



Create a House Select Committee on Homeland Security and Terrorism

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Please note: This article, written while serving as a legislative fellow in Congressman Curt Weldon's office, was an individual effort. Thus, it is not intended to be the position of any member of Congress; all opinions herein are solely the author's.

As smoke rose in to the sky over New York, Pennsylvania, and Virginia on 11 September 2001, members of Congress pledged to work together and support the President's strategy to counter the terrorists' attack. They joined in a bipartisan, bicameral fashion to support the President's use of force and to appropriate \$40 billion for the relief efforts. Today, after five months of convening hearings, introducing legislation and allocating funding, Congress has succeeded in making homeland security a national priority, but it has failed to effectively coordinate its actions.

Though the recent attacks brought homeland security issues to the forefront, Congress has long known of the threat of terrorism and the lack of coordination in the legislative branch on these issues. Previous acts such as the bombing of the World Trade Center in 1993 and the Oklahoma City bombing in 1995 raised congressional awareness. Because of this heightened awareness, budgets for combating terrorism increased dramatically.

With this increase in funding came no unified oversight from Congress. Numerous congressional committees held hearings and asserted jurisdiction for homeland security and terrorism issues and programs. Soon these congressional committees became the chief reason why a disjointed, overlapping structure exists in the legislative branch today. Despite objective analysis by outside entities such as the Bremer, Hart-Rudman and

Gilmore commissions, most members of Congress refused to turn their coordination efforts inward. Coordination in the legislative branch was at its nadir immediately preceding the events of 11 September.

Following 11 September, President Bush exercised belated leadership and established the Office of Homeland Security to address the executive branch's shortcomings and coordinate its efforts. Congress needs a similar mechanism to provide oversight of the executive branch's efforts and assert congressional authority in a unified manner. Consolidating power into a single committee is the best approach to accomplish these critical tasks.

While much has been written criticizing the executive branch's mismanagement of domestic preparedness programs,¹ a paucity of research devoted to the congressional role exists. In this article, I will attempt to rectify this imbalance and examine the role of Congress for homeland security and terrorism initiatives. I will demonstrate the need for and the feasibility of a Select Committee on Homeland Security and Terrorism. By establishing this committee, America will be able to best address terrorism in the wake of the 11 September tragedy and finally be assured of coordinated efforts in the future.

The first section of this article shows how the overlapping, disjointed congressional committee structure inhibits coordination and the development of a coherent strategy to combat terrorism. The second section shows why the intelligence committees provide an ideal pattern for a homeland security committee. Analyzed in the third section, the recommendations of four congressional commissions provide evidence supporting the establishment of a new committee. The fourth section discusses the options for congressional organization and current efforts of Congress to consolidate its power.

The Overlapping, Disjointed Committee Structure

Over the past decade, Congress has consistently increased the level of funding for counterterrorism programs.² While this additional funding provides much-needed resources for executive branch agencies, it simultaneously contributes to the U.S. government's uncoordinated approach to addressing the threat of terrorism.

The principal reason for the inverse relationship between spending and coordination is that 40 stakeholder committees and subcommittees individually assert their authority over counterterrorism spending. These 11 committees in the Senate and 13 committees in the House, plus numerous subcommittees in each body, have directed various components of the government to undertake expensive counterterrorism programs.³

Paul Bremer, former Ambassador-at-Large for Counter-terrorism and the chairman of the National Commission on Terrorism, highlights how Congress is contributing to the executive branch's coordination problems:

Over the years, Congress has passed a hodgepodge of legislation, pulling the federal government one way or another, imposing rules, regulations, policies and practices with no concern for developing a coherent strategy.⁴

Thus, the lack of coordination in the legislative branch compounds the coordination problem in the executive branch. Because this is a two-way relationship, it is helpful that the President established the Office of Homeland Security that now helps the executive branch coordinate its efforts. Congress needs a similar coordinating body to bring together its uncoordinated committees.

Though working groups or task forces have tried to coordinate the committees, they remain divided because these groups are largely informal meetings by members of the same party. No serious effort has been made to create an overarching structure that coordinates efforts at a level above the stakeholder committee chairman, each unwilling to give up his piece of the homeland security pie.

