



# **Task Force Report on Streamlining and Consolidating Congressional Oversight of the U.S. Department of Homeland Security**

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THE ANNENBERG RETREAT  
AT SUNNYLANDS

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# Task Force Executive Summary

***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.***

—9/11 Commission Report

Nearly a decade after the 9/11 Commission issued its report on the greatest act of terrorism on U.S. soil, one of its most significant recommendations has not been acted upon. The call for consolidated Congressional oversight of the U.S. Department of Homeland Security (DHS) is, in the words of Commission co-chair Thomas H. Kean, “maybe the toughest recommendation” because Congress does not usually reform itself.

To underscore the importance of this reform, The Annenberg Foundation Trust at Sunnylands and the Aspen Institute’s Justice and Society Program convened a task force in April 2013, including 9/11 Commission co-chairs Kean and Lee H. Hamilton, former DHS officials under Presidents Barack Obama and George W. Bush, and members of Congress (Appendix). While the failure to reform DHS oversight may be invisible to the public, it is not without consequence or risk. **Fragmented jurisdiction impedes DHS’ ability to deal with three major vulnerabilities: the**

**threats posed by small aircraft and boats; cyberattacks; and biological weapons.**

“I think we’ve been distinctly less secure from a biological or chemical attack than we would have been had we had a more rational and targeted program of identifying the most serious threats,” said former Sen. Bob Graham (D., Fla.). As the 9/11 Commission Report noted: **“So long as oversight is governed by current Congressional rules and resolutions, we believe that the American people will not get the security they want and need.”**

Earlier work by policy groups such as the Heritage Foundation and Brookings Institution attests to the consensus that consolidated oversight of DHS is needed. Among the concerns: More than 100 Congressional committees and subcommittees claim jurisdiction over it. In 2009, the department spent the equivalent of 66 work-years responding to Congressional inquiries. Moreover, the messages regarding homeland security that come out of Congress sometimes appear to conflict or are drowned out

altogether. As former DHS Secretary Michael Chertoff noted, “When many voices speak, it’s like no voice speaks.”

The task force recommends that:

- DHS should have an oversight structure that resembles the one governing other critical departments, such as Defense and Justice.
- Committees claiming jurisdiction over DHS should have overlapping membership.

Since a new committee structure cannot be implemented until the 114th Congress is seated in 2015, the task force also recommends these interim steps toward more focused oversight:

- Time-limiting subcommittee referrals to expedite matters of national security.
- Passing, for the first time since formation of the department in 2002, an authorization bill for DHS, giving the department clear direction from Congress.

# Streamlining and Consolidating Congressional Oversight of the U.S. Department of Homeland Security

*So long as oversight is governed by current Congressional rules and resolutions, we believe that the American people will not get the security they want and need.*

—9/11 Commission Report

In 2002, the federal government's third-largest department, the Department of Homeland Security, was created by putting under one umbrella 22 departments and agencies, from the Coast Guard in the Department of Transportation to the Border Patrol in the Department of Justice to the U.S. Secret Service in the Treasury Department. In July 2004, the 9/11 Commission issued 41 recommendations, including one that the Commission itself noted was among "the most important" but also "the most difficult to realize" — reform of Congressional oversight of the U.S. Department of Homeland Security (DHS). In the words of Commission co-chair Thomas H. Kean, "We had a number of members of the commission like [co-chair and former Rep. Lee H.] Hamilton who had served in the body, and they all said the same thing: This may be the toughest recommendation" because Congress doesn't usually reform itself.<sup>1</sup>

The recommendation of the 9/11 Commission addressed problems that had contributed to the United States' vulnerability to attack on 9/11. Former Sen. Bob Graham (D., Fla.), co-chairman of the Senate Intelligence Committee on 9/11, recalls:

We found among other things that there had been inadequate communication among the agencies with a responsibility to alert us to a security threat. The FBI and the CIA had information which, had it been brought together, might well have allowed us to have avoided 9/11.<sup>2</sup>

The 9/11 Commission reached the same conclusion. In the words of former Gov. Kean:

Before 9/11, Congress was not doing its job of oversight of the intelligence agencies that were not doing the job themselves. That was one of the lessons of 9/11. This recommendation [resulted from asking the question], "How can we make sure that ... Congress is in fact ... doing the most that [it] can to protect [us]?"<sup>3</sup>

