. The longer-term benefits should be substantial. In particular, it should gradually reorient the cultures of the agencies coming together in the new department towards the post-911 mission of homeland security. But there are always costs of such consolidation, primarily short-term costs. There will be bureaucratic resistance. There are inevitable frictions associated with the movement of agencies. There is a clash of cultures that have to be adjudicated and, of course, the reconciliation of contrasting personnel and acquisition systems. It is not a certainty that the benefits of consolidation will outweigh the costs.

For the Department of Homeland Security, however, that decision is behind us. It is now the duty of all of us to do our best to make this crucial consolidation work effectively. It is a monumental challenge successfully to bring together these rather disparate elements—and efficiently combine them in pursuit of the common mission.

Here is the crucial point to bear in mind. A new government department does not spring, like Athena from the brow of Zeus, full blown and ready for action. Organizing the department is not instantaneous; it takes time. There are many organizational challenges and organizational gaps, especially in the early days of a new department. The Department of Homeland Security is, in a sense, a start-up organization. Contrary to the expectations of too many, there will be unavoidable growing pains—as the overall organization gradually comes together. No such thing as immediate and complete success should be expected. Inevitably, in so complicated an operation, there will be unresolved problems and some setbacks. Consequently, for those inclined to be critical, there will be all too many targets to shoot at. The critics can have a field day.

In the case of the Department of Homeland Security, there are all too many platforms for such criticism. At last count, there were 26 full committees with jurisdiction—and a total of 88 committees including subcommittees. As problems are uncovered or take time to be resolved, the opportunities for criticism will mount. Nonetheless, since the stake is the security of our homeland, the new department deserves support—and not unnecessary carping. To whatever extent the Congress can help by simplifying the overlapping committee structure that oversees the department, that would be a significant contribution.

By comparison, the creation of the Department of Energy was relatively child's play. The Department was far smaller. Most of the budget came from what had been the Atomic Energy Commission. The incorporated entities, by and large, had a common mission either producing energy or weapons. Additionally, there was the oversight function inherited from the Federal Energy Administration. Yet, all in all, it was a simpler task. To be sure, the department later ran into difficulties. Several secretaries, by direction or personal inclination, wanted to disestablish the department. One department head was dismissive of the national security functions of the department. All that contributed to later and unnecessary disorder.

Yet, at the time of the department's creation, there was well-nigh universal support. In the House, the Speaker, to facilitate the formation of a national energy policy, established a Select Committee, which brought together on strict time lines the actions of the standing committees with jurisdiction. That resulted in quick passage by the House of the several components of the National Energy Act. But the Senate, which had no similar mechanism, took a long time to decide on the components. When the Senate finally acted, and the results went to conference, the standing committees in the House were once again empowered to assert their jurisdictions.

Some of those jurisdictional problems will likely afflict the new Department of Homeland Security, though others will not. Nonetheless, I underscore that we all have a vast stake in the mission and the success of this new department. Any weaknesses in the department likely will prolong the activities of potential terrorists. So, I repeat: it is a monumental challenge to integrate the elements that are being brought together in a common mission. Anything that the House can do to help the new department, rather than provide additional perches from which the department can be criticized would serve the national interest.

Thank you for your attention. I shall be happy, Mr. Chairman, to answer any questions that you and members of the Committee may have.

Mr. DIAZ-BALART. Well, thank you so much, Dr. Schlesinger. I have found your remarks to be extremely interesting. And in combination with your written testimony, which I had the pleasure of reading before, very illustrative as well.

You emphasized, certainly made reference at various times, to your view that we should attempt to cut back on the time that certainly the secretary of the new department should have to dedicate to Capitol Hill. And the decision, obviously, is, as you referred to as well, has been made, and I agree with you, that nobody's looking back, that you consolidate as much as possible in the executive branch homeland security functions.

But Congress has not made the decision with regard to consolidation or lack of consolidation in the legislative branch with regard to the oversight functions.

Could you be, perhaps, more specific with regard to your personal preference regarding what we should do with this Committee on Homeland Security, perhaps based on your experience and the experience that you had in energy with the multiple referrals and the lack of consolidation that existed at that time, which it has continued, in the energy field?

Mr. SCHLESINGER. That is a complex question, Mr. Chairman. Let me say, first, when I talk about preserving the time of the Secretary, I did not mean that this should interfere with the proper oversight by the House or by the Senate of the activities of the new department. My problem is that there is so much duplication when a senior official comes to Capitol Hill and has to deal with five, six or eight committees. That does not help the House. That does not help the process.

You would get better results from that secretary or from his senior deputies if you consolidated. So the purpose is to economize on the time, rather than to eliminate the function.

And I would fervently hope that you could bring about that legislative miracle of making the Select Committee a standing committee, so that there is one committee that has a primary responsibility for the Department of Homeland Security. Then the department would know where to go, just as the Department of Defense now knows where to go: It can go to Armed Services.

This is much more complicated than was the Energy Department or the Defense Department, in that you have so many committees up here. I fervently hope that you could create that new standing

committee so that there is one central place that the new department can go.

There can be referrals, no doubt. There will continue to be referrals on specific aspects of the non-homeland security functions that have been brought into the new department.

Obviously, the Coast Guard now must focus more on homeland security and less on?I shouldn't say less?proportionately less on such things as water safety, rescue operations and the like.

The Customs agency must focus more on spotting those who would bring harmful matter into the country, rather than maximizing the take from the revenues due to the Untied States government.

So there must be a change in culture, and that would be helped if you could bring these functions together at one central point in the House.

Let me throw in one other observation. We must recognize that there will over time be problems that develop with this new department; inevitably, all departments have problems. And with so many committees and so many staff members, you create an opportunity for people chiding the department unnecessarily, for there to be those little sound-bit on news programs saying, The Department of Homeland Security has failed, and another 30 second burst.

Shrink that down, don't allow all these perches for criticism. I recognize the oversight responsibility must be fully carried out, but don't allow there to be too much captious criticism which results from everybody in the House having a piece of the action.

Mr. DIAZ-BALART. Thank you, Dr. Schlesinger, so much. Again, I found your testimony to be extremely interesting, as well as useful. And I think your talent and experience are real assets for the United States.

Ms. Slaughter?

Ms. SLAUGHTER. Thank you, Mr. Chairman.

Dr. Schlesinger, I really enjoyed that very much, too.

There are couple of questions that come to my mind quickly. One is that I know that when you set up the Department of Energy that FERC was not a part of it, nor was the Regulatory Commission. Why was that?

Mr. SCHLESINGER. The Nuclear Regulatory Commission?

Ms. SLAUGHTER. Yes. Did they balk at going in?

Mr. SCHLESINGER. Well, no, as a matter of fact, they did not balk at going in. The FERC was brought into the department,

However, at the insistence of the Senate, and particularly then-Chairman Ribicoff.

There was a decision that we would preserve within the Department of Energy the commission structure of the old Federal Power Commission. The Federal Power Commission was placed within the Department of Energy, renamed.

But what we originally proposed in the legislation was that the secretary would have rulemaking authority, that this would be published in the Federal Register, that there would be public comment. And then, as with other departments, a rule would go into force.

That was too much, at least for the Senate. The House agreed to that arrangement, if I recall correctly. And so we have within

the department the FERC, and the FERC is obliged to take into account the advice of the Secretary of Energy.

The Nuclear Regulatory Commission is a different matter. President Carter said to me bring the Nuclear Regulatory Commission into the department. I said, Mr. President, this department will have enough problems without having to wrestle the problems of nuclear regulation. We will leave it outside.

In retrospect, I think that was a wise decision, particularly after the Three Mile Island accident and all of the problems that that created for nuclear regulation.

But as of 2003, we might well do to the Nuclear Regulatory Commission what we did with the Federal Power Commission and bring it within the Department of Energy.

Ms. SLAUGHTER. Would you recommend that?

Mr. SCHLESINGER. Yes, as a matter of fact, I would. I have not thought much about it in 25 years, but?

Ms. SLAUGHTER. It seemed interesting to me because, as you know, the FBI and the CIA and other intelligence agencies are not going to be within the Department of Homeland Security. And it struck me there was a parallel there. And I think many of us are somewhat perplexed as to whether or not they should not be a part of Homeland Security. Can you give me a comment on that?

Mr. SCHLESINGER. I would comment as follows. The resistance of the CIA and the FBI is more formidable than was the resistance of the Federal Power Commission.

Ms. SLAUGHTER. I sure bet that is true.

Mr. SCHLESINGER. And you are going to be, as part of your responsibilities, it is necessary to see to it that the new department has the necessary resources, particularly the analytical resources, to deal with the information that comes in, both from law enforcement and from intelligence.

That has been slow to develop. This committee can help with that necessary ingredient. Intelligence is a peculiar function in that somewhere back there around 1980 there was a proposal that we create a Department of Intelligence, and take everything out of the Defense Department, out of the State Department, out of Energy Department, consolidate it. Secretaries don't like that.

[Laughter.]

Ms. SLAUGHTER. They don't like it up here when we do the others.

Mr. SCHLESINGER. They dislike it for the right reasons. They need to have some intelligence capability under their own command and control.

Ms. SLAUGHTER. Why is that? It seems to me the most efficient and best intelligence agency that you could have, regardless of where—you fragment it when you give several secretaries the opportunity to have their own intelligence, which they may, because they are zealous people, hold unto themselves.

Mr. SCHLESINGER. As a practical matter, if you look at any field commander, any what we used to call CINCs, but we now call combatant commanders, they will want to have their own internal intelligence committee. In fact, we have these national assets, the overhead reconnaissance that commanders previously ignored be-

cause those were national assets. They weren't under their direct control. We have changed that to some extent.

But in order to feel confident, a combatant commander must feel confident of the intelligence that he is getting. If it comes in from some outside agency, he is not going to feel comfortable with it.

The Secretary of State draws on the Central Intelligence Agency. But he has within the department his own intelligence in INR. So that he has some degree of confidence that people who are responsive to him, rather than to somebody else, are giving him what he, as the head of the agency, can regard as reliable information. And that is going to go on.

The basic point that I said when this proposal came up before the Congress in 1980 or 1981 commanders or secretaries they will squirrel away resources. They will call those assets something else other than an intelligence unit. But they will be functioning as an intelligence unit. You must recognize that these units will exist whether or not they are labeled as intelligence units, because the individual secretaries must have a feel that they get a clear picture of what the outside world is like, and they have people who can deal with the Central Intelligence Agency and other intelligence components.

The critical thing, I think, at this stage is for you to see to it that within the Department of Homeland Security there is the equivalent of INR in the Department of State, so that the Secretary's own subordinates can ask questions about information that is coming in from the outside. And at the moment, that has not been done sufficiently well.

Ms. SLAUGHTER. So sort of a competition model, basically.

Mr. SCHLESINGER. Yes, going back to your original question, Congresswoman Slaughter?

Ms. SLAUGHTER. Yes.

Mr. SCHLESINGER. To bring the CIA and the FBI within the Department of Homeland Security is biting off more than you can effectively swallow. If it would be unwise to bring the Nuclear Regulatory Commission in because of the psychological and political problems that nuclear energy endured, this would be even harder. Right now, you can afford to wait.