Describing the various pieces of the homeland security pie, Senator Judd Gregg (R-NH) highlighted the principal committees with jurisdiction over counterterrorism activities:

Obviously, Senator Stevens is chairman of the Appropriations Committee. He has the entire pie. Senator Shelby of the Intelligence Committee has a very significant portion of it. Senator Warner, chairman of the Armed Services Committee, has an even more significant portion of it, in the sense of breadth of responsibility. Senator Roberts is responsible for emerging threats here in the Senate in his committee. And I have a small part of the pie which is called the FBI, our Justice Department and State.⁵

The chairmen of the congressional committees desire more funding for the agencies and departments within their jurisdiction, rather than other agencies competing for the funding available. The result of this myopic view of the committee chairmen is that they are individually focusing on agencies and departments within their jurisdiction without regard to a larger strategy. Furthermore, by following the requests of these agencies, the committees amplify the effects of a lack of a coherent strategy in the executive branch.

Those who believe that an uncoordinated homeland security approach is simply a government inefficiency rather than something detrimental to U.S. national security may not realize that America may have already suffered the consequences of this uncoordinated approach to combating terrorism. On 21 March 2001, the Working Group on Terrorism of the House Permanent Select Committee on Intelligence held a hearing on "The Threat Posed by Usama bin Laden and U.S. Countermeasures." This hearing occurred well before the 11 September attacks, raising the question: Was there information that would have assisted the full intelligence committee or another stakeholder committee and prevented the 11 September attacks? Because this hearing was closed to the public, Americans will likely never know the answer to this unsettling question.

It is difficult to calculate the overall damage to U.S. national security caused by an uncoordinated congressional approach to combating terrorism, because many of the hearings were closed to the public and the top-level discussions were private. However, evidence in the context of Congress' authorizations, appropriations, and oversight role demonstrates a system replete with inefficiencies and potentially endangering the lives of the American public.

Authorizations

Everyone on [Capitol] Hill and in the White House has their own pet rock when it comes to homeland defense, and they are all pushing their own ideas.

—*Democratic congressional staff member*⁶

The authorizations committees possess specialized knowledge in their functional areas. They analyze legislation that falls under their jurisdiction and advocate the funding levels for executive branch programs. Unfortunately, with an overlapping committee structure, these committees assert their legislative authority over counterterrorism programs in a manner that, rather than rectifying any problems, instead contributes to them.

The list below shows hearings conducted by the House Government Reform Subcommittee on National Security, Veterans' Affairs and International Relations—just one of the 40 stakeholder terrorism committees. This example, combined with a discussion of this subcommittee's relationship with other stakeholder committees and subcommittees, elucidates the disjointed structure. To show that a congressional coordination problem existed before 11 September, this section focuses on stakeholder committees' activities from January 2000 through 10 September 2001. It will be clear that these committees are responsible for the uncoordinated situation that exists today.

The House Government Reform Subcommittee on National Security, Veterans' Affairs and International Relations held ten hearings related to homeland security before 11 September 2001:⁷

- Federal interagency data sharing and national security: 24 July 2001
- Federal response to a biological weapon attack: 23 July 2001
- Combating terrorism and management of medical stockpiles: 1 May 2001
- Options to improve federal response capabilities (joint): 24 April 2001
- U.S. Commission on National Security/21st Century: 27 March 2001
- Assessing threats, risk management and establishing priorities: 26 July 2000
- DoD Chemical and Biological Defense Program: 24 May 2000
- Domestic preparedness against terrorism: 27 March 2000
- Combating terrorism and coordination of R&D programs: 22 March 2000
- Combating terrorism and management of medical stockpiles: 8 March 2000

While this subcommittee of the House Government Reform Committee examined homeland security issues, the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management convened similar hearings on legislation proposed to coordinate counterterrorism programs and activities: a hearing on 9 May 2001 concerning H.R. 525, the Preparedness Against Domestic Terrorism Act of 2001, and a hearing on 4 May 2000 concerning H.R. 4210, the Preparedness Against Terrorism Act of 2000. During these hearings, the subcommittee acknowledged significant coordination problems in the executive branch but failed to address any similar congressional problems. In fact, the legislation the subcommittee examined ignores any culpability within Congress and focuses solely on the executive branch. These hearings were unfortunately not the first time such a situation occurred.

Even efforts to coordinate hearings fall short of the need for consolidation. On 24 April 2001, the two previously mentioned subcommittees held a joint hearing on the terrorism legislation then before the House. While this would seem like a positive first step in coordinating congressional efforts, it suffered from two fatal flaws: First, the pieces of legislation focused only on executive branch issues and ignored similar legislative branch concerns. Second, because these are only two of the 40 stakeholder committees and subcommittees, the joint hearing contributed relatively little to the overall congressional coordination effort.