In the nine years since the 9/11 Commission issued its findings, the vast majority of its recommendations have been implemented in whole or in part. Not so the one urging the streamlining of Congressional oversight of DHS. Since the 9/11 report was promulgated, independent reports by a

variety of groups – including the Bipartisan Policy Center, the Heritage Foundation, the Brookings Institution, George Washington University’s Homeland Security Policy Institute, and the Center for Strategic and International Studies-Business Executives for National Security – have underscored the need for oversight reform. They have characterized the current system as “balkanized and dysfunctional” (CSIS-BENS, 2004)<sup>4</sup>, “jurisdiction ... carved up to accommodate antiquated committee structures” (BPC, 2011),<sup>5</sup> “duplicative and wasteful” (HSPI, 2004),<sup>6</sup> a “crushing ... failure” (Brookings, 2006),<sup>7</sup> and “byzantine” (Heritage, 2012).<sup>8</sup>

To raise awareness of the need for Congress to respond to this 9/11 Commission recommendation, The Annenberg Foundation Trust at Sunnylands and the Justice and Society Program of the Aspen Institute, in partnership with the Annenberg Public Policy Center of the University of Pennsylvania, convened a high-level bipartisan Task Force on Streamlining and Consolidating Congressional Oversight of the U.S. Department of Homeland Security, in April 2013, at The Annenberg Retreat at Sunnylands in Rancho Mirage, Calif. Among its members are 9/11 Commission co-chairs Hamilton and Kean, former DHS officials under Presidents Barack Obama and George W. Bush, and past and present members of Congress (see Appendix, p. 24).

The task force members examined five questions:

- Why does Congressional oversight matter?
- What are the characteristics of an effective oversight structure?
- How does fragmented oversight affect

the nation’s well-being and security?

- What are the structural and political barriers to reform?
- What should be done now and when the new Congress convenes in January 2015?

Drawing on the experience of its members as evidence, this report offers the Sunnylands-Aspen Task Force’s answers.

### **Why Congressional Oversight Matters**

Congress’ job is to look into every nook and cranny of the executive branch to see that the laws are being properly executed, to make suggestions [about] where improvements can be made. To understand what the policy of the executive branch is. To try to be constructive and to be a critic as well if they don’t like what the executive is doing. If it is properly done, if the right questions are asked, it can greatly strengthen the operation of a department. ... Proper, tough, robust oversight can put the bureaucracy on its toes, can make sure that the law is being implemented, can see that there’s not a lot of hanky-panky going on, corruption. And to make sure that the people are being well served.<sup>9</sup>

—9/11 Commission co-chair and former Rep. Lee H. Hamilton (D., Ind.)

“Properly executed” oversight, as former DHS Secretary Michael Chertoff notes, enables members of Congress to better “understand the department that they’re looking at, understand the issues well, ask sharp and informed questions and get answers that are helpful in determining whether the

department or agency is performing most efficiently.”<sup>10</sup> Former Homeland Security Adviser Kenneth L. Wainstein agrees: Effective Congressional oversight “enhances our national security” by helping “to inform the legislative process. The more Congress conducts oversight, the more [its members] understand the workings of the executive branch, and the better the legislation that they produce, which assists the executive branch in its efforts to protect the country.”<sup>11</sup>

“We oversee to make sure that they’re doing what we ask them to do — that’s the law,” observes Rep. Loretta Sanchez (D., Calif.), a member of the House Committee on Homeland Security. “We oversee them to know that they’re not spending too much or too little money in an arena, that there’s no corruption.”<sup>12</sup>

“Congressional oversight,” says former Rep. John Tanner (D., Tenn.), “is probably as important a function of Congress as any other. ... It has to do with the wise utilization of whatever resources come to the government. And it has to do at the end of the day with the confidence level people have ... the confidence that the government is actually functioning in a way that makes sense to people.”<sup>13</sup>

### **The Characteristics of an Effective Congressional Oversight Structure**

Effective oversight occurs when corresponding committees in each House hold a department accountable and use their power to ensure that it has the authorizations and resources it requires to accomplish its mission well and in a way that makes efficient use of tax dollars.

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***Congressional oversight is most constructive when a Congressional committee builds expertise and is in a position to see the big picture, ensuring that existing legislation is implemented properly and new legislation responds to evolving threats.***

big picture, ensuring that existing legislation is implemented properly and new legislation responds to evolving threats. For example, as Chertoff notes, “Over time the committees in the defense area in Congress have had quite a lot of influence on the direction of defense policy because there’s been a single focal point in each House for authorizing what the Department of Defense does.”<sup>14</sup>

The Constitution, in Article I, Section 9, provides, in part: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” This gives the Congress the power over federal spending. This legislative provision is broadly enforced by laws, such as the Antideficiency Act, that limit what executive branch officials can do with the funds given them.