Ms. SLAUGHTER. They are much stronger than the U.S. Congress.

Mr. SCHLESINGER. Oh, you are unduly modest.

[Laughter.]

Ms. SLAUGHTER. Excuse me even to think that they might not be.

Mr. SCHLESINGER. I remember one of Mr. Nixon's senior advisers back around 1969 or 1970 observing, Well, these people on the Hill, they are kind of stupid, you can ignore them. And Bryce Harlow, who was then his adviser for congressional relations, reared back and said to this particular individual, You can say whatever you want to about the people on the Hill, but remember that the people on the Hill have the power. And that if you ignore them, they will strike back and they can bring down an administration.

And I want to say that that was one of the great unheralded predictions in history or commentary.

Ms. SLAUGHTER. Thank you, Mr. Schlesinger, it has been fascinating. Thank you very much.

Mr. DIAZ-BALART. It has been fascinating.

Ms. Dunn?

Ms. DUNN. Thank you, Mr. Chairman.

I am pleased to listen to your testimony and hear you say that you think one committee would be more efficient and it would certainly cut down on the time that folks have to—advisers like you and folks like Secretary Ridge have to spend testifying on the Hill so that they could spend more time on organizing the department and getting done what needs to be done.

I might add to that, though, I think one standing committee could be very important from another point of view, and that is the point of view of focus on the problem. So that is probably more operational. And I think what we have been doing in the months since we have organized our select committee has been to bring focus to the problem. Not just in the trips that we have taken to investigate areas like ports, but also in analyzing the credibility and the effectiveness of people who have been selected to head the Department of Homeland Security at different levels. And I think we have been successful in ferreting out some weakness, and therefore assisting Secretary Ridge with what he has to do.

In the testimony, one of the people who is going to be speaking to us today, the comment was made something like so often reform is just the codifying of the status quo. And I guess my question to you, because you have answered most of my questions already, do you think we have time to put this whole thing together?

I mean, it is not as if this were a long time in coming, as the energy crisis was. I mean, this happened starting on 9/11 and we had to respond. And we have 1 1/2 years before we move from a select committee to a standing committee.

You mentioned the whole issue of growing pains. And we have already witnessed jurisdictional problems, which are to be expected. But you say that the other reforms were relatively easy. Do you think in the time we have left we can pull it together? And if so, do you have any thoughts for this subcommittee to make those growing pains a little bit easier?

Mr. SCHLESINGER. Well, Congress can, of course, make those growing pains much easier if it eases the burden of dealing with oversight on the Hill. Not proper oversight, but duplicative oversight.

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

So you used the proper expression when you said ″focus.″

Do we have time? Well, we must strive to make the transition as quickly as we possibly can, and that is the responsibility of all of us. We are not going to instantly transform these agencies into an integrated whole.

But we must move quickly, because any gaps that we have are going to be exploited by a world of terrorists that is going to be around for a long time.

We are going to take some blows ourselves here in the continental United States. We want to move as quickly as we can to minimize that, and to be able to respond when such events take place.

Mr. DIAZ-BALART. Thank you.

Mr. Thompson?

Mr. THOMPSON. Thank you, Mr. Chairman.

Welcome, Mr. Secretary. And I might add, your testimony has been very good. Some of us agree with you that there is a need for this committee to be more than select, but we are challenged by the issue of jurisdiction and whether or not some of the will to release jurisdiction will be forthcoming. I look forward to our chairman's leadership in making some of those things happen.

Just for the record, can you more or less repeat the danger of this committee not becoming permanent for the sake of homeland security and this country?

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

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

Mr. THOMPSON. Well said.

I yield back the balance of my time.

Mr. DIAZ-BALART. Mr. Linder?

Mr. LINDER. Dr. Schlesinger, welcome.

Mr. SCHLESINGER. Thank you.

Mr. LINDER. You said earlier on that putting the intelligence agencies under one roof would be biting off more than you could chew.

Mr. SCHLESINGER. The intelligence agencies.

Mr. LINDER. Yes. Has the department bit off more than it can chew?

Mr. SCHLESINGER. I beg your pardon?

Mr. LINDER. Has the Homeland Department bit off more than it can chew?

Mr. SCHLESINGER. Only time will tell. Obviously, it is a time-consuming process to put together these elements. And there will be differences of opinion whether all of the elements that went into this new department were essential for the department.

Going back to what Ms. Slaughter said earlier about the Nuclear Regulatory Commission, in logic that might belong in the Department of Energy, but the costs, the internal costs, of bringing it in were deemed, at least at that time, to be too great to make that attempt.

There may have been elements that have been included in the department that in retrospect it would have been wise not to include.

But in the overall, we have made the decision to bring these elements together. We need to bring these elements to focus on the problem of homeland security. And since the decision is behind us, let us all work together to achieve that outcome.

Mr. LINDER. Don't we always at the Federal level tend to overreact?

Mr. SCHLESINGER. Well—

Mr. LINDER. For example, does the Homeland Security Department need to be in charge of agricultural imports?

Mr. SCHLESINGER. I am sorry?

Mr. LINDER. Does the Homeland Security Department need to be in charge of agricultural imports?

Mr. SCHLESINGER. I am not sufficiently familiar with those issues. Of course, you have the various agricultural infections. It has long been ruminated that one might use biological weapons in order to destroy the crops of country X or country Y. Here the country that one might worry about, whether it is boll weevil or some biological agent that would go after our wheat crops or go after the importation of meat.

I don't know. That may be one of the marginal elements, Mr. Linder. But once again, we have made that decision, and let's make it work.

Mr. LINDER. It seems to me that this department could be organized on a continuum from one end to be nothing but an intelligence organization to inform local governments to the other end have a national police force. We are trying to find a middle ground here somewhere. If you were going to pick out a mission with the primary focus of the Department of the Homeland Security, how would you define that?

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

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

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

Mr. LINDER. Such as FEMA has been doing for years?

Mr. SCHLESINGER. It is not only FEMA. The Department of Defense has worried this problem continuously, because FEMA doesn't have the resources to deal with a major attack on the United States; only the Department of Defense has those resources. And thus the Defense Threat Reduction Agency has worried these problems and has war-gamed these problems. If you war-game, you will never know what you are going to encounter, but you will be

somewhat better prepared to deal with those events if you have had such war games.

What we have here is a problem for the Department of Defense being handed this responsibility, because of the posse comitatus statute and the desire of the department to avoid as far as possible seeming to interfere with local police forces and the like.

The new department will organize not only the warnings to those local elements, but have a structure in place that can quickly respond and to ameliorate the consequences of an attack, and I don't think that FEMA could have done it.

As you may know, I was on the so-called Hart-Rudman Commission, which recommended that we create a Department of Homeland Security based upon FEMA.

What we have now legislatively is much larger than what was recommended by the Hart-Rudman Commission. So your question goes to the heart of the issue—no pun—goes to the heart of the issue of whether or not all of these elements needed to be brought in or needed to be brought in initially. And I cannot answer that. I think that it is now our responsibility to make it work.

And it is the responsibility of the department to convince you and other members of the Congress, as well as the broad public, that indeed the creation of this department was a major asset for the United States government. And only time will tell.

Mr. LINDER. Have you ever seen the schematic of the management and leadership of the Department of Homeland Security?

Mr. SCHLESINGER. Yes. I think I have seen that. It rivals that of the Department of Defense.

Mr. LINDER. Thank you very much.

Mr. DIAZ-BALART. Thank you, Mr. Linder.

Recognizing Mr. Meek.

We are not using the 5-minute clock. But I would ask the members to try to voluntarily keep themselves as though we would be using it.

Mr. Meek.

Mr. MEEK. Any reason why you decided to say that when I came into the room?

[Laughter.]

I am not long-winded, Mr. Chairman.

Mr. DIAZ-BALART. No, no, no. It had nothing to do with you.

Mr. MEEK. Thank you, Mr. Secretary. I am glad you are here.

You have a great deal of experiencing in dealing with this government. And I am not going to say that we are at crisis point right now in the Congress. I think we are just trying to figure out how we are going to function from this point on.

I think the American people are expecting some level of focus by the Congress. I say that because I know that you were around during the energy field crisis. The President had to respond to that in the Congress. I know that two administrations prior to his administration saw that this was important and it needed direction and focus not only by the Congress, but by the executive branch.

As we start to wrestle amongst ourselves in our own locker room on whose in charge or whose not in charge, the last time this rules subcommittee met, we had another panel. And I shared with them that everyone that sits on the Homeland Security Committee is

going to be held directly responsible for any attacks on the homeland. And the American people want to make sure that there are members of the Congress that have not only been briefed, but educated on the issues of protecting the homeland.

Now we can get into all kinds of metaphors and personalities. Many say a war against terrorism. I say an effort against terrorism because in every war, folks feel that on both sides they need to do things to keep up the status quo of the war.

Share we me the importance of protecting the homeland, above it all. Let's leave the Congress for a minute. But why it is important—I know you have said it 10 times over that it would be good for it to happen—why it is important for the protection and sovereignty even of our country to be able to have this standing committee. Because if we don't have a standing committee for the largest agency in the Federal Government, I just don't see a bright future focusing here. And I don't see a future of a direction to that department from a committee that should be providing that direction.

Mr. SCHLESINGER. If we have major terrorist acts continued, possibly frequent terrorist attacks on the United States, it will begin to change the nature of our system. It will change the nature of the body politic. We want to preserve the body politic as it now exists, for the most part.

In World War II, General Marshall would come up here to Capitol Hill. And anyone who wanted to hear how the war was going, he would meet with people in closed sessions in just an informal discussion of what was going on in the world, so that members of Congress could feel that they were well informed with regard to the strategies and hopes of the government.

It is also true that in that period that power was much more centralized, particularly here in the House. When Sam Rayburn was speaker of the House of Representatives, he had a great deal of authority and could push through things.

In the wake of the Watergate crisis, or to some extent the disenchantments of the Vietnam War, there was a democratization of the Congress. There are advantages in that, but one of the costs of that is that we have seen a dispersion of power.

We now face a different kind of crisis. It is not a question of responding to Pearl Harbor, and 4 years later accepting the surrender of Japan in Tokyo Bay.

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

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

Mr. MEEK. Mr. Chairman, just one more second.

Mr. Secretary, right now our structure, we have chairpersons that are serving on this committee. We have ranking members that are serving on this committees of jurisdictions historically. When you think of a set up a standing committee, is that the formula to use to give the kind of input by other committees who serve on this committee, substantial members, ranking members, chairpersons, to serve on such a makeup of a standing Homeland Security Committee?

Mr. SCHLESINGER. I have not thought through the way of implementing this on Capitol Hill. It may be that in the jurisdictional turf matter that the creation of a standing committee that would exist, as with other legislation with a sun-set law, might be the way to proceed. You have to entice, I think, sufficient support from powerful members of the House to allow the creation of this new standing committee.

Part of that enticement would be their participating on this standing committee that might have a sun-set provision 5 years out or 6 years out, during which we hope to essentially tear Al Qaida apart. We are doing a fair job of that now, but there will be more elements out there later on.