The same coordination problems exist in the Senate. For example, on 27 March 2001, the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information discussed “Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction.” The focus of the hearing was the Gilmore Commission’s recommendations. Just a few days later, the same subcommittee again held a hearing on homeland security; this time the focus was on another congressionally mandated commission, the Hart-Rudman Commission. Two points make this situation problematic. First, the Judiciary subcommittee is only one of the stakeholder Senate committees and subcommittees. Second, the subcommittee should have combined the two commissions’ testimony into a single hearing to highlight the differences between the panels’ recommendations and allow for a substantive debate.

Not only does the lack of coordination within the House and Senate pose a problem, but the lack of intercameral coordination is also concerning. For example, on the same day the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information held the hearing discussing the recommendations of the Gilmore Commission, the House Government Reform Subcommittee on National Security, Veterans’ Affairs and International Relations heard testimony from the Hart-Rudman Commission. The Senate Judiciary subcommittee held a hearing on the Hart-Rudman Commission’s recommendations just days later.

These examples of authorizations committees’ failing to coordinate are not an exhaustive list, simply a snapshot of the congressional coordination problem before 11 September. Moreover, the congressional coordination problem is not limited to the authorizations committees, because Congress not only microanalyzes executive branch funding requests

but, through the appropriations committees, also places this funding in the government's bank accounts.

Appropriations

The Constitution is clear that Congress has an essential role in funding the executive branch. Article 1, Section 9, states: "No money shall be drawn from the Treasury, but in consequence of appropriations made by law." Thus, Congress has a constitutional responsibility to judiciously appropriate funds for executive branch programs, including those aimed at combating terrorism.

All 13 appropriations subcommittees play a role in shaping the counterterrorism budget.⁸ Each independently determines the level of funding, following the passage of a corresponding authorizations bill. Though rules in both houses explicitly require an authorization before each appropriation, the actual process can be much different. As Senator Robert Byrd (D-WV), the powerful appropriations chairman and noted expert on Senate rules, said: "I'm not about to start hunkering down and running like a scared rabbit because somebody says it's got to be authorized."⁹ Not only do the Senate rules provide exceptions for unauthorized appropriations; House appropriators are also able to ignore the rules (either because no member raised a point of order or because the chamber waived its rules) and allocate funds for their desired homeland security programs.¹⁰ Such earmarks complicate the already convoluted process because they supersede other laws that were established more pragmatically.¹¹

The authorizations and appropriations committees also lack any significant coordination with each other. For example, on 9 May 2001, the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary held a hearing to examine the federal government's capabilities with respect to terrorism. Simultaneously, the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings and Emergency Management held a separate hearing to discuss the Preparedness Against Domestic Terrorism Act of 2001. Thus, the same proverbial stovepipes formed by authorizations committees that inhibit their coordination applies equally to the lack of coordination between the authorizations and appropriations committees.

The historical examples point to a long-standing coordination problem; a recent appropriations act gives evidence of a looming coordination crisis. Passed by votes of 422-0 in the House and 96-0 in the Senate, the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States represents \$40 billion of new funding. With half of the amount allocated for disaster and other humanitarian relief in New York, Pennsylvania, and Virginia, \$20 billion will be added to the counterterrorism budget.¹² This represents a 281% increase over the initial FY 2002 request. With this massive increase in funding and a continuing lack of coherent strategy, coordination among the committees will be even more difficult.

After the determination of funding for programs and the allocation of these funds, Congress provides oversight of the programs. This process is no less problematic than the previous two.

Oversight

Because committees often have far broader oversight jurisdiction than actual legislative authority, nearly every committee in the House and Senate can legally assert a right to oversee the gamut of counterterrorism programs. This situation is counterproductive, and potentially dangerous, because the broad oversight powers of the committee are to the detriment of the comprehensive strategy to combat terrorism.

The legislative branch can effectively paralyze the executive branch and prevent it from coordinating its efforts by subjecting the agencies and departments to excessive scrutiny. One way the congressional committees do this is by independently calling executive branch leaders to provide testimony before the numerous committees.

Speaking to this point during a Gilmore Commission meeting, Lt. General James Clapper (USAF, Ret.), then Vice-Chairman of the Gilmore Commission, related his experience of testifying before several committees and subcommittees during one day on Capitol Hill. He was frustrated because he had to run from one hearing to another to provide the same testimony before committees that were independently analyzing homeland security and terrorism efforts.¹³ Had there been a single committee with exclusive oversight jurisdiction, it would have reduced duplication of effort. It should come as no surprise that the Gilmore Commission recommended a single committee to address the terrorism programs, because the commission's leadership experienced the problem firsthand.

