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## Untangling the Web: Congressional Oversight and the Department of Homeland Security

As a column of smoke rose from the Pentagon in the distance on the late afternoon of September 11, 2001, several hundred members of Congress assembled in unity on the steps of the Capitol building, in a profound act of grief, solemnity, and national resolve. “We will stand together to make sure that those who have brought forth this evil deed will pay the price,” said Speaker of the House Dennis Hastert. Senate Majority Leader Tom Daschle echoed these comments and added that the Congress would “work together to ensure that the full resources of the government are brought to bear in these efforts.”

Yet more than three years later, Congress has failed to remove a major impediment to effective homeland security: the balkanized and dysfunctional oversight of the Department of Homeland Security (DHS).

While Congress worked with the executive branch to create the Department of Homeland Security, it has done almost nothing to match this important reorganization with a parallel initiative to put its own house in order. Instead, it has protected prerogative and privilege at the expense of a rational, streamlined committee structure. The result is a Department of Homeland Security that is hamstrung by a system of Congressional oversight that drains departmental energy and invites managerial circumvention. Until Congress confronts the hard task of correcting this mismatch, DHS is at risk of failing to achieve its full potential.

The Homeland Security Act that created DHS was the most sweeping reorganization of the federal government since the National Security Act of 1947 created the Department of Defense. The new Department brought together 170,000 employees from 22 department and agencies, with the goal of overcoming bureaucratic insularity and rivalry, and providing a single point of leadership and responsibility for the nation’s efforts to defend against terrorism.

Before the creation of DHS, no less than 88 committees and subcommittees in the House and the Senate had responsibility for oversight of homeland security.<sup>1</sup> The 108<sup>th</sup> Congress took only limited steps to modify this structure to reflect new realities. Both the House and the Senate created new subcommittees for homeland security on their respective Committees on Appropriations. The House created a new Select Committee on Homeland Security to serve as a focal point of attention to homeland security issues, and the Senate designated the Government Affairs Committee as the lead committee for homeland security issues.

The changes to the Appropriations subcommittees have proven to be generally successful. The Homeland Security Appropriations bill has been passed without undue impediments (relative to the other 12 appropriations bills) in each of its first two years. But reforms to the legislative and statutory oversight roles of Congress for homeland security have proven to be woefully insufficient. For example, the House Select Homeland Security Committee has been a paper tiger during the 108<sup>th</sup> Congress, in spite of sincere leadership. Many of its senior Republican members are Chairmen of other powerful committees with responsibility for parts of DHS, and they have frequently seemed more interested in protecting their own turf than ceding power to the new Homeland Security Committee. The Senate Governmental Affairs Committee has battled similar vested interests in its own chamber.

The leaders of these legacy committees are sincere in their belief that they can more effectively guide the component agencies within DHS that they have long overseen. But ultimately, this fragmentation preserves the rivalries and cultural barriers that the creation of the Department was intended to eliminate; and it prevents DHS from acting as a single, well-coordinated team.

The 88 committees and subcommittees that had some amount of jurisdiction over various aspects of homeland security prior to the creation of DHS shrunk to a “mere” 79 after the reorganization in the 108<sup>th</sup> Congress.<sup>2</sup> These lines of oversight are identified in the chart in Appendix A.

**The Department of Homeland Security is still responsible to everyone – which makes it accountable to no one.**

In comparison, the Department of Defense, with a budget that is more than ten times greater than DHS, reports to only 36 committees and subcommittees in the House and the Senate.<sup>3</sup> Most importantly, at least 80% of DoD oversight is concentrated in just six places: the two Armed Services committees and the Defense and Military Construction Subcommittees on Appropriations in both chambers.

By contrast, all 100 senators and no fewer than 412 out of 435 House members currently have some degree of oversight over DHS. The implication of this is clear: very few members of Congress have any real incentive to acquire expertise on homeland security issues and those who do may have difficulty developing a perspective that includes related concerns beyond their committee’s or subcommittee’s domain.

For example, the House Transportation and Infrastructure committee (T&I) and the Senate Commerce committee have taken the lead on transportation security issues in the past three years, and have been generally effective at guiding the creation and development of the Transportation Security Administration. But transportation security cannot be dealt with in a vacuum; rather, it is a subset of greater homeland security concerns, and must be addressed in conjunction with issues such as immigration and border security, critical

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<sup>1</sup> The Coast Guard and the Transportation Security Administration were in the Department of Transportation; the US Customs Service and US Secret Service were in the Department of the Treasury; the Immigration and Naturalization Service was in the Department of Justice; and the Animal and Plant Health Inspection Service was in the Department of Agriculture. Numerous smaller entities were previously in a range of departments, including Agriculture, Commerce, Defense, Energy, Health and Human Services, Justice, and Treasury.

<sup>2</sup> CSIS/BENS internal analysis, based on checks of congressional testimony database and committee websites.