And, yes, I think you have got to, if I were to speculate, if the leaders on the Democratic and the Republican side, speaker and the Democratic leader, were to estimate that they have the support of enough individuals in the House so that they can push through a standing committee, then the time has come to have a conversation with the chairmen of those standing committees and say, We are going to put this through. We have the votes.

Now, would you like to be a participant? Or would you like to be an obstructionist? Because we have the votes, we have decided that this is in the national interest and the national interest is foremost, and jurisdictional questions must take a back seat to that. We need your help, but we will succeed without your help.

Mr. DIAZ-BALART. Dr. Schlesinger, I know you said you had to leave at 11:45. I was wondering if you had enough time for just a question from the chairman and the ranking member of the full committee. Mr. Sessions has been kind enough to waive his question.

Mr. CHAIRMAN?

Mr. COX. Well, I note that it is after 11:45, and I don't want to keep you from your next appointment. I do want to thank you for your very pointed testimony. And I just wanted to draw attention to one part of your prepared testimony, which you also alluded to in your oral presentation. Contrasted the support that the creation of the Department of Energy had from the speaker of the House who created a select committee, who moved along the work of the standing committees in the House, did it on a strict time schedule and so on, with not only the disorganized process in the Senate that ultimately slowed things down, but also some intra-executive branch sniping, including the head of one department who derided the national security functions of the Department of Energy.

And you pointed out that that ultimately contributed to, later, what you termed accurately, I am sure, unnecessary disorder.

Now, fast forward to where we are today. You have stated that the purpose of consolidating oversight and legislative authority in

the House of Representatives and the Senate is to ensure that we succeed and that the department succeeds in its mission and ″any weaknesses in the department likely will prolong the activities of potential terrorists.″

So I take it that I am correctly inferring from your testimony that you are saying that there is a direct connection between what we are doing here and whether we win the war on terrorism.

Mr. SCHLESINGER. It may be that there is a direct connection between that and whether we win the war on terrorism. But we will be more effective and quicker in winning such a war if we are united in our response to potential acts of terrorism.

Mr. COX. So I should have stated not whether, because our ultimate victory we are confident of, it is just a question of whether we do it sooner than later.

Mr. SCHLESINGER. I hope that—as a response to that prior question, one must recognize that the capacity of the populace to accept repeated acts of terrorism could bring about a change in the composition of this society, a change in governance. And if we want to preserve the kind of democracy that we have, we must strive to be as effective as possible and to give as limited space to those who are hostile to us to successfully perform those acts of terrorism.

Mr. COX. Very well said.

And I yield back, Mr. Chairman.

Mr. DIAZ-BALART. Thank you.

Mr. Turner?

Mr. TURNER. Thank you, Mr. Chairman.

And thanks, Dr. Schlesinger, appreciate your insights today.

You know, when I evaluate where we are, and I know when we are trying to work through these jurisdictional turf battles, it seems to me that though there may be some who would prefer that we not have a committee, because it takes from the jurisdiction of others, it seems that the practical politics of this is just, as we created the Department of Homeland Security—and I concur with you, irrespective of our past views on what that department should look like—we all have a responsibility now to the American people to make it work.

And nobody would ever dare suggest that we now undo it. I think in the same vein, it would be very surprising to think those in charge in the Congress, having created a Select Committee on Homeland Security, would declare that we are going to abolish it. And I would be interested in your thoughts on the politics of that.

So if we make the assumption that we are going to have some kind of committee, it seems that the only outcome that could be worse than the abolishment of the committee would be to have created one without sufficient power to do the job.

And there are two issues that I think I would like to ask you to give us your insight on. First of all, it seems to me that it is important for any committee of the Congress to have identical and overlapping oversight jurisdiction and legislative jurisdiction, which this committee currently does not have. Because, in exercising your oversight responsibility, if you discover something that needs to be changed and you do not have the legislative authority to change it, it seems to be a certainly a useless undertaking to delve into it in the first place.

The second thing that comes to my mind that I would be interested in your comments on is, that if a department is accountable to everyone, it seems that it is likely to be accountable to no one. And as we have begun our task on this committee, I have seen examples of how our new department, in many ways, appears to be searching for who it really is supposed to be listening to.

And so it seems to be fundamental to the appropriate and effective exercise of oversight to be sure that a department head, and his or her underlings, understand clearly who they are accountable to.

Mr. SCHLESINGER. I cannot improve on that statement. I would modify it. It is not useless if oversight and legislative power or separated. But it is most useful if they are joined together. Having oversight responsibility, you can point to certain things. You can arouse a concern in the general public and press—that may force legislative changes. But obviously, if you have the power within a committee dedicated to the Department of Homeland Security, that is better than separation of those two components.

second, you talked about what essentially was fragmentation. If the if the 88 committees of some jurisdiction in the Congress are dealing with the Department of Homeland Security, they cannot successfully achieve that common mission of protecting the homeland.

Thus, it will wind up that some committees, some committee members, some staffs will say to that Department of Homeland Security, Unless you do X, unless you give us this response, we are going to take it out on the department.

And you will have a fragmentation that will be pulling the department apart. It will be responding to the fragmentation that would continue to exist on Capitol Hill.

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

The executive branch will continue to fragment if the Hill remains fragmented.

You asked about politics, Mr. Turner? If something happens and that is seen to be a response to the continued fragmentation of authority on Capitol Hill, the politics will not be good for those who have blocked an appropriate response.

And I think that you can spell that out much more eloquently than I can.

Mr. TURNER. Thank you.

Mr. DIAZ-BALART. Thank you, Dr. Schlesinger. I think your testimony of frankness and clarity could not have been more interesting or useful, and we are very grateful to you for having been here this morning.

Mr. SCHLESINGER. Thank you, Mr. Chairman, thank you all for your kind attention.

Mr. DIAZ-BALART. Thank you. Our second panel today consists of three noted scholars and congressional practitioners who will share

their insight and observations about House committee jurisdiction and homeland security, and more generally the relationship between committee and executive branch organization.

We have with us this morning Dr. James Therber, who directs the Center for Congressional and Presidential Studies at the American University. Dr. Therber is not only a well-known congressional scholar, he was a former aide on Capitol Hill, he is the author of numerous books on Congress and American politics.

Don Wolfensberger also joins us today. Don is a 30-year veteran of the House of Representatives who rose to become the staff director of the Committee on Rules, and served the committee very ably, under the chairmanship of our dear late colleague Gerald Solomon of New York. Today, Mr. Wolfensberger is the director of the Congress Project at the Woodrow Wilson Center.

Professor David King is at the Kennedy School of Government at Harvard, is the author of an award-winning book entitled Turf Wars: How Congressional Committees Claim Jurisdiction. And to be sure, that is a topic that, obviously, interests us very much.

So I welcome our distinguished panelists, and would ask them to proceed in the order they wish at this time.

STATEMENT OF DR. JAMES THURBER, PROFESSOR AND DIRECTOR, CENTER FOR CONGRESSIONAL AND PRESIDENTIAL STUDIES, SCHOOL OF PUBLIC AFFAIRS, AMERICAN UNIVERSITY

Dr. THURBER. Shall I start, Mr. Chair?

Mr. DIAZ-BALART. Yes, sir.

Dr. THURBER. Thank you.

Thank you, Mr. Chairman and members of the subcommittee for this honor to testify before you on this important issue.

I especially am pleased to work here with Representative Slaughter. I have worked with her before.

And a co-author, Mr. Dreier. In one of my books, he has written a chapter on Internet in Congress. He did a fine job in that book.

I am here to not talk about the need of this committee. That is in my testimony, and I ask that my written testimony be put in the record. I think all of you have stated the need very clearly.

I am here to talk about the details. I think there should be a permanent committee on homeland security. And I would like to talk specifically about jurisdictional changes that I recommend.

second, some secondary oversight responsibilities of this committee and primary responsibility in other committees.

And third, methods for achieving the creation of a permanent committee on homeland security.

I do this, by the way, in the context of almost 30 years experience. But in particular, I worked for the Senate—it was called committee on committees—that reorganize the Energy and Environment Committees—in 1976. And I was the staff person to do that. So I will have some comments with respect to Mr. Schlesinger's comments on the difficulty of reorganizing Energy.

I think the Senate was fairly successful. The House was not. And I will give you some reasons why that was the case later.

I also would like to say that I have used this as an assignment for the last 5 years with my graduate seminar in the sense that

I have asked them to map policy systems, including counterterrorism systems. And so I have heard all kinds of cases for reorganization of the House and the Senate from my students.

Two of those students are in the audience right now, and they did a fine job of helping me with this.

But let us begin.

As you know, the reorganization of the House committee system has already begun. And it started with the creation of your select committee: but, more importantly, there has been restructuring of the Committee on Appropriations, the Armed Services Committee, the International Relations Committee, the Judiciary Committee and the Permanent Select Committee on Intelligence with respect to homeland security.

I know from my outside observation and discussing with former students who are staff members up here, that the appropriators would like you not to reorganize in the sense that it would be just fine to have the focus primarily in appropriations over this particular issue. That is somewhat of a joke. I don't think they would tell you that. But if you didn't organize, the power would certainly go for a central focus to the appropriators.

I think the next step for the Congress, though, is to consolidate jurisdictions and to clearly designate it in Rule 10, and I will get into that later, rather than through precedent. There should be some codification in Rule 10 for the jurisdiction, immediately, to get this select committee the power of oversight, as well as authorization.

I know that many influential members and their staffs chiefs of staff-are reported to be against creating the permanent Committee on Homeland Security. It was in the press last week. Because it would create this very large jurisdictional battle, and these jurisdictional battles have created unnecessary conflict, they think, in the past, from 1946 to the present. Now, there are examples of failure of doing this.

However, this is no time for the committee to shy away from the job of creating a permanent panel. It will reduce the risk of terrorism. I think the American people want this.

As just an aside, I think the first responders want it. My son-in-law is a detective in Seattle. And I was there last week. And he could not believe that the Congress had not reorganized itself yet. And I told him that there were 88 panels involved here.

And he, of course, is not a congressional scholar, and he is only one person, but I think the first responders would like to see Congress organized in a way so that there is a central focus over this issue.

I recommend that the permanent committee have the jurisdiction directly related to the agencies of DHS and generally to the mission of reducing the threat of homeland security. The jurisdictions of committees related to the major agencies in DHS should be transferred.

And it is in my written testimony, but let me remind you that you should have in this permanent committee jurisdiction from the Committee on Agriculture, the Animal and Plant Health Inspection Service, Plum Island Animal Disease Center.

I would also move jurisdiction from the Committee on Armed Services, the National Bioweapons Defense Analysis Center, the National Communication System Jurisdiction and the Committee on Energy and Commerce, the Strategic National Stockpile and the National Disaster Medical System.

From the Committee on Judiciary, the Secret Service, Immigration and Naturalization Service and also the Federal Law Enforcement Training Center, the Office of Domestic Preparedness, domestic emergency response teams, the National Infrastructure Center. And from the Committee on Science, the CBRN countermeasures programs, the Environmental Measures Laboratory, the Critical Infrastructure Assurance Office, Federal Computer Incident Response Center, the energy security and assurance program.

And from the Committee on Transportation, the infrastructure, Secret Service, the U.S. Coast Guard, the Federal Protectorate Service, the Transportation Security Administration and FEMA.