While some may argue that the dispersal of congressional authority for terrorism oversight among many committees assures a variety of perspectives, this comes at the cost of coordination. It is this lack of coordination that will inhibit cooperation and jeopardize a comprehensive policy.

Such dispersal of authorizations, appropriations, and oversight authorities continues after 11 September; since then, 442 pieces of legislation have been introduced and referred to virtually every congressional committee.¹⁴ Because no central authority is responsible for this legislation, coordinating counterterrorism efforts in the legislative branch is a daunting task for the 107th Congress.

To accomplish the goal of consolidating homeland security and terrorism efforts in Congress, the history of the intelligence committees should be considered. This history highlights the feasibility of creating a new committee dedicated to homeland security and terrorism issues.

The Intelligence Committee Model

The intelligence committees provide a framework for the development of the Select Committee on Homeland Security and Terrorism. This framework is best described by the table below that—for the first time#151;draws a parallel between the history of intelligence and terrorism oversight by Congress.

Period	Intelligence	Terrorism
1. Benign Neglect	1947-1973	1947-1992
2. Uncoordinated Concern	1974-1979	1993-Present
3. Consolidated Oversight	1980-Present	The Future

Up until the early 1990s, the low level of concern for domestic terrorism was akin to the intelligence community’s 1947-1970 “era of trust” or “period of benign neglect.”¹⁵ Just as Congress failed to provide a unified oversight during the intelligence community’s early period, Congress did not provide diligent oversight of the government’s terrorism efforts.

Since the “period of benign neglect,” with its periodic—yet legislatively fruitless—congressional hearings, a graph of legislative review would depict relative calmness until the 1974 publication of Seymour Hersh report in the *New York Times*, detailing covert CIA operations, including assassination attempts against foreign leaders. At this point the graph would show a sudden jump in legislative activity, which remains high today.¹⁶ A graph of legislative review for counterterrorism activities from 1993 through the present would track the same course, with the first World Trade Center attack being the modern wake-up call.

Thus, it was not the attacks on September 11 that alerted policymakers to America’s vulnerabilities; it was the World Trade Center bombing eight years earlier. With over 1,000 Americans injured in the 1993 blast, terrorism became a concern for many federal policymakers.

Much like the uncoordinated efforts following the first World Trade Center incident was Congress’s response to the Hersh article. Congress formed temporary congressional committees to investigate allegations of illegal domestic intelligence activities. These committees, chaired by Senator Frank Church of Idaho and Representative Otis Pike of New York, recommended the new permanent committees to provide oversight of the intelligence agencies and consider applicable legislation. This recommendation was not embraced by congressional leaders of the time. Instead, during this period of “uncoordinated concern,” Congress, while increasing its oversight of intelligence activities, also dispersed its oversight powers throughout Congress. The Hughes-Ryan amendment of 1974 provided oversight of CIA activities by requiring the CIA to notify eight committees before undertaking covert operations.¹⁷ This meant the CIA had to report its activities to 50

Senators and over 100 members of the House.¹⁸ Such a dispersal of powers reduced the effectiveness of intelligence oversight reforms.

Finally, in the Intelligence Oversight Act of 1980, Congress realized that having numerous committees with jurisdiction over a single issue complicated the legislative process to the detriment of U.S. national security. Congress wisely consolidated its efforts by charging one committee in each house with exclusive jurisdiction for intelligence activities. The Intelligence Oversight Act amended the Hughes-Ryan Amendment, requiring only that the CIA, before engaging in covert actions, notify the two intelligence committees, which provided “consolidated oversight.” Just as the Intelligence Oversight Act of 1980 successfully consolidated intelligence oversight in two committees, so too can the Select Committee on Homeland Security and Terrorism accomplish the same goal with respect to counterterrorism efforts in America.

As history demonstrates, such a marked shift in committee jurisdictional boundaries was not seriously considered until an event compelled Congress to act. Just as intelligence controversies (such as the human intelligence problems experienced during the Bay of Pigs operation) largely failed to elicit meaningful legislative action on intelligence activities, evidence of an uncoordinated homeland security and counterterrorism approach following the first World Trade Center attack failed to galvanize Congress to develop a legislative remedy. Now, in the wake of 11 September, Congress should feel compelled to establish a new committee to address the threat of terrorism.

The need for consolidation is as important today for homeland security and terrorism activities as it was for intelligence activities in 1980. If a single committee with jurisdiction over terrorism issues had information about Usama bin Laden that was previously provided to a single subcommittee or that there was a lack of counterterrorism focus at the FBI, the United States might have been able to prevent the attacks on 11 September.