As the size and role of government has grown, Congress has realized that it needs to divide policy deliberations from spending. Both Houses have established separate authorizing and appropriations committees to achieve this. Programs and their administration are to be funded through an annual

appropriation process, while overseen and authorized by a separate authorizing committee. The Congress exercises its “power of the purse” through this authorization and appropriation of funds.

Most executive agencies are chiefly associated with and scrutinized by a single legislative committee in each chamber of Congress. For instance, the operations of the Department of Labor are principally overseen in the Senate by the Committee on Health, Education, Labor & Pensions and in the House of Representatives by the Committee

on Education & the Workforce. Likewise, these two committees have the main responsibility for developing and drafting legislation relating to the Department of Labor.

The same is true of most of the other departments and agencies of the Executive Branch. The State Department is closely aligned with the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations. As the following table shows, major Cabinet departments correspond with one or two substantive committees in each chamber of Congress.

<b>Department or Agency</b>	<b>House Committee</b>	<b>Senate Committee</b>
Agriculture	Agriculture	Agriculture, Nutrition & Forestry
Defense	Armed Services/ Intelligence	Armed Services/ Intelligence
Education	Education & the Workforce	Health, Education, Labor & Pensions
Energy	Energy & Commerce	Energy & Natural Resources
Justice	Judiciary	Judiciary
Labor	Education & the Workforce	Health, Education, Labor & Pensions
Director of National Intelligence/CIA	Intelligence	Intelligence
State	Foreign Affairs	Foreign Relations
Treasury	Financial Services/ Ways and Means	Finance/Banking, Housing and Urban Affairs
Veterans' Affairs	Veterans' Affairs	Veterans' Affairs



However, when jurisdiction is diffuse — asserted, in this case, by more than 100 committees and subcommittees, each with a different mandate — good oversight is difficult. As Chertoff, DHS Secretary from 2005 to 2009, said at Sunnylands:

A fragmented oversight structure means conflicting direction, maybe uncertainty about what Congress wants, and it certainly means a burden of appearing at hearings or producing paper for Congress that multiplies in a way that actually impedes the department's ability to focus on its operations.<sup>15</sup>

The lack of alignment between the House and Senate committees claiming jurisdiction is problematic as well. Currently, the Senate Homeland Security and Governmental Affairs Committee has less oversight of homeland security than its counterpart, the House Committee on Homeland Security. Caryn Wagner, who worked both on the House Permanent Select Committee for Intelligence and for DHS as Under Secretary for Intelligence and Analysis, explains the difficulty created when House and Senate committee jurisdiction does not match up:

The House passes a bill and the Senate passes a bill. Then they get together in conference and come up with one bill that ideally the president signs into law. If you don't have jurisdiction over the same elements, it's really impossible to conference a comprehensive bill.<sup>16</sup>

## **How Fragmented Oversight Affects the Nation's Well-Being and Security**

The current state of DHS oversight hampers the department's functioning in three primary ways: redundant requests from committees drain valuable resources; the overlap of legislative roles complicates Congressional oversight and results in less Congressional control; and that same fragmentation prevents Congress from addressing pressing concerns in a timely fashion.

### **1. A Drain on Resources**

Forcing people who should be doing their jobs securing our homeland to spend more of their time reporting to Congress than doing their job is wrong.<sup>17</sup>

—*Former Rep. and House Rules Committee chair David Dreier (R., Calif.)*

The complications created by fragmented oversight were on vivid display in November 2012 when a DHS official decided not to fulfill a request to testify before a Congressional committee. As Administrator of the Transportation Security Administration (TSA), a part of DHS, John S. Pistole oversees a 61,000-person workforce, the security of more than 450 U.S. airports, and the Federal Air Marshal Service, as well as highway, railroad, port, mass-transit and pipeline security throughout the nation. In late 2012, he drew attention to the issue of divided oversight when he declined a request by the House Subcommittee on Aviation to testify on passenger policies on the grounds that the panel lacked jurisdiction over the TSA.