And from the Committee on Ways and Means, the Customs Service.

But this will not happen, in my opinion, unless you approach it the way Secretary Schlesinger had indicated in the answer to Mr. Turner, and I have it in my testimony. I think you need experienced members from the seven primary committees losing jurisdiction on this committee, where they have lost jurisdiction on this committee. In the Senate, that is what we did.

As I like to tell my students, we aggrandized the barons. What does that mean? We didn't take away from powerful people; we gave powerful people more power. And in this case, I would grandfather people for the new committee so you could keep your previous committee assignments and be on this new committee.

What does that do? It brings in knowledge, expertise, institutional history from those committees. And it automatically helps to coordinate with those committees.

The Budget Committee had, when it was created in 1974, a similar thing where they brought in people from Ways and Means and Appropriations and someone from leadership on the Budget Committee. And it was a way—some people said it was a way to weaken the committee. I felt it was a way to coordinate with the key committees that were related to the budget process. And this would be a similar thing.

Transition rules should be made to allow, then, members from these committees, in my opinion, to be on this new committee.

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

We talked about NRC before. I have done a lot of work with NRC. And there is a division there that deals with security. There should be some relationship to that. And the elements of the Drug

Enforcement Agency that deal with borders, and many parts of the Department of Energy.

There should be some kind of oversight and coordination relationship with those activities, in my opinion.

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

There is also the issue that was brought up by Mr. Linder, earlier as well, why in the world should we have certain aspects of the Coast Guard or the Agriculture Department in the jurisdiction, or even in DHS in the jurisdiction of this committee?

I would say that for the following jurisdictions, the committee of primary jurisdiction before DHS was created, I think, should have that jurisdiction, and you should have, you meaning the Permanent Select Committee, permanent committees should have an oversight relationship on these things.

For example, the safety, transportation, and maritime responsibilities of the Coast Guard, I think, they overlap with the Committee on Transportation Infrastructure; I think that they should stay there.

In terms of primary jurisdiction, the food safety responsibilities of the Animal and Plant Inspection Service, you could share jurisdiction there.

The promotion of trade, which was brought up before, could be shared with the Ways and Means Committee. This shared jurisdiction with primary and secondary responsibilities for the functions of the entities in DHS needs to be carefully defined and done in a prudent way.

Now, how do you do it? Well, I have given you one indication of that, and that is that you have, you bring people, as you have with the Select Committee, from other committees and beyond the committee.

Another way to do it, and I don't recommend it, but it is an alternative, is to create an ad hoc committee, continuing, though with oversight, as well as authorizing jurisdiction.

I think the way you do it is you transfer powerful people onto the committees from the committees of jurisdiction, and you change the rules in Rule 10.

I think that the American people, do not care where this is going to be handled, they just want it to be handled with efficiency, efficiently and in one place.

I think that you, with all due respect, must get beyond the laugh factor when Americans think that there are 88 committees and subcommittees up here dealing with homeland security.

That worries them. They are worried about homeland security and terrorism, and I think it should move prudently but rapidly to create a permanent select, a permanent Committee on Homeland Security.

PREPARED STATEMENT OF DR. JAMES A. THURBER

The views expressed in this statement are those of the author and should not be ascribed to the trustees, officers, or staff members of American University.

Thank you for inviting me to testify before your subcommittee on the issue of whether the House committee organization, procedures and structure are organized adequately to address policy and oversight issues associated with homeland security. In the aftermath of September 11th , the continuing dangerous security threats to the nation, and the historic reorganization of twenty-two agencies employing over 175,000 workers into the new Department of Homeland Security to deal with those threats, your evaluation of the effectiveness of the House committee system to meet the challenge of homeland security is a crucial priority. Periodic consolidation and modernization of the standing committee system is necessary and this is certainly one of those times. That task is critical and directly related to the security of America and is called for in the legislation creating the new Department of Homeland Security (DHS): "It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department," (Title XV, Subtitle A, Section 1503).

I hope my thirty years of academic and practical knowledge of the operations of the Congress and the jurisdictional battles in the committee system can provide useful background information and lessons from past congressional reorganization efforts. I am pleased to be asked to comment on how the House can be organized to more effectively handle issues of homeland security and the work with the new Department of Homeland Security.

Create a Permanent Committee on Homeland Security

As you know, the reorganization of the House committee system has already started with the creation of your Select Committee and the restructuring of the Committees on Appropriations, Armed Services, International Relations, Judiciary and the Permanent Select Committee on Intelligence to deal with jurisdictional matters related to homeland security. The next step in the process of improving the way Congress addresses issues of homeland security is to create a permanent standing committee in the House with its areas of jurisdiction over homeland security clearly designated in Rule X. I know that many influential House members and their chiefs of staff are reported to be against creating a permanent Committee on Homeland Security because it would create major jurisdictional battles. This is not the time for your committee to shy away from the job of creating a permanent committee that will help reduce the risk of terrorism.

Knowing full well the difficulty of committee jurisdictional change and taking into account the homeland security related reforms that have already occurred in the House, the focus of my testimony is on the need to create a permanent Committee on Homeland Security and the methods the House might consider in creating the new committee. I strongly recommend a permanent committee with clear primary jurisdiction over the Department of Homeland Security and the broader mission of keeping America safe from terrorism. This committee must take a vigorous lawmaking and oversight role in homeland security policy in order to be taken seriously by the executive branch, other House committees, and the American public. Americans need the assurance that Congress is protecting the nation from future terrorist attacks. Creating a single permanent committee is consistent with other congressional responses to horrible events in history.

I recommend the creation of a permanent Committee on Homeland Security with jurisdiction directly related to the agencies in DHS and generally to the mission of reducing the threat to homeland security. Jurisdiction of committees related to the major agencies in DHS should be transferred to the permanent committee, which include: Committee on Agriculture (Animal and Plant Health Inspection Service, Plum Island Animal Disease Center), Committee on Armed Services (National Bio-Weapons Defense Analysis Center, National Communications System), Committee on Energy and Commerce (Strategic National Stockpile and the National Disaster Medical System), Committee on the Judiciary (Secret Service, Immigration and Naturalization Service), Federal Law Enforcement Training Center, Office of Domestic Preparedness, Domestic Emergency Response Teams, National Infrastructure Center), Committee on Science (CBRN Countermeasures Programs, Environmental Measurements laboratory, Critical Infrastructure Assurance Office, Federal Computer Incident Response Center, Energy Security and Assurance Program), Committee on Transportation and Infrastructure (Secret Service, U.S. Coast Guard, Federal Protective Service, Transportation Security Administration, Federal Emergency Management Agency), and Committee on Ways and Means (Customs Service).

Experienced members (not necessarily the chairs) from the seven primary committees losing jurisdiction and other committees with related jurisdiction should form the basis of the membership of the Committee on Homeland Security. If the membership of the new committee were to come from these committees, it would possess

the informed power to act quickly and decisively when needed. "Grandfather" or transition rules should be made to allow the members of the new committee to hold the new assignment as well as their existing ones. This allows for better coordination among committees and an efficient transfer of institutional memory and expertise of homeland security issues from other committees.

The jurisdiction of the new committee should also take into account that most agencies dealing with homeland security are outside the DHS. These agencies include the new Northern Command, the National Guard, the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, the National Imagery and Mapping Agency, the Centers for Disease Control, and key elements of the Drug Enforcement Agency and the Department of Energy. Therefore, therefore the new committee will need to strengthen its coordination with other committees, such as Armed Services, Judiciary, and the Permanent Select Committee on Intelligence, in order to develop a comprehensive policy-making approach to homeland security and counter terrorism.

The committee should also carefully designate some overlapping jurisdiction with programs in DHS with other committees; for example, the safety and transportation maritime responsibilities of the Coast Guard could overlap with the Committee on Transportation and Infrastructure; the food safety responsibilities of Animal and Plant Inspection Service could share jurisdiction with the Committee on Agriculture; and the Customs Service's function of promotion of trade with the Committee on Ways and Means. Shared jurisdiction with primary and secondary responsibilities for the functions of the entities in DHS is necessary and prudent to make sure that the old and new missions of these programs work smoothly.

Reasons to Create a New Committee on Homeland Security

The ability of the House to write legislation, develop comprehensive policy in advance and in response to crisis, oversee the administration of laws, as well as represent the American people, organized groups, and state and local governments (including first responders to attacks), depends largely on the organization and management of the committee system. The House currently relies on a total of 13 standing committees (including Appropriations and the Permanent Select Committee on Intelligence) plus your committee and at least 38 subcommittees (see appendix for chart of committees) with jurisdiction over homeland security. Homeland Security Secretary Tom Ridge said of the turf question on the Hill: "I believe they'll work their way through that maze of committees and subcommittees, and end up providing the kind of leadership we need at the congressional level." This complex, competing and cumbersome jurisdictional juggernaut over homeland security generates dramatically different workloads, excessive competition among committees, scheduling conflicts, duplication of staff, and dissipation of technical expertise. The House committee system related to DHS and the mission of homeland security has too many standing authorizing committees with major jurisdiction over programs that have been transferred to DHS.

On opening day of the 108th Congress, Speaker-elect Hastert implicitly offered the most important reason for a new Committee on Homeland Security: "Members of this select committee (Select Committee on Homeland Security) 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 ears as this critical department is organized. ...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." The House created a select committee with no primary legislative or oversight jurisdiction relying on the will of the House leadership and the skill of its chair, Chris Cox, as well as the members of the committee to highlight the problems with DHS and homeland security, to get the department to implement its reforms and focus on new threats, and to educate the American public. The select committee does not have the formal power to bring a focus to all of the jurisdictional parts of the DHS, let alone the other aspects of homeland security in other departments. A permanent Committee on Homeland Security is the only way to effectively see whether DHS, and other homeland security programs, are doing their jobs of addressing the problems of terrorist threats.

Other important reasons for the creation of a permanent Committee on Homeland Security are that it would help Congress carry out the will of the American people to improve the protection of our homeland and it would protect the constitutional powers of Congress and our system of checks and balances with the executive branch. If the Congress wants to influence and direct homeland security policy and act as a co-equal partner with the executive branch, it needs to create a permanent committee on homeland security. This committee would also maintain coordination within the House and create a central point of contact in the House for the executive

branch. The committee could increase efficiency of dealing with homeland security crises and issues that will arise. It could help equalize the workloads of committees. It will ensure effective oversight of a crucial national priority and be the primary eyes and ears of the House over DHS as it struggles with a new culture and organization. The new committee could direct homeland security in a comprehensive and coordinated way, reducing uncertainty in committee jurisdictions and decision-making related to the mission of homeland security.

Methods of Establishing a Committee on Homeland Security

One way to create the legislative and oversight jurisdiction over homeland security is through different patterns of bill referral. The House rules stipulate that the Speaker must refer each bill, resolution, or other measure to a committee in accordance with the subject matter of the act and the jurisdictions of chamber panels (House Rule XII, Section 2). 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 and then to other committees. The Speaker has all the authority he needs to refer bills to the Select Committee on Homeland Security, thus establishing it as the primary committee of jurisdiction. However, the select committee is not permanent and does not currently have the authority to consolidate jurisdictions and legislate through its own actions.