Thus, it is important for America to embrace the intelligence committee model and take the advice of General James Clapper, who testified on behalf of the Gilmore Commission before Congress that “Congress we think must also better organize itself and exercise much greater discipline.”¹⁹ As a former Director of the Defense Intelligence Agency, the general understands that the answer is a committee based on the intelligence committee model:

So we recommended the creation of a joint committee or alternatively separate committees in each house, somewhat akin to the construct that I am used to in intelligence oversight committees, to pass on executive branch requests and to oversee execution of programs that it authorizes. And obviously for this to work other Congressional authorizing and appropriations committees would have to defer to the joint or the single committee in each House.²⁰

General Clapper is not the only objective voice to publicly support the establishment of a new congressional committee to combat terrorism; several congressional commissions reached the same conclusion.

Supporting Evidence From the Commissions

All the commissions charged by Congress to address the lack of coordination among the 46 federal agencies with a counterterrorism role returned an ironic verdict to Congress: Congress is contributing to the failure of the U.S. government's efforts to coordinate its counterterrorism programs.

The Bremer Commission, the Center for Strategic and International Studies Working Group on Homeland Defense, the Hart-Rudman Commission, and the Gilmore Commission all addressed the congressional coordination problem.

The National Commission on Terrorism (the "Bremer Commission") explored international terrorism issues rather than domestic threats, but its recommendations regarding congressional coordination are still applicable. The commission appropriately demanded congressional reform but stopped short of recommending a new committee. The commission found that "Congress should develop a mechanism for reviewing the President's counterterrorism policy and budget as a whole.... House and Senate Appropriations Committees should immediately direct full-committee staff to conduct a cross-subcommittee review of counterterrorism budgets."²¹

While this would have been a valid recommendation to be implemented as a first step during the 1990s era of "uncoordinated concern," this recommendation has been obviated by the recent turn of events. Such a review would be an unnecessary use of resources and would lengthen the amount of time before changes would be implemented. The leadership from both houses must swiftly take action, rather than wait for such a report from the staff.

The Center for Strategic and International Studies Working Group on Homeland Defense stated: "The objective would be for each legislative body to have only one authorization and one appropriations committee for cyber threats, [chemical, biological, radiological, and nuclear] terrorism, and critical infrastructure protection."²² The recommendation is valid but stops short of providing authority over conventional threats. While weapons of mass destruction account for a large part uncoordinated efforts, all issues relating to terrorism in the United States must be a part of the new committee's jurisdiction.

Chaired by former senators Gary Hart and Warren Rudman, the U.S. Commission on National Security/21st Century (the "Hart-Rudman Commission") submitted its third report to Congress in January 2001. The commission recommended that Congress "form a special select committee for homeland security to provide Congressional support and oversight in this critical area."²³ This recommendation is strong evidence of the congressional coordination problem. It carries even more weight coming from former congressional leaders.

The Advisory Panel to Assess the Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (the "Gilmore Commission") stated in its December 2000 report to the President and Congress, "We recommend the establishment of a Special Committee for Combating Terrorism#151;either a joint committee between the Houses or

a separate committee in each House¹⁵¹;to address authority and funding, and to provide Congressional oversight, for Federal programs and authority for combating terrorism.”²⁴ Most notably, the commission recommended that the committee should be “similar to the processes of permanent select committees on intelligence.”²⁵

In the wake of the 11 September attacks and the subsequent news media attention on the reports of these commissions, many Americans now wonder why Congress did not implement the recommendations of the commissions it empanelled. This is a valid concern and one that members of Congress should have to address, even if it is too late to prevent the thousands of deaths that the commissions had predicted.

Consolidation Options and Efforts

Congress did little before 11 September to consolidate its efforts. All substantive legislative efforts focused instead on the executive branch. Following 11 September, efforts to address the congressional processes took on a new fervor. Though this much-needed introspection will likely mean new congressional structures to address the threat of terrorism, if done hastily these efforts might actually deepen the schisms between committees and worsen the coordination problems.

Task Forces or Working Groups

The first option and least effective is to form a task force or working group dedicated to terrorism issues. This is the most informal way Congress organizes itself. Because a task force or working group lacks resources (such as dedicated staff) and authorities (such as subpoenas and hearings) granted to committees, its power comes from the close relationships it has with those who founded the group¹⁵¹;frequently senior party leadership. While this may provide a communications link between the group and its party, it engenders little change unless the leadership makes a concerted effort to influence committee chairmen¹⁵¹;something that has not yet occurred.