<sup>3</sup> Ibid.

infrastructure protection, and privacy, among others. The current multiplicity of authority naturally leads to isolated efforts and fragmented priorities for DHS.

This fragmentation also creates the conditions for mid-level subordinates to end-run the DHS leadership, and appeal directly to Congressional committees with which they have long-standing relationships. It allows outside interest groups, single issue lobbies, and government contractors to more easily find champions for parochial interests and pork barrel projects that fall outside the strategic mandate and intent of DHS.

**Homeland security needs to be guided by a smaller set of members of Congress, who can develop long-term expertise on homeland security issues and be responsible for developing a strategic and well-informed perspective that can guide and advise the Department.**

Recent months have seen some movement on this issue in the Congress, pursuant to the 9/11 Commission's recommendation in July 2004 to reform oversight of homeland security:

“Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.”<sup>4</sup>

Members of the Commission reiterated the importance of these recommendations in the weeks following the release of the Commission report. Commission co-chair Lee Hamilton told Congress: “you have to get your house in order so that you can have robust oversight over the Department of Homeland Security. The Department of Homeland Security needs your advice and counsel. And they want to be able to come, as Secretary Ridge said to us, ‘I want to be able to come to one body of expert members of the Congress and lay out my problems to them, tell them what we've done, tell them what we haven't done and get their advice and counsel.’”<sup>5</sup>

Both chambers of Congress have taken steps, at least nominally, to respond to the 9/11 Commission, and create new oversight structures for the 109<sup>th</sup> Congress. The House Select Committee on Homeland Security has recommended that it be transformed into a permanent standing committee with clear and primary oversight of DHS.<sup>6</sup> The recommendation is currently under consideration by the House Rules Committee.

Less progress was made in the Senate. In a promising start, the Senate leadership convened a task force in August 2004, led by Senators McConnell and Reid, to make recommendations for reforming oversight in the chamber<sup>7</sup>. The final report was bold and appropriate, calling for a formal transformation of the Governmental Affairs Committee into a Homeland Security Committee, with a commensurate, centralizing transfer of authority from other committees. But vested interests rallied to dismantle this plan piece by piece; the Governmental Affairs Committee was changed in name only, and large oversight responsibilities were guarded by other legacy committees in the Senate.

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

It is a given that the prerogatives of power and seniority will remain paramount in a Congress where members

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<sup>4</sup> 9/11 Commission Report, page 421.

<sup>5</sup> Committee hearing, House Select Committee on Homeland Security, August 17, 2004

<sup>6</sup> <http://homelandsecurity.house.gov/files/recommendationsreport.pdf>

<sup>7</sup> <http://mcconnell.senate.gov/record.cfm?id=227202&start=1>

must serve their constituents well to ensure their re-election. The Congress has been turf-conscious since the founding days of the United States, and throughout its history committee structure has often better served the interests of members than the interests of the people. Efforts to restructure Congress on nascent issues such as energy and the environment in the last thirty years have proven to be difficult as a result.

But homeland security is too critical a priority to suffer for these reasons. It is time for the leadership of the House and the Senate, with the support of the Bush administration, to move forward to support the spirit and the letter of the 9/11 Commission's recommendation.

**We recommend that both the House and the Senate create strong standing committees for homeland security, with jurisdiction over all components of the Department of Homeland Security. We recommend that these committees have a subcommittee structure that maps closely to the core mission areas outlined in the National Strategy for Homeland Security,<sup>8</sup> not simply to the individual directorates of DHS. Further, we recommend that these committees be established pursuant to developing a small, expert cadre of members who can exercise oversight and craft legislation taking into account the full spectrum of homeland security requirements – not simply one narrow element of the domestic war against terrorism.**