Task forces, and ad hoc panels have been good temporary devices for dealing with major issues with multiple jurisdictions, illustrated by Speaker Tip O'Neill's creation of an ad hoc committee to help pass the Carter energy plan through the house on an expedited basis. The creation of a temporary committee for the expedited passage of legislation to create the Department of Homeland Security is another example. However, these mechanisms are not a good permanent solution to handle high-priority issues such as homeland security. If another terrorist attack occurs, Americans will want a single congressional committee tackling the problem. Congress did not have a series of temporary panels after the attack on Pearl Harbor and the American people do not expect it to react to this crisis in an ad hoc fashion either.

The best way to create a permanent Committee on Homeland Security is to formally shift jurisdiction from existing standing committees along the lines elaborated above through changes in House Rule X.

Concluding Comments on Committee Reform

In describing how difficult it is to reorganize jurisdictions in the House committee system in the 104th Congress, Representative Dreier said, "You would have thought I was threatening their wives...people would prefer to give me their first-born rather than give up a portion of their committee jurisdiction." Members are profoundly conscious of the electoral effects when the House rules and procedures are changed. Members invest heavily in their assigned committees. Congressional committee organization has a perceived impact on the likelihood of reelection. However, voters do not care about the jurisdictional powers of congressional committees; they care if their representative can solve the problems of homeland security or not. Members are astute political actors who understand the ramifications of changing the turf or jurisdiction of their committees and their ability to help constituents and get reelected, but the House must move beyond these worries. This committee is bound to meet with considerable resistance to any change in committee jurisdiction over homeland security—the greater the reform, the bigger the battle. Recommendations of major jurisdictional committee reforms will result in broadening the coalition of opponents, as we have seen with all House reorganization efforts since 1946. However, this committee should not be intimidated by the upcoming battle. It must move the House beyond policy deadlock, partisan bickering and turf protection on this important policy. Do not make homeland security a partisan issue in the 2004 elections. This is time for a bipartisan response to a real fear felt by every American. Create a permanent Committee on Homeland Security to deal with the terrorist threat to America.

Thank you, and good luck!

Mr. DIAZ-BALART. Thank you, thank you very much, Dr. Thurber. Mr. Wolfensberger?

STATEMENT OF MR. DONALD WOLFENSBERGER, DIRECTOR, CONGRESS PROJECT, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

Mr. WOLFENSBERGER. Thank you, Mr. Chairman, and members of the subcommittee. It is good to be back here in the House, which I still consider home, and to see so many familiar faces again.

I appreciate this opportunity to testify today on organizing the House for homeland security in the wake of the September 11 terrorist attacks. I will summarize my statement, and ask the full statement be put in the record.

Mr. DIAZ-BALART. Without objection, it will be.

Mr. WOLFENSBERGER. I especially want to commend, the bipartisan leadership, both in the last Congress and this Congress, for its flexibility, innovation, and commitment to addressing this issue early on.

Speaker Hastert and Mr. Gephardt in the last Congress actually put together, or were the creators of a task force on the Intelligence Committee on counter-terrorism and homeland security several months before September 11th in 2001. That was the Chambliss-Harman Task Force, and that was done in response to the Hart-Rudman Commission recommendation.

But then in the last Congress you had the small leadership Select Committee that was charged with coordinating the crafting of the legislation that put together the Homeland Security Department; and, in this Congress a quite different Select Committee, with a different mission, your 50-member Select Committee on Homeland Security, charged with really overseeing the early organization and operation of the new Department.

So there have been different ways of addressing this as you have moved along over the last 3 years. The central issue that confronts you now is where do you go structurally in the House, or, should there be a more permanent type of entity that should be put in place.

And there are two key questions that you have to ask yourselves. First, is the issue of homeland security important enough to warrant a separate committee focused exclusively on the policies, programs and problems of homeland security?

And secondly, if so, what is the best way to restructure the House committee system to ensure that this is done in the most effective manner?

Now, obviously there is a third question, which I do mention in my written testimony, and in your minds it may be an overriding question, and that might be one that to you obscures or negates the importance of the other two questions, and that is whether it is politically feasible to do this, given the turf sensitivities of various committee chairmen and members.

I would caution, however, against allowing this third question to get in the way of proceeding to go full bore on the first two questions, so let me just briefly address each of the three questions in the order in which I have posed them.

First, is a separate committee needed? In my opinion, the answer is an unequivocal yes. I think the threat of terrorism is going to be with us for a long time to come, and it is not just a passing phenomenon.

Second, I think the threat is so serious as to warrant a concentrated effort by both the executive and Congress to combat it. And that, in turn, requires having intensive and extensive coordination between and within the two branches, as well as with state and local units of government.

This level of coordination is not something that you can relegate to a subcommittee of an existing committee, let alone to dozens of existing committees and subcommittees having bits and pieces of jurisdiction.

Finally, this is something that will require a change in the bureaucratic culture and norms in the new executive branch components of the department, as well as a change in the political culture and norms here in the Congress.

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

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

Moving to the second question, as to how such a committee should be constituted, I think the answer is self-evident if you agree with the basic premises of my answer to the first question. This must be a permanent, standing committee, not a select committee. It should be a major committee for assignment purposes, if not an exclusive committee.

It must have primary legislative as well as oversight authority over the Homeland Security Department, its agencies, programs and activities. And it should also have secondary legislative and oversight jurisdiction over homeland security responsibilities lodged elsewhere in the government.

It should be tied closely to the leadership in coordinating its oversight activities with that of other committees, meaning that the oversight agendas adopted by the committees at the beginning of a Congress should be superintended by the bipartisan leadership of the House, as the rule now intends, but also on an ongoing basis as new areas for oversight arise during the course of the Congress.

Finally, to my third question. Is the creation of a new standing committee in homeland security politically feasible?

My answer is that winning approval of such a committee will be a very difficult, contentious, and perhaps even bloody, challenge, but that it is politically feasible because it is both good for the House and for the country.

Most worthwhile endeavors are not easy, but that does not mean that you turn your backs on them at the possibility of defeat or rejection.

Much has been made of past failed attempts in the House over jurisdictional reform, particularly the efforts by select committees in 1974 and 1980. The central reason for both failures then, we are told, was Turf with a capital T, and that stands for trouble.

Turf is still a major obstacle today in any proposed jurisdictional reorganization. But I think the times have changed since the

1970's, and the Energy and Homeland Security analogy is an imperfect analogy at best. First and foremost, terrorism is a more real and tangible threat to the American people than the threat of energy insecurity or dependence on foreign oil.

During the twin energy shocks of the 1970's, there was not strong public sentiment that they were presented with a life-and-death situation, let alone that a new energy department or energy committee would ameliorate the problem.

The terrorism attacks, on the other hand, literally hit home and changed our country and its people dramatically overnight. This is a very real and ongoing threat that could extinguish our lives and livelihoods in an instant.

Second, the House has changed institutionally since the 1970's. In that decade, the House went through a dramatic transformation of power relationships among the majority party caucus, committee chairmen and party leaders. Following that democratic upheaval, there was little interest in any of these camps to fight another round for power, this time over committee jurisdictions.

So, junior and senior members alike banned together to defeat the bipartisan select committee reforms, not once, but twice. And the two speakers at the time, who were much weaker then than they are today, stayed away from above the fray, rather than lead.

Third, an array of special interests was organized and mobilized against the Bolling Plan in 1974. And the longer that the plan was delayed in the caucus, the more that these interests had time to pick it to pieces and grow the opposition within the caucus.

Fourth, there was little media attention, if any, to the plan back in 1974. It was not sexy, like campaign reform. And it did not have legs beyond the beltway, notwithstanding some urgency over the energy issue.

Fifth, the plan had more losers than winners. It was not officially tweaked to ensure that members at least gained something for their losses. To most, it was a lose-lose proposition.

Sixth, the bipartisan membership of the select committee did not work closely together in building bipartisan support beyond its ranks. Instead, the ranking minority member ended up offering his own substitute, which was different from that reported by the select committee. They divided and were conquered.

Mr. Chairman, you and your colleagues on the select committee have a chance to make this succeed, and thereby demonstrate that history does not necessarily repeat itself. You have the benefit of knowing why past efforts failed. You have the time in the next few months to lay the ground work for the concept and the necessity of a permanent committee by educating your House colleagues and building bipartisan support among party leaders and members alike.

I wish you well in this endeavor, should you decide to pursue it.

And I will be happy any questions once our third witness is finished.

PREPARED STATEMENT OF MR. DONALD R. WOLFENSBERGER

Mr. Chairman and members of the Subcommittee:

I appreciate this opportunity to testify today on possible future House organizational changes to deal with the structural and policy issues surrounding homeland security. I especially want to commend Speaker Hastert, former Democratic Leader

Gephardt, and current Democratic Leader Pelosi on working together to devise creative ways to handle both the creation of the new Homeland Security Department hi the last Congress and to oversee its early organizational and operational efforts in this Congress, The creation of two different select committees, of different compositions and missions, is a tribute to the flexibility and commitment of the bipartisan leadership to make sure this job is done right at every step of the way, and that Congress plays an ongoing and integral role in the further development of measures to protect this country against future terrorist attacks. This is too important a task to leave solely to the Executive Branch.

The central question confronting this subcommittee, and ultimately the full committee and House, is what new structural mechanism if any, is needed in the House to perform the policy and oversight functions involved with this vast new undertaking. I agree with the Parliamentarian, Charley Johnson, that the Congress need not, as a matter of course, create a committee system that mirrors, in every respect, the Executive Branch cabinet departments. At the same time, we should recognize that this is precisely how the Appropriations Committee's subcommittee structure is organized (including the new House and Senate Appropriations Subcommittees on Homeland Security), and, to a lesser extent, how many of our authorizing committees are focused. The Armed Services Committee is responsible for the annual defense authorization bill, the International Relations Committees for the State Department authorization, Intelligence for the annual intelligence community authorization, Judiciary for the Justice Department authorization, Veterans' for the VA and its programs, Education for the Education Department, Small Business for SBA, and so on.

It seems to me that there arc two key questions you have to ask yourselves. First, is the issue of homeland security important enough to warrant a separate committee focused exclusively on the policies, programs, problems of homeland security? And, secondly, if so, what is the best way to restructure the House committee system to ensure this is done in the most effective manner?

I fully appreciate that there is a third question hanging over this, and, in your minds, it may seem an overriding question that obscures or negates the importance of the other two questions, and that is: Is it politically feasible to create such a committee given the turf sensitivities of existing committee chairmen arid members? But I would caution against letting this third question get in the way of proceeding full bore with answering the first two.

Let me give my perspective on all three questions in the order in which I have posed them. First, is a separate committee needed? In my opinion, the answer is an unequivocal "yes." I think the threat of terrorism is going to be with us for a long time to come and is not just some passing phenomenon. Second, I think the threat is so serious as to warrant a concentrated effort by both the Executive and Congress to combat it. And that in turn requires having intensive coordination of Executive branch efforts internally and with state and local levels of government, and close oversight and policy innovation by the Congress This is not something you can relegate to a subcommittee of an existing committee, let alone to the existing structure in which dozens of House and Senate committees and subcommittees have apiece of the jurisdiction.