The Working Group on Terrorism, led by Congressman J. C. Watts (R-OK), the Chairman of the House Republican Conference Committee, has a distinct advantage: it was established well before 11 September. For several months before the 11 September terrorist attacks, the group brought Republican members of Congress and staff from the various stakeholder committees together for discussions and briefings from relevant executive branch agencies on terrorism issues.

During one such briefing—ironically on 10 September 2001—senior officials from the Federal Bureau of Investigation briefed the group that the FBI’s number-one concern for terrorism at home was the Animal Liberation Front and the Earth Liberation Front. Surprised that the number-one threat was a group that had not committed a single murder, several staff members questioned the FBI’s thinking.²⁶ Because this question came from staff members (instead of from a member of Congress) and was asked in a private session (rather than in a public forum), this troubling news that the FBI was dedicating its

counterterrorism resources to a nonviolent threat, rather than investigating persons associated with Usama bin Laden, was largely forgotten following the briefing.

This example highlights the specter of the decision makers in Congress having incomplete information. Had this testimony occurred before a full committee dedicated to terrorism, the FBI would have likely faced much stiffer criticism and perhaps would have been forced to alter its course toward more dangerous terrorists well before 10 September. The result of a coordinated approach could have been the prevention of the tragedy that occurred the very next day.

The events of 11 September convinced the House Democratic Caucus of the need to form a task force on terrorism. Chaired by Congressman Robert Menendez (D-NJ), the task force is similar in structure to the Republican working group chaired by Congressman Watts.²⁷ However, given the *ex post facto* nature of the Democratic Caucus's task force, it lacks the foresight and understanding of the issues that boost the credibility of the Republican working group on terrorism.

The only bipartisan group, the House Intelligence Committee's Working Group on Terrorism and Homeland Security, was named by Speaker of the House Dennis Hastert on 13 September to be the lead congressional entity on the investigation of the 11 September attacks. By stating, "The working group ... will examine all aspects of these terrorist attacks, including the vulnerability of America's infrastructure and our counter-terrorism, preparedness and response capabilities,"²⁸ the Speaker essentially gave a low-level group a leadership capacity over all House committees and subcommittees that had far more power and authority. Apparently realizing the precarious position he placed this group in, Speaker Hastert later gave the group subcommittee status.

Oversight Panels

An oversight panel is the result of a committee chairman's desire to have a portion of his committee examine a specific issue. Such a panel does not have any authority to make authorizations and is relatively powerless, often subjugated by the full committee or its subcommittees. For this reason, it is ineffective as a method to coordinate congressional efforts to combat terrorism.

One example of this type of structure is the House Armed Services Committee Special Oversight Panel on Terrorism. The panel, chaired by Congressman Jim Saxton (R-NJ), has held just six hearings during the past two years, and only two of these focused on terrorism at home. While it can be helpful to study a specific component of terrorism (as this panel did in its investigation of the attack on the U.S.S. *Cole*), it is far too discrete of a structure to effectively address all issues relating to homeland security and terrorism. Oversight panels contribute to the dispersal of power across committees and inhibit Congress's ability to develop a comprehensive counterterrorism strategy.

Subcommittees

The subcommittee alleviates the problems discussed with regard to the previous structures because it is vested with the power to hold hearings and issue subpoenas and it has a dedicated staff. Realizing that these powers will be necessary for a terrorism panel to be effective, Speaker of the House Dennis Hastert rescinded his earlier order naming a task force as the lead congressional entity on terrorism by announcing on September 20:

In order to best protect our country and address the security needs of the American people, I'm proud to announce that we are converting the Working Group on Terrorism and Homeland Security into a full subcommittee, which will be part of the House Intelligence Committee.²⁹

At first glance, this move by Speaker Hastert appears to be in line with the recommendations of this paper. Certainly elevating a working group to subcommittee status has the advantage of giving the group a higher status and the power to hold hearings and issue subpoenas. However, this well-intentioned effort will likely contribute to#151;rather than alleviate#151;the dispersal of powers.

Two principal reasons make this automatic reaction one that is destined to fail. First, other committees and subcommittees have no reason to refrain from exercising their right to hold hearings and issue subpoenas. Each will continue to work independently, and this new subcommittee will simply be another subcommittee contributing to the coordination problem, among the 40 committees and subcommittees that already exist. Second, the new subcommittee is unlikely to exhibit any leadership for a comprehensive strategy because it is a subgroup within the Intelligence Committee, which itself has only a small portion of the counterterrorism budget. Undeterred, Congressman Saxby Chambliss (R-GA) and Congresswoman Jane Harman (D-CA), the new Chairman and Ranking Member respectively, sent a letter to their House colleagues the same day as Speaker Hastert's announcement, stating that the Subcommittee on Terrorism and Homeland Security would "spearhead efforts in the House of Representatives to examine all facets of the tragic terrorists attacks of September 11th and to recommend new countermeasures."³⁰ The reality is, however, that a subcommittee simply cannot pull together all the stakeholder committees for a common purpose; it will take a full committee to achieve this kind of consolidation of power.