At that time, Pistole said the TSA would continue to work with its committees of

jurisdiction to pursue effective security solutions. What appeared to the TSA to be a measured response to a redundant demand was taken by the subcommittee as a symbolic finger in the eye. While conceding that the subcommittee does not have “direct jurisdiction,” Rep. Bill Shuster (R., Pa.), the incoming chair, observed of the TSA, “When they impede the traveling public, they need to answer to the committee.”<sup>18</sup> Although the TSA head challenged the subcommittee’s jurisdiction, the Homeland Security Department’s Inspector General’s office tacitly granted it by accepting an invitation to testify at the same hearing.<sup>19</sup>

In the 112th Congress (2011-2013), TSA personnel testified at 38 hearings and provided 425 briefings for members of Congress, numbers consistent with the worry expressed in 2010 by then-Homeland Security Secretary Janet Napolitano that:

**Our principals and their staff [are] spending more time responding to Congressional requests and requirements than executing their mandated homeland security responsibilities.<sup>20</sup>**

Every request for a briefing or invitation to attend a hearing requires a commitment of resources. By one estimate, no other agency spends as much time on Capitol Hill as DHS. In 2007 and 2008, for example, officials at the Department of Veterans Affairs, a department of comparable budget and size to DHS, testified at half the number of hearings before just two committees, and gave less than one-tenth as many briefings as DHS.<sup>21</sup> By contrast, Congress recently brought DHS officials before five committees for almost a dozen hearings on cybersecurity issues in less than a year, requesting answers to

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dozens of redundant questions on network protection.<sup>22</sup> Nonetheless, Congress has been unable to pass a comprehensive cybersecurity bill.

“When you have different Congressional committees all asking questions or conducting oversight into the same areas of an agency’s operations,” Wainstein says, “that means that their officials ... who are responsible for, in the case of DHS, protecting the homeland [are] spending hours responding to redundant questions. ... That’s time that they’re not committing to protecting the nation.”<sup>23</sup>

In the 112th Congress, more than 100 Congressional committees and subcommittees asserted jurisdiction over DHS (compared with the 36 committees and subcommittees that oversee the Department of Defense, which has a budget 10 times greater and millions more employees). DHS personnel participated in 289 formal House and Senate hearings, involving 28 committees, caucuses and commissions, which required testimony from more than 400 DHS witnesses. The department also participated in more than 4,300 briefings and other non-hearing engagements with Congress.<sup>24</sup>