Finally, this is something that will require a change in the bureaucratic culture and norms in the new Executive Branch components of the department as well as a change in the political culture and norms here in Congress. Both branches are still wedded to traditional, pre-9/1 1 arrangements and relationships internally and with their counterparts in the other branch—what some have re to in the past as the "iron triangle" of subcommittees, agencies and their private sector clienteles. You need a separate committee that is willing to set a new course and way of doing things—exercise tough oversight, employ innovative thinking, and exert constant pressure on the new department to set the right priorities and pursue them vigorously. There is no time nor room for clinging to the old, cozy relationships and standard operating procedures that everyone is comfortable with. This is not a cozy, comfortable age in which live. As Lincoln put it in his second annual message to CongressThe dogmas of the quiet past arc inadequate to the stormy present. The occasion is piled high with difficulty and we must rise with the occasion. As our case is new, so we must think anew arid act anew. We must disenthrall ourselves, and then we shall save our Country.

Moving to the second question as to how such a committee should be constituted, I think the answer is self-evident if you agree with the underlying premises of my answer to the first question. This must be a permanent, standing committee, not a select committee, It should be a major committee for assignment purposes, if not an exclusive committee. It must have primary legislative as well as oversight authority over the Homeland Security Department, its agencies, programs and activi-

ties. It should also have secondary legislative and oversight jurisdiction over homeland security responsibilities lodged elsewhere in the government. It should be tied closely to the leadership in coordinating its oversight activities with that of other committees—meaning the oversight agendas adopted by committees at the beginning of a Congress should be superintended by the leadership, as the House rule intends, but also on an ongoing basis as new areas for oversight arise during the course of a Congress.

Much is made of the need to avoid taking all the time of the Secretary of Homeland Security or his key principals in appearing before a host of congressional committees and subcommittees, and that is one important argument for a central or primary committee coupled with leadership coordination of the others. But the convenience of Executive Branch officials is not, nor should it be, the principal driving force behind creating such a committee. The principal rationale for such a committee is to better ensure the protection of the American people against ten threats, and if the committee is dedicated solely to that it will both assist and prod the Department to do the best job it can. But it cannot be justified simply on grounds of being a one-stop hearing shop or convenience store for the Executive Branch officials. I suspect if the committee is doing its job well, the Department will often not find it a very "convenient" venue to testify, but that it will find the committee a very vital and helpful ally in our war against terrorism.

Finally, to the third question, which is whether creating a new standing House Committee on Homeland Security with primary legislative jurisdiction over the Department and its activities is politically feasible. My answer is that winning approval for such a committee will be a very difficult, contentious, and perhaps even bloody challenge, but that it is politically feasible because it is good for both the House arid for the country. Most worthwhile endeavors are not easy, but that does not mean that you turn your backs on them at the prospect of defeat or rejection.

Much has been made by me and others about the lessons of past attempts to make jurisdictional changes in our committee system, and why and bow most of these have gone down in flames—particularly the two efforts to create a House energy committees in 1974 and 1979. As one of my colleagues on this panel has cautioned me, analogies are imperfect, at best, and I agree. The times change, the players change, the institution changes, the relative powers of party leaders and committee chairs change. But one thing that does not seem to change, in my opinion—the one thing that seems to have an almost universal aura about it—and that is "turf;" with a capital "T," and, as the Music Man might put it, "that stands for trouble." The title of David King's book, "Turf Wars," sums up nicely what happens when committees? jurisdictions are threatened by other committees.

So, why should creating a standing committee on homeland security turn out any differently than past efforts to create a standing committee on energy? I think there are several reasons why this one seems more politically doable than the failed energy committee efforts. First and foremost, terrorism is a more real and tangible threat to the American people than the threat of energy insecurity or dependence on foreign oil. Notwithstanding the Arab oil embargo, the gas lines, the rising prices, and the distant prospect that our way of life might be altered, there was not strong public sentiment that these perceived threats were all that serious, let alone that a new energy department or energy committee would help stave off those threats.

The terrorism attacks, on the other hand, literally hit home and changed our country and its people dramatically overnight. I am not suggesting that the people are clamoring for bureaucratic fixes or congressional reforms to save them from terrorists. But they are, in a general way, depending heavily on their government, all branches and at all levels, to do their utmost to prevent another 9111 from occurring. Whether or not they appreciate the need for a separate committee in Congress to deal exclusively with the threat is not so important as the perception that Congress continues to care and work closely with the Executive Branch to address the problem. As a young Congressman Don Rumsfeld (R-Ill.) once said, "Congressional reform has no constituency." Nevertheless, as I see it, the results of those reforms can help effect major policy changes that benefit millions of constituents.

Second, the times have changed institutionally in the House from the 1970s. In the early 1970s, notwithstanding some of the House and Democratic Caucus reforms to weaken the power of committee chairmen, the jurisdictional changes recommended by the Boiling select committee ran into a buzz saw of opposition in the Caucus that was led in part by affected committee chairmen who Il turn rallied their members to oppose the plan Even though many of the "Old Bulls" still enjoyed many of the prerogatives of power, the democratizing reforms of the Democratic Caucus had empowered more rank-and-file members bath through semi-autonomous subcommittees arid as individual policy entrepreneurs. These members were not

about to alter a system they had just successfully changed and were learning to game.

Moreover, when the leadership, namely Speaker Carl Albert, saw all the opposition forming against the Boiling plan, he stepped into the shadows and let his members slug it out in the Democratic Caucus. Because the Boiling committee was completely bipartisan, it was suspect among Democrats and thus an easy target for those arguing for retaining the powers and prerogatives of the majority. Arid, without strong support from the party leadership, the plan was doomed to failure.

Third, an array of special interests was organized and mobilized against the Boiling plan, arid the longer the plan was delayed in the Caucus, the more these interests had time to pick it to pieces and grow the opposition to it within the Caucus.

Fourth, there was little if any media support for the plan. It was not sexy, like campaign finance reform, and thus had no legs beyond the beltway, notwithstanding some urgency over the energy issue.

Fifth, the plan had more losers than winners, and was riot sufficiently tweaked to ensure that members at least gained something for their losses. To most it was a lose-lose proposition.

Sixth, the bipartisan membership of the Select Committee did not work closely together in building bipartisan support beyond its ranks. Instead, the ranking minority member ended up offering his own substitute which was different from what the Select Committee had reported. They divided and were conquered.

These are some of the lessons past of experience. The Select Committee on Committees in 1979, chaired by Rep. Jerry Patterson (D.-Calif.) had no more success than Boiling, even though the Select Committee had carefully chosen to go the incremental route and confine itself to recommending the creation only of a new energy committee. Again, the lack of leadership backing and the opposition of the bulls and their outside allies thwarted any chance for success.

Mr. Chairman, you and your colleagues on this Select Committee have a chance to make this succeed and thereby demonstrate that history does not necessarily repeat itself. You have the benefit of knowing why past efforts failed. You have the time in the next few months to lay the groundwork for the concept and necessity of a permanent committee by educating your House colleagues and building strong, bipartisan support among party leaders and members alike. Prior to reporting your final recommendation next year, you have the time to make your case in the media and with the American people. But, if you wait until September of next year to get behind a unified plan and work for it, then I suspect it will fail, whether you vote on it in September, October, or the following January.

Your case is good for a standing committee because it is the right thing to do and the necessary thing to do. It is right from the standpoint of ensuring that Congress holds its own as a coequal branch of government And, more importantly, if you want the best possible partnership between the branches to fight and win the war against terrorism. Do not back down from making the effort because some turf might be tom-up and transplanted. And do not settle for a fallback, permanent select committee with mere oversight responsibilities. Oversight will not matter if it is not directly tied to the ability to change policy, The last thing the House needs is more layers of bureaucracy and processes on top of existing layers. That will only defeat the need to concentrate House resources and efforts for maximum results and success

Thank you, and good luck!

Mr. DIAZ-BALART. Thank you, Don.

Dr. King.

STATEMENT OF DR. DAVID KING, ASSOCIATE PROFESSOR OF PUBLIC POLICY, THE KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY

Dr. KING. Thank you very much.

It is an honor to speak with you today. And you know my name is David King. I am an associate professor at Harvard University. And I am Director of Political Studies for Harvard's Institute of Politics.

In my 1997 book—it was called Turf Wars: How Congressional Committees Claim Jurisdiction—there I tracked jurisdictional change from the 1790's through the 1990's. And as for jurisdictional reforms, I am really, actually, quite serious when I say that

you could do almost no better than to lock Charley Johnson, Walter Olozek and Billy Pitts in a room, and precommit that you will adopt whatever they recommend.

They don't want to be in a room together because they don't want to make enemies with any of you. But you have terrific experts here.

Since you have decided to hear from the three of us, it is surprising, actually, that we are all going to say about the same thing.

I will speak briefly about what has happened to jurisdictions, and then what I would like to see happen to homeland security.

We should remember that there are several sources of jurisdictional legitimacy, and an obvious summary is written in Rule 10. These are statutory jurisdictions in the sense that the rules are passed by a majority at the beginning of each Congress. But almost all turf is originally conferred on committees through bill referrals over jurisdictionally ambiguous issues. Referrals set binding precedents, and these are common-law jurisdictions.

Since about 1911, the House parliamentarian has been the arbiter of jurisdictional disputes, although with the advent of multiple referrals in 1974 and really in 1975, and subsequent time limit referrals, the speaker has enhanced his ability to control turf.

Importantly, when there are brief bursts of reform that change Rule 10, as in 1946, 1974, 1980, 1995, what overwhelming happens is that common law jurisdictions are written into the rules becoming statutory.

Your focus, then, should be on the day-to-day rules that govern bill referrals, which will lead you inevitably to the parliamentarian and his staff.

The parliamentarian has a host of decision rules determining which committee should receive a jurisdictionally ambiguous bill, but the outcome of these decisions tend to reward committees with the most relevant expertise.

I want you to think of the parliamentarian as an institutional guardian who looks to the long-term interests of the committee system. Each one of you may lust for someone else's turf, but the integrity of the committee system is at stake whenever boundaries change.

As I said, successful revisions of Rule 10 tend to codify what had been going on behind the scenes for years. It is virtually impossible to get a majority of members to agree to a significant change in their own committee powers. Reforms often embrace and then codify the status quo. So the trick then is to stealthily become the status quo.

Furthermore, the political dynamics that bring about a reformist majority are very rare, as when a lame duck Congress passed the 1946 act, and in 1995 when the Gingrich-Dreier reforms passed after Republicans had wandered in the wilderness for 40 years.

Given that caveat, here is what I would like to see happen. First, the Select Committee on Homeland Security should be made a permanent select committee, along the lines of the Permanent Select Committee on Intelligence. I encourage you to read through Rule 10 on the permanent select committee.

Second, membership on the new committee should draw from current standing committees with jurisdiction over homeland secu-

rity, including the Committees on Judiciary, Transportation and Infrastructure, Ways And Means, Energy and Commerce, Armed Services and perhaps Committee on Appropriation.

Third, Homeland Security Committee seniority should be based on time served on the committees contributing their members, not on within committee seniority.