Ad Hoc Committees

Above the subcommittee but below the full committee is a unique structure designed to review legislation from several committees: the ad hoc committee. While it may serve to boost coordination, it does little if anything to consolidate congressional power: First, because most substantive work on legislation is completed in committees—and the ad hoc committees review legislation only after it is already reported from standing committees—the ad hoc committees would be in a weak position to reverse the findings of the many committee chairman who reported the bill. Second, other than two short-lived ad hoc committees in the House during the 1970s, little precedent exists for an ad hoc terrorism committee today. Congress needs a strong committee that can persist despite likely

criticism from other committee chairmen reluctant to divest their power. The only two examples of this type of committee, the Ad Hoc Committee on the Outer Continental Shelf and the Ad Hoc Committee on Energy, give credence to these concerns about longevity.

Though an ad hoc committee would draw members from stakeholder committees, it is an inappropriate model to consolidate power in a manner that Congress requires to combat terrorism effectively. A more formal, permanent committee is required to achieve this consolidation.

Permanent Committees

The most prevalent type of permanent committee in the House and Senate is the standing committee. These 35 committees (19 in the House and 16 in the Senate) and their subcommittees are the bulwarks of Congress.

With no fewer than 40 separate committees and subcommittees exercising jurisdiction over homeland security and terrorism funding and oversight, a new standing committee dedicated to homeland security and terrorism would consolidate power by establishing a single entity that would have exclusive jurisdiction over these issues.

While this would consolidate power, it would do so without using the gained knowledge of the various committees and their members, because there exists no mandate for a standing committee to draw its membership from the stakeholder terrorism committees. It makes little sense to ignore the work of the stakeholder committees—each of which has addressed homeland security and terrorism issues for the past several years—and instead rely solely on the discretion of the congressional leaders when forming the committee. It is also unlikely that existing committee chairmen will hand over their large budgetary and oversight authorities without a guarantee that they will have representation on the new committee.

Alternatively, an existing committee—for example, the Armed Services Committee—could be given exclusive jurisdiction for domestic terrorism. Essentially, it would mean ignoring each of the previous committees' findings and starting anew because, unless a member of the Armed Services Committee is by chance a member of one of the other relevant committees, no representation from other committees will be present. Such happenstance does not build confidence in U.S. counterterrorism efforts. Furthermore, there is no clear justification that the Armed Services Committee is better qualified to assume this role than the Judiciary or Intelligence committees. Each of these committees has a role to play.

The Gilmore commission also raised the idea of a joint committee, which is unlikely a prudent choice for a terrorism committee because only one joint committee has ever been given full legislative jurisdiction (the Joint Committee on Atomic Energy, until 1977). All joint committees today (such as the Joint Economic Committee and the Joint Committee on Taxation) lack the legislative jurisdiction that a terrorism committee requires for it to be effective.³¹

Select Committees

To best address each of these issues, a structure that is inclusive rather than exclusive is the most viable option to consolidate congressional power and provide a capability to develop a comprehensive strategy. Thus, the select committee structure, which draws members from all of the stakeholder committees, stands as the best option to achieve consolidation.

The select committee is so named because its members are a select group drawn from committees with jurisdiction over the issues it addresses. This ensures that all relevant parties are part of the budget-making and oversight processes. For example, the Senate Select Committee on Intelligence is composed of 15 members: two members from the Committee on Appropriations; two members from the Committee on Armed Services; two members from the Committee on Foreign Relations; two members from the Committee on the Judiciary; and seven members appointed from the Senate at large.³²

All committees with jurisdiction over the Intelligence Community are represented. The Armed Services Committee oversees the Department of Defense, which, though classified, is likely responsible for \$26 billion of the \$30 billion appropriated for the FY 2002 intelligence budget.³³ The Foreign Relations Committee considers issues relating to our diplomatic ties to foreign countries. This is an important consideration because intelligence activities frequently involve diplomatic cover. The Judiciary Committee oversees the Federal Bureau of Investigation, which leads domestic intelligence activities. The result of the input from each of these committee members is a whole that is greater than the sum of its parts.