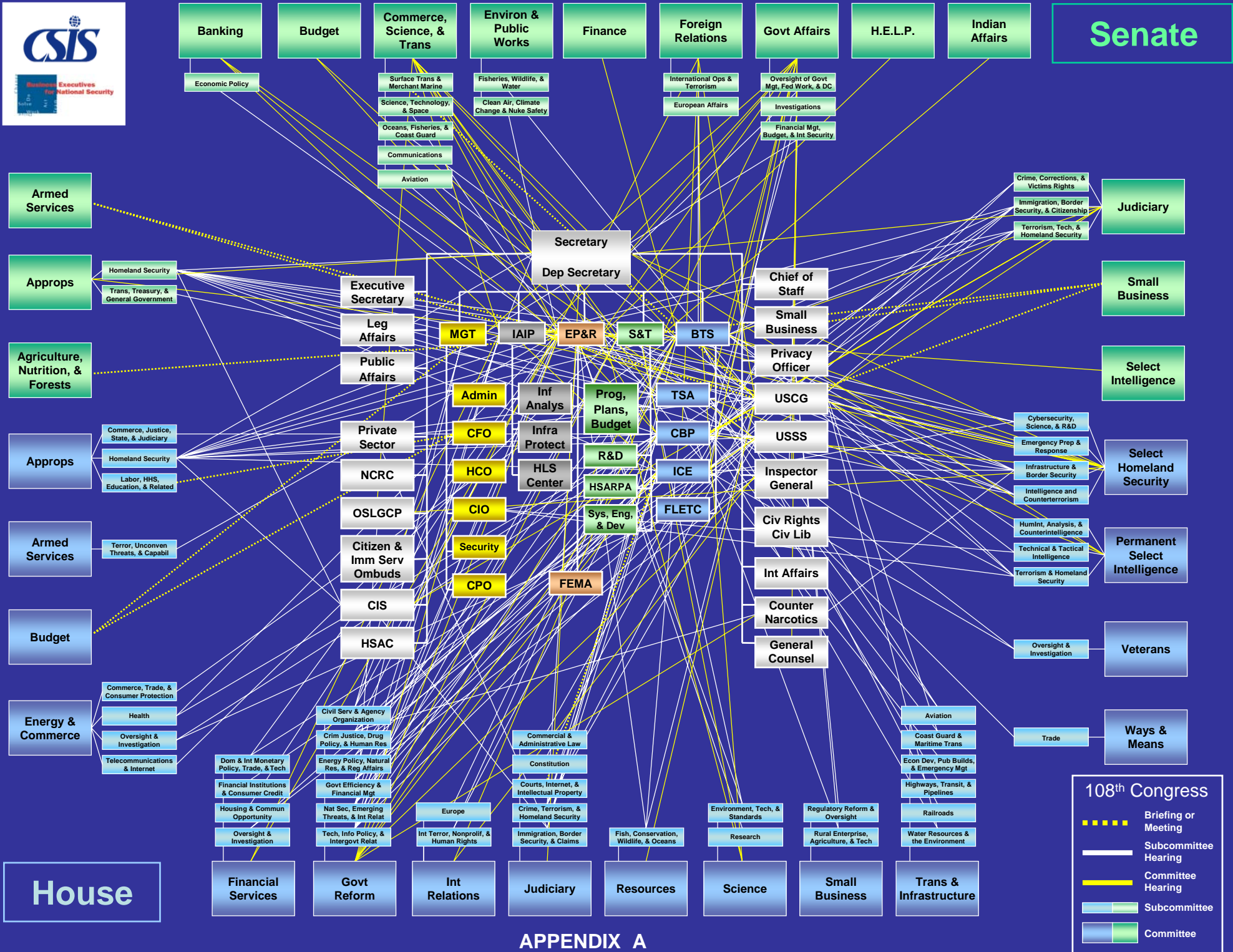
Not long after the end of World War II, in the days of the gathering threat of Soviet communism, Congress faced a similar challenge. World War II proved that national security and defense required a global and unified response; but the oversight of defense activities was split between two committees in each chamber, the Military Affairs Committee and the Naval Affairs Committee. Among other reforms, the Legislative Reorganization Act of 1946 merged these two committees into the Armed Services Committees. These reforms were not easy; President Truman noted how the “problem of reorganizing and modernizing the Congress has been a peculiarly difficult one.” But by moving forward, Congress set the stage for clear statutory oversight of the Department of Defense, which was created shortly thereafter in 1947. Today the Secretary of Defense remains responsible primarily to the House and Senate Armed Services Committee, and seldom faces demand from other committees for testimony.

The Congress faces a similar challenge today, and the imperative for change is just as important. Without reform, the Department of Homeland Security will suffer from diffuse accountability and lack the centralized, coordinated guidance demanded by its vast responsibilities. One clear authorizing committee in each chamber of Congress can hold the Department accountable and ultimately improve its effectiveness in the long battle ahead. Without this authority, DHS is at risk of becoming sluggish, distracted, or complacent, and failing to develop the capabilities required for the front lines of the war on terror.

The people of the United States are shareholders in homeland security, and deserve the assurance that the tens of billions of dollars of their money spent each year are in fact improving the security of the nation and its ability to combat terrorism. But Congress is faring poorly as a “board of directors” on homeland security. The committees that it has given nominal responsibility for homeland security are overpowered by vested rivals with conflicting agendas. No large organization could operate with such disjointed oversight. Neither can the department charged with safeguarding the security of the American homeland. Nearly all other parts of government have reorganized to improve the nation's security – now it is Congress' turn to do the same, and fulfill the solemn promise made on the steps of the Capitol over three years ago.

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<sup>8</sup> Intelligence and Warning, Border and Transportation Security, Domestic Counterterrorism, Protecting Critical Infrastructures and Key Assets, Defending Against Catastrophic Threats, Emergency Preparedness and Response.



APPENDIX A