Fourth, the new committee should be given primary responsibility, primary jurisdiction, over A, homeland security generally, and B, the Department of Homeland Security.

Fifth, I think Rule 10 should be modified specifically to reflect and effectively transfer the jurisdiction from several other committees for primary referrals from Judiciary, the INS, the National Domestic Preparedness Office, the National Infrastructure Protection Center.

From Transportation Infrastructure, I would take the Transportation Security Administration. From Ways and Means, the U.S. Customs Service. And then there are multiple other areas where I would think that the new select committee would get secondary referrals.

Sixth, and here I know I am spoiling for a fight, but I wish that the House would move the Coast Guard to the Armed Services Committee. I don't expect it.

Seventh, and most important, I encourage Speaker Hastert to empower the House parliamentarian's office to draft the memorandum of understanding that would govern the use of multiple referrals for homeland security issues. To minimize jurisdictional fragmentation, I recommend that the speaker give a new permanent select committee primary jurisdiction over homeland security, give secondary time-limited referrals to Judiciary, Transportation, Ways and Means, Commerce, Agriculture and so on.

Even today without a memorandum of understanding, the speaker has the authority to send initial referrals to this current select committee. And I hope that the speaker will be aggressive with multiple referrals, so as to set the stage for later modifications of Rule 10.

Finally, let me say what I am tempted to do if a reform of Rule 10 looks unlikely. I would aggressively amend the Homeland Security Act to transfer programmatic jurisdiction to your committee. As Congressman Dreier explained, your current select committee has ″legislative jurisdiction over matters that relate to the Homeland Security Act. 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.″

Properly made, these amendments could predate formal changes to Rule 10 and would give the select committee a stronger position when arguing on behalf of initial referral.

I think it is going to take a few years. I don't know if you are going to be able to amend Rule 10, change Rule 10, in this current Congress. Certainly, I would hope you can beginning in the 109th, if you can't do so now.

I want to underscore one thing one thing that Dr. Thurber mentioned. Appropriations is going to be a hostile environment for you, and especially with the tendency to waive Rule 21, which now is

in epidemic proportions on Capitol Hill, I think that you are going to have to be very careful dealing with the Appropriations Committee.

And I encourage you not only on homeland security issues, but on other issues to stop voting for waivers on Rule 21, keep the authorizing committees doing the real work of Congress.

I am looking forward to your questions, and I hope I can be helpful as the House moves forward.

PREPARED STATEMENT OF DR. DAVID KING

It is an honor to speak with you today. My name is David King. I am an Associate Professor at Harvard University and Director of Political Studies for Harvard's Institute of Politics. My 1997 book, Turf Wars: How Congressional Committees Claim Jurisdiction, tracked the dynamics of jurisdictional change from the 1790's through the 1990's.

As for jurisdictional reforms, the House could do no better than to lock Charlie Johnson, Walter Oleszek and Billy Pitts in a room, and to promise to adopt whatever they recommend. But since you have decided to hear from us, I will speak briefly about what has happened to jurisdictions, and what I'd like to see happen with Homeland Security.

We should remember that there are several sources of jurisdictional legitimacy. An obvious summary is written in House Rule X. These are "statutory jurisdictions," in the sense that the Rules are passed by majority vote at the beginning of each Congress. But almost all turf is originally conferred on committees through bill referrals over jurisdictionally ambiguous issues. Referrals set binding precedents. These are "common law jurisdictions."

Since about 1911, the House Parliamentarian has been the arbiter of jurisdictional disputes, although with the advent of multiple referrals in 1975 and subsequent time-limit referrals, the Speaker has enhanced his ability to control turf. Importantly, when there are brief bursts of reform that change Rule X, as in 1946, '74, '80 and '95, what overwhelmingly happens is that "common law jurisdictions" are written into the Rules, becoming "statutory jurisdictions." Your focus, then, should be on the day-to-day rules that govern bill referrals, which will lead you inevitably to the Parliamentarian and his staff.

The Parliamentarian has a host of decision rules determining which committee should receive a jurisdictionally ambiguous bill, but the outcome of these decisions tends to reward committees with the most relevant expertise. I want you to think of the Parliamentarian as an institutional guardian who looks to the long-term interests of the committee system. Each one of you may lust for someone else's turf, but the integrity of the committee system is at stake when boundaries change.

As I said, successful revisions of Rule X tend to codify publicly what had been going on behind the scenes for years. It is virtually impossible to get a majority of members to agree to a significant change in their own committee powers. Reforms often embrace and then codify the status quo. The trick, then, is to stealthily become the status quo. Furthermore, the political dynamics that bring about a reformist majority are rare, as when a lame duck congress passed the 1946 act and in 1995 when the Gingrich/Dreier reforms passed after Republicans wandered in the wilderness for 40 years.

Given that caveat, here is what I would like to see happen.

First, the Select Committee on Homeland Security should be made a permanent select committee, along the lines of the Permanent Select Committee on Intelligence.

Second, membership on the new committee should draw from current standing committees with jurisdiction over homeland security, including the committees on Judiciary, the Transportation and Infrastructure, Ways and Means, Energy and Commerce, Armed Services, and the Committee on Appropriations.

Third, Homeland Security Committee seniority should be based on time served on the committees contributing members.

Fourth, the new committee should be given primary responsibility for (a) Homeland Security Generally and (b) The Department of Homeland Security.

Fifth, Rule X should be modified to reflect the effective transfer of jurisdiction from other committees.

- From Judiciary: Immigration and Naturalization Service; the National Domestic Preparedness Office, and the National Infrastructure Protection Center.
- From Transportation and Infrastructure: The Transportation Security Administration.

• From Ways and Means: The U.S. Customs Service.

Sixth, and here I am spoiling for a fight, I wish the House would move the Coast Guard to the Armed Services Committee. But I do not expect it.

Seventh, and most important, I encourage Speaker Hastert to empower the House Parliamentarian's Office to draft a memorandum of understanding that would govern the use of multiple referrals for Homeland Security issues. To minimize jurisdictional fragmentation, I recommend that the Speaker give a new Permanent Select committee primary jurisdiction over Homeland Security—and give secondary time-limited referrals to Judiciary, Transportation, Ways and Means, Commerce, Agriculture, and so on.

Even today, without a memorandum of understanding, the Speaker has the authority to send initial referrals to the current select committee, and I hope that the Speaker will be aggressive with multiple referrals so as to set the stage for later modifications to Rule X.

Finally, let me say what I'd be tempted to do if a reform of Rule X looked unlikely. I would aggressively amend the Homeland Security Act to transfer programmatic oversight to your committee. As Congressman Dreier explained, your current select committee has "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." Properly made, these amendments could pre-date formal changes to Rule X and would give the select committee a stronger position when arguing on behalf of initial referrals.

I am looking forward to your questions, and I hope I can be helpful to the House as this process moves forward.

Table 4.1 Overview of the History of Bill Referrals

	Committee System Typified by	Arbiter of Jurisdictional Disputes	Effect on the Committee System
1789–1815	Ad hoc	Speaker and floor	Floor paralysis as workload increases
1816–1889	Rapid growth in number of standing and select committees	Floor majority routinely overturns referral decisions by Speaker	Floor paralysis over referrals. Jurisdictional fragmentation even over "settled" issues
1890–1910	Stable number of committees. Speaker dominance	Speaker makes final call on jurisdictionally ambiguous bills and rewards allies	Jurisdictional fragmentation over "new" issues. Committee reports attacked as biased
1911–1974	Strong committee fiefdoms. Chairs by seniority	Speakers relies on parliamentarian's advice as an institutional guardian	"Weight of Bill" decision rule enhancees informational efficiency. More fragmentation
1975—present	Subcommittee power. Increased attention to jurisdictions	Parliamentarian. Speaker strengthened by time limits on sequential referrals	Intercommittee coordination increases. Fragmentation continues

Thank you.

Mr. DIAZ-BALART. Thank you, thank you very much. I appreciate all three of you. And I think your testimony, all three, was very useful.

Mr. Wolfensberger, Dr. Thurber was very, very specific with regard to his recommendations on jurisdiction as it relates to the creation of a permanent committee.

Now, you did indicate your strong support for the creation of a permanent committee. Do you have further, or perhaps more specific, recommendations with regard to the issue of jurisdiction in order to make that happen?

Mr. WOLFENSBERGER. Well, I didn't want to presume to put the more specific recommendations in my testimony, but now that you ask I do have some ideas that you might want to consider. But they might raise a stir in certain corners of this building.

I would suggest that you follow the lead that was done with the Appropriations Committee when they took the Transportation Subcommittee, made that Homeland Security, and took the non-homeland security-related transportation matters and put them elsewhere.

I would suggest you consider as the basis for this new standing committee splitting the Transportation Committee into two committees. It is now obscenely large, 75 members, the largest committee in the House.

I would suggest that you take 30 of those members, however the leadership wants to do it, bus another 10 members or so from other committees with jurisdiction on a new Homeland Security Committee, and then have the other 45 members of the Transportation Committee on a separate transportation committee.

I think you would be taking care of two birds with one stone, and having a more manageable Transportation Committee, as well as recognizing the fact that committee now has a 60 percent, I believe—let me just check on what I had here—34 percent of the personnel in the Homeland Security Department, 60 percent of the budget.

So I think that should be the basis for a new committee. But that is one possibility I think you should consider.

The other thing that I would recommend is that you do this in September of next year rather than try and put this through in a rules package at the beginning of the next Congress. I would have a separate vote on this issue, a separate debate. I know you are not scheduled I think to report until, what, the end of September, is it? I would do this, though, in September, because members are going to be getting out of here first part of October for the elections.

But bring this up in terms of the new Standing Committee on Homeland Security, and put it together with just one other piece.

I would recommend that you take the current term limit on committee and subcommittee chairmen and change that from three successive terms to four successive terms.

And I would make it clear to all committee chairmen and subcommittee chairmen this is the only shot you are going to have to do this. We are not going to put this in the next Congress's rules package on the opening day. I think if you put these together you have a certain incentive in there for a lot of people to consider voting for this who might otherwise not do so.

And I am not suggesting this facetiously. I think that three terms is far too short once a committee or subcommittee chairman has taken over to really get the feel for the subject matter, and so on.

I still like the idea of term limits, but I would change it from three successive to four successive terms, and put this together with a single vote on a new Homeland Security Department in September of next year.

Mr. DIAZ-BALART. Very interesting.

Dr. Thurber, you talked about, in I thought a very useful way, the laugh test of the American people. Couldn't it be said that the problem of extreme fragmentation is, in practicality, in reality,

somewhat solved by what has been done by the Appropriations Committee in the homeland security area?

Dr. THURBER. Yes, when it comes to money matters, and while working on various committee reforms on the Hill, I looked at the issue of merging Authorization and Appropriations Committees, and of course, it didn't go anywhere.

I think we do need authorizers and we do need appropriators, and on the money side, yes, but they don't have enough time, in my opinion, to do what a permanent committee on homeland security would be doing in terms of authorizing new legislation, changing the direction of the department, maybe bringing new agencies into it, taking others out, as well as rigorous oversight.

They do oversight, but they don't have a lot of time. They have broad responsibilities in other areas of where that committee, in my opinion. I think you need a authorizing committee, and I think that it should not all be on the back of the appropriators.