This congressional holism would be a key strength of a Select Committee on Homeland Security and Terrorism. It is why the select committee is a more appropriate model than the standing committee. Stakeholder committees that have already developed expertise in homeland security will share their expertise with the new committee. Seniority must not trump this expertise. Congress would be ill served if a very senior member of Congress with little expertise takes a seat rather than a member of the Armed Services Committee who is familiar with the issues. It is not that this senior member should not be on the committee, because having senior members on a committee provides other political benefits to the committee, but the senior member should be one of the at-large representatives chosen by the leadership.

Thus, the select committee is essentially a standing committee that is required to have at least a simple majority (8 of its 15 members) drawn from stakeholder committees.

Several members of Congress agree that a Select Committee is the best model for overseeing homeland security and terrorism. Beyond Congressman J. C. Watts' prescience when he formed the Working Group on Terrorism, he introduced a resolution on 14 February 2001 that called for a select committee. H.Res. 52, section 3, states:

Resolved, That it is the sense of the House of Representatives that ... Congress should establish a panel to examine the adequacy of its committee structure to deal with issues related to domestic terrorism and to consider the creation of more effective structures, including a Select Committee on Domestic Terrorism.³⁴

Following the 11 September attacks, a member of the Senate developed an even more ambitious proposal. Senator Pat Roberts (R-KS) introduced S.Res. 165 to create the Select Committee on Homeland Security and Terrorism, which is the first piece of legislation to formally outline a select committee on domestic terrorism. Though the membership of the select committee is left for the Senate leadership to decide, it does require that the chairmen and ranking members of the committees designated "as having primary and preeminent jurisdiction over homeland security and terrorism" be members of the new committee.³⁵

Both Senator Roberts' and Congressman Watts' proposals are certainly steps in the right direction for increased congressional coordination. However, given that the Senate bill has no cosponsors and the House measure merely recommends the establishment of a committee, these are simply first steps and need to be built upon by concerted efforts of congressional leaders to foster an agreement that will make the Select Committee on Homeland Security and Terrorism a reality.

Conclusion

The overlapping, disjointed structure that Congress employs for homeland security and terrorism programs' authorizations, appropriations and oversight require Congress to develop a new committee based on the intelligence committee model to address this inefficient and possibly dangerous situation. The four congressional commissions provided clear evidence that such a committee is necessary. Members of Congress must now take substantive action to pass legislation such as S.Res. 165 to address the need for a coordinated approach, rather than simply acknowledge the threat.

To do this, Congressional leaders in both houses must embrace the intelligence committee model. Speaker Hastert has been an outspoken advocate of the House Intelligence Subcommittee on Terrorism and Homeland Security, and now that the Speaker understands the immensity of the counterterrorism coordination problem, he must endorse new select committee.

Members of the congressional commissions that advocated a new committee to address terrorism must also push policy leaders to implement the commissions' recommendations. Particularly well positioned is the Gilmore Commission, which, because of an amendment to the FY 2002 Defense Authorizations Act by Congressman Curt Weldon (R-PA), will have an additional two years to work with Congress to implement its recommendation to form a new committee.

The task to create a new Select Committee on Homeland Security and Terrorism will not be easy. In fact, history will show that the transfer of power to the new committee is sure to incite congressional leaders. For instance, in 1977, during a debate on the establishment of the House Permanent Select Committee on Intelligence, leaders of Congress—usually known for their equanimity and strict decorum—behaved quite ungentlemanly:

An angry Speaker Thomas P. (Tip) O’Neill Jr. (D-Mass.) shouted at (Minority Leader John J.) Rhodes that he had consulted him and Rhodes had told him that he was in favor of (the House intelligence) committee. “I wish the minority leader could lead instead of always following his followers around here,” O’Neill said in what was an unusually harsh attack even for political opponents.³⁶

Even though the future looked bleak for the intelligence committee following the raucous exchange between the party leaders, we now understand that, undeniably, the consolidation of intelligence oversight into a single committee in each house was a success. Today, there is no evidence of an intercommittee power struggle for intelligence oversight and the nation is likely more secure as a result.

As was the case during the 1970s discussions of a new intelligence committee, committee chairmen will be reluctant to endorse a Select Committee on Homeland Security and Terrorism, simply because they wish to keep their jurisdictional boundaries intact. It is essential, therefore, that House and Senate leaders join outside experts such as the Gilmore Commission to educate members of Congress and their constituencies that keeping the status quo will hinder efforts to coordinate resources, oversight, and strategy, which will ultimately make the United States less prepared for future acts of terrorism. No member of Congress will be able to justify a vote against such a commonsense proposal to a now terrorism-cognizant public.

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Click on an end note number to return to the article.

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