Mr. DIAZ-BALART. Dr. King, I really didn't, perhaps my colleagues did, but I didn't really get the rationale for your recommendation of a permanent select committee.

Could you help me a little bit more on your reasons for that proposal? Are they more practical? Perhaps you would like to expand on it a little bit.

Dr. KING. Well, you could actually write it either way. You could make it a permanent, you know, full committee, but I think you need to be very careful about the membership.

I wouldn't leave the membership entirely up to the Democratic-Republican Caucus. I would specify, as one does the Permanent Select Committee on Intelligence, that there is a distribution of memberships coming from specific committee.

And that is really to draw on the intelligence and expertise of those members.

And then the second part of that is to base the committee seniority of the new Homeland Security Committee on seniority from those relevant committees of jurisdiction. I think that way you would be drawing the most expert members from these few very important committees.

So you can call it what you will, but the general model of the permanent select committee is I think the right way to go.

I would also be quite careful, as you all did when you created the Permanent Select Committee on Intelligence, to limit the size of the committee. Transportation is simply unworkable. And the committee sizes tend to ratchet up quite frequently, although it has been must less pressure on the Intelligence Committee, because it is specified so cleanly on the rules.

Mr. DIAZ-BALART. Don?

Mr. WOLFENSBERGER. Yes, one other thing that probably should be mentioned in connection with that, and I am not endorsing the permanent select committee idea, but one of the advantages it has is that the leadership names the members to a select committee. So this does not go through the process of being voted on by the caucus or by the floor. And so this would give it the status of a leadership committee, which the Intelligence Committee has now.

And they did that for a very understandable reason, because of the sensitivity that they have to have on that committee for security matters.

Mr. DIAZ-BALART. Very interesting.

Dr. Thurber?

Dr. THURBER. I would respectfully lean towards a permanent security on homeland security, rather than a select committee and to have a full debate over the rule change. And to make it and to make the case that Mr. Schlesinger said before, either, you know, this is a major problem, either you are with us or you are not, on taking the issue of homeland security seriously in the jurisdiction of the House.

Yes, the leadership can appoint people. But the leadership changes, and I would like to have it codified in the rules of the House to create a full permanent committee, not a select committee.

Dr. KING. As I say, you can certainly do that within Rule 10, create a permanent committee.

Mr. DIAZ-BALART. But I think what you had talked about was a permanent select, would be codified.

Dr. KING. That is right.

Mr. DIAZ-BALART. It is an interesting idea. It is very interesting.

Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman.

And let me thank all three of the gentleman for bringing their positions forward on what, obviously, we all agree that there is some permanent status for this committee should be. The question that we will be confronted with is by the naysayers on the other side is why should we do it? Why not just leave jurisdiction where they are?

And I would just like a little further elaboration from the three of you on what happens if we leave jurisdiction within the other committees? Where do you see us going from the standpoint of homeland security? Will Appropriations then assert itself even more, or what?

Dr. THURBER. If I might start, Mr. Chair?

Mr. DIAZ-BALART. Yes, sir.

Dr. THURBER. First of all, yes, the appropriators would gain power. They have, in my opinion, gained substantial power over the last 30 years in the House and Senate anyway as a result of so-called back-door authorizing, waiving Rule 21.

But secondly, there is a real reason to have expertise in one committee, not only expertise of members, but the expertise of staff. If you dissipate the expertise among many committees, it is not as effective as an oversight panel, but not as effective also as an authorizing panel.

Secondly, it creates one central place for the executive branch to go for homeland security, rather than to—as I count them, it is greater than the national journal article and others. It is 38 subcommittees and 13 full committees in the House, by the way.

If you have people from the department going to multiple committee hearings, because everyone is concerned about homeland security, because their constituents are, they are, then it is sort of

a waste of time, in my opinion, for the executive, but also for the Hill.

And also, there is the problem of setting up hearings. Many of the members here have gone off to other committee hearings. If you had multiple hearings on homeland security happening at the same time, I don't think it is as effective as if you have one committee doing that.

So it is expertise. It is workload. It is timing. It is relationship with the executive branch. You have the constitutional responsibility to oversee this new department, and you are more effective having it in one committee primarily, in my opinion.

Those are the main reasons, in my opinion, if I am answering your question.

Mr. WOLFENSBERGER. And I would just add to that something that I emphasized at the beginning of my oral statement, and that is that Congress, now more than ever, needs to be a coequal branch. You are not going to have that kind of coequality if you allow things to remain scattered among 88 committees and subcommittees of the House and Senate.

I think there has got to be a central focus here, that Congress has to be in on the take-off of this new department. And that means closely paying attention to what is going on operationally, policy-wise, priorities and so on.

And that you closely tie policy and oversight together on an ongoing basis. And I think this can only be done through a single committee.

Dr. KING. I was going to say something that may shock and surprise many people. I didn't support the creation of the Department of Homeland Security in the first place. But now it is a fact that we have it, and it is a fact that there is now a tremendous imbalance between the executive branch and the legislative branch. And the Congress must catch up.

I am afraid that some of the people who will oppose the single standing committee of jurisdiction here are still in their minds back in the days before there was a Department of Homeland Security, trying to keep those clientalistic relationships that existed before.

The fragmentation is tremendously debilitating. And Congress, as an institution, must step up to the plate, effectively tonight.

By the way, the baseball game, hope it goes well.

But it has to step up to the plate. And far too many members of Congress, and certainly people in the executive branch, forget that Article I is about Congress, the most important branch as far as I am concerned, in the government.

And it needs to be on equal footing with the Department of Homeland Security through a single permanent committee.

Dr. THURBER. May I add something related to the attack on the United States on 9/11 related to this? After Pearl Harbor, we did not have a series of temporary panels. We did not have disbursement of jurisdiction. We came together, in the executive branch, but also on the Hill, with the central focus on events. And the analogy is here probably even worse now than it was then in terms of disbursement of jurisdiction.

I think that the American people want to have a coordinated effort on the Hill, from the House and the Senate, on this important issue after the fact.

Mr. THOMPSON. Thank you, and I appreciate your comments. If the committee were challenged to look at it from the standpoint of a select committee or a permanent committee, can you just tell me which of the two would be your individual preference?

Dr. THURBER. My preference is a permanent committee on homeland security, as I said before. Yes, a select committee can have the authorizing and oversight authority. But I think that if you are going to vote on changes of jurisdiction anyway, let's make this a permanent committee, a standing committee rather than a select committee.

Although I don't feel strongly about it, I do lean towards that.

Mr. WOLFENSBERGER. I would definitely favor a permanent committee, as I indicated earlier. A select committee does allow the leadership to make the appointments directly.

I don't think that is needed or warranted in this case, because I think members of each caucus would like to be able to vote on the members to this permanent committee.

You have talked about the problems of emergency responders in your local districts and so on. You want these people to feel accountable to you as members of your caucus, and not just to the leadership. So I would favor a permanent committee.

Dr. KING. And I would stick with the testimony that I have already given. I think the permanent select committee is the way to go, and gives certain stature to the committee. And it allows the leadership to be very careful to divvy up power from the committees with which it shares jurisdiction.

Mr. THOMPSON. Thank you.

Mr. DIAZ-BALART. Thank you, Mr. Thompson.

Ms. McCarthy?

Ms. MCCARTHY. Thank you, Mr. Chairman. And I apologize to our witnesses for not being here for your oral explanations. I appreciate your written statements.

I wondered as we—I happen to agree, and thank you for the support of making this a permanent select committee. I am just curious about how members are best chosen. I wonder if we could explore that a little bit. A couple of you have touched upon it in your papers, but the idea of how to select who should serve and for how long they may serve. That would be worthy of extended thought on your part, and I would welcome any comments that you have to share.

Dr. THURBER. If I might begin on that. I touched on it in my written testimony in greater detail.

I think that the members on this committee should come from seven committees that have primary jurisdiction over the agencies or entities in the Department of Homeland Security. But also, beyond that, there should be members from other committees associated with the broader mission of homeland security. And I have some details on that also.

How that is done is up to you, but one could do it similar to this committee by selecting people with expertise, but also with tenure, years of dealing with this and maybe formal leadership positions.

It could become a committee made up of people who are leaders on these other committees with the jurisdiction.

I think they are going to have problems changing jurisdiction no matter what, but if you do bring in people who have the expertise and the power to deal with things within the jurisdiction of the committee, you are likely to build more support for it than if you leave a more open system.

Now, in terms of should there be term limits on members on this committee, as there are on the Budget Committee, I am against that. I think that people should come to this committee and build a career here, as long as they are here in Washington. I think that the Budget Committee has term limits because the appropriators in Ways and Means and leadership did not want that to be a very strong committee in the first place, and so they had rotations.

The Senate Budget Committee, in my opinion, is in a much more powerful more effective and more effective vis-a-vis the other committees, as a result of having people on there permanently, and so I would recommend that for this committee.

Ms. MCCARTHY. Dr. King, do you have any thoughts? Because I know you speak to it.

Dr. KING. Well, I will just underscore that I think that there need to be membership from the committees that Dr. Thurber has mentioned. I would probably also put somebody on there from Appropriations.

And then how members beyond that are selected, you could have a mixed membership, some chosen by the leadership and some chosen by the caucus. You know, the rules are there to be changed, the rules are temporary, and you all have it within your power to change the rules.

So even though you tend not to have these kinds of mixed membership committees, I do want to underscore again that I think it is useful to have committee seniority on the new permanent select committee based on service on other relevant committees.

And that helps to create an incentive for the most ranking, the highest seniority members, of a committee to come on.

And I also certainly would not term limit membership on this committee.

Ms. MCCARTHY. Thank you very much, Dr. King.

Mr. WOLFENSBERGER. I agree with what my colleagues have said, with one caveat, which, and I don't think they would disagree with this, if you decide to take this Select Committee, for instance, and turn it into a Permanent Committee, I would urge against doing it where you have committee chairmen of other full committees on it. I don't think they have the time to devote to this committee and its mission.

So I like the idea more of having other members from those committees, rather than the chairmen, on the new Homeland Security Committee.

I just think you cannot carry on the type of work you are going to have to do if you are a full-time permanent committee chairmen from other committees on this committee. They will not be able to come and devote the time to your activities.

Ms. MCCARTHY. Would you think, then, letting the chairman of that committee select the member from?

Mr. WOLFENSBERGER. They can make recommendations to the committee on committees, but I think that is a decision the leadership ultimately has to make.

I mean, but certainly, they do now make recommendations as to who they would like to have represent their committee on the Budget Committee, for instance, or on the Intelligence.

Ms. MCCARTHY. Right, thank you. Thank you very much, and thank you, Mr. Chairman.

Mr. DIAZ-BALART. Thank you, thank you, Ms. McCarthy, and thank you, the three of you. I have enjoyed your testimony thoroughly. I am very pleased with this hearing.

Dr. King, I have to admit that I agree with your view of Congress. I think that Congress embodies the sovereignty of the American people, and not only because it is in Article I, but because of that fact, I think, I agree with your assessment.

And I thank the three of you. I think it has been an extraordinarily fruitful hearing.

And the hearing is now adjourned.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned.]