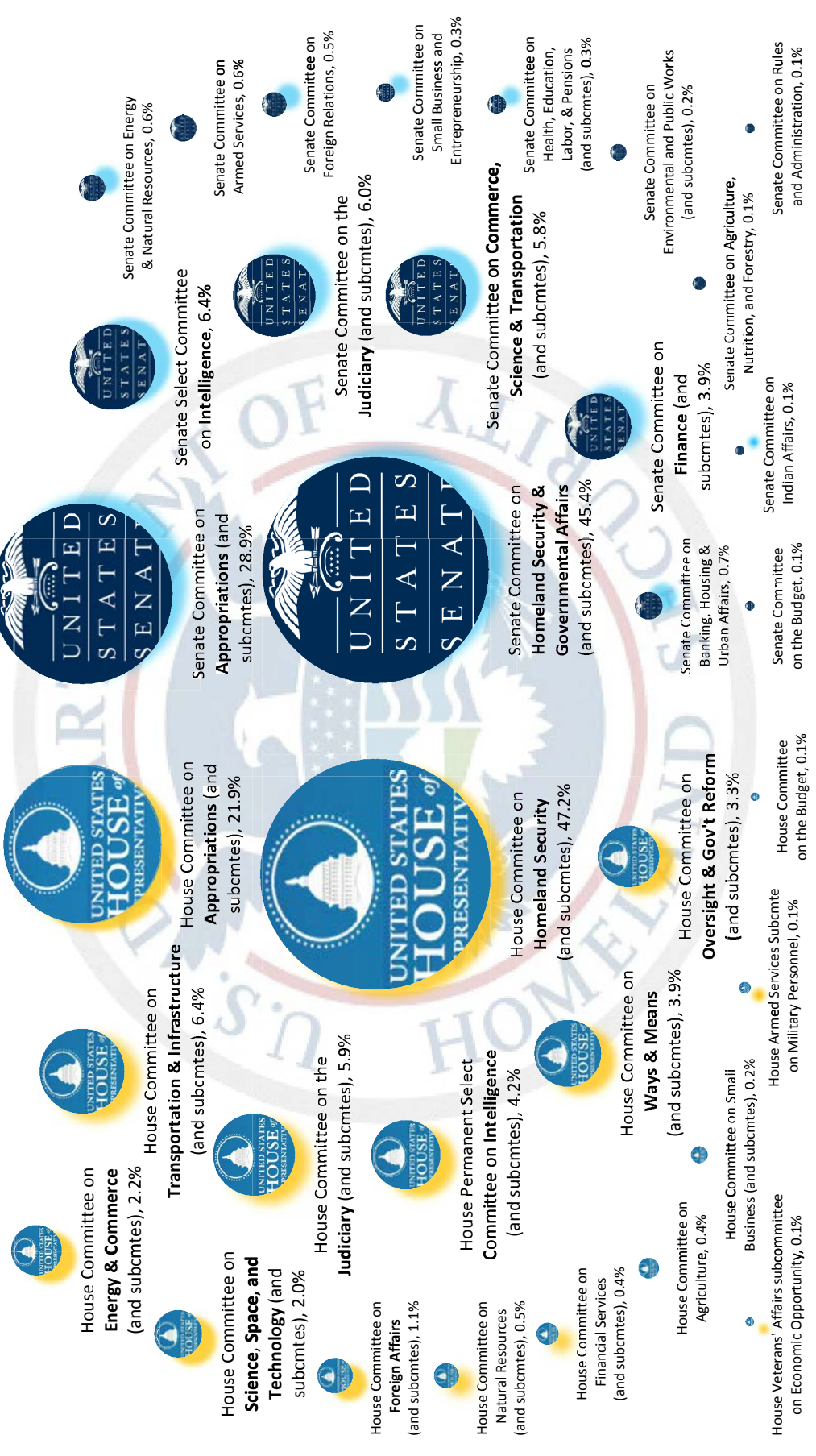
# DHS Congressional Engagement

~ 112th Congress ~

119 Committees, Subcommittees, caucuses and commissions

1650 engagements with 17 of the 21 standing House Committees; 204 were hearings

1346 engagements with 17 of the 25 standing Senate Committees; 82 were hearings



Circle size is proportioned as percentage of total chamber engagements. A committee shadowed in yellow or blue has held hearing(s) where DHS has testified.



**Think of having 100 bosses. Think of reporting to 100 people. It makes no sense. You could not do your job under those circumstances.**<sup>25</sup>

—*9/11 Commission co-chair and former New Jersey Gov. Tom Kean*

**Three buzzwords used in Washington are “accountability,” “disclosure,” and “transparency.” Those three words are thrown out all the time. If you look at the notion of the people at the Department of Homeland Security being accountable, the difficult thing here is, to whom are they accountable?**<sup>26</sup>

—*David Dreier*

These numbers understate the time commitment required to respond effectively. Drafting testimony for each hearing typically requires the work of two or three subject matter experts. The Office of Legislative Affairs and the general counsel must review the prepared remarks. Depending on the issue, senior managers may need to approve the substantive content of the testimony. One or more preparation sessions are required. And after the hearing there typically will be a series of questions for the record, for which responses must be drafted. One estimate suggests that each hearing requires one month’s worth of person-hours of preparation.<sup>27</sup> In 2009 alone, DHS spent roughly 66 work-years responding to questions from Congress, at a cost to taxpayers of \$10 million.<sup>28</sup>

Rep. Lamar Smith (R., Texas), chair of the House Judiciary Committee, which oversees part of DHS, asserted in 2011 that Congress meant to create a “purposeful redundancy” with its oversight.<sup>29</sup> But as Kean

noted in a recent interview, “You can’t have oversight with over 90 committees ... [and] it’s gotten worse, not better. And so in that area, it continues to be dysfunctional. And everybody knows it.”<sup>30</sup>

So, for example, in the House the Transportation Committee, which used to have the Coast Guard and FEMA under its supervision, will continue to try to insert itself into supervising those parts of the Department of Homeland Security, even though there actually is a Homeland Security Committee that’s supposed to look at the whole department. As a consequence it’s a little bit like childhood soccer games. Everybody runs after the ball, and they wind up colliding into each other.<sup>31</sup>

—*Former Homeland Security Secretary Michael Chertoff*

## **2. Diminished Congressional Influence**

The fractured system of Congressional oversight makes it difficult for Congress to enact substantive legislation guiding DHS. Emblematic of this difficulty: In the 10 years since it was established, DHS has never had a comprehensive authorization bill. Such legislation, routine for comparable agencies such as the Department of Defense, is the forum in which Congress sets its priorities and offers comprehensive policy direction to a department, while providing it with the legislation necessary to effectively perform its daily operations. In the absence of such a bill, most DHS policy is made through the already overextended appropriations committees (a process that severely diminishes the Congressional “imprint” on DHS),

through piecemeal authorizations such as the SAFE Port Act, or through executive interpretation of statute.

“The authorizing legislation is the primary means by which the Congress tells the executive branch what it wants done,” Hamilton notes.<sup>32</sup> “They write it into law in the authorization law. Totally absent in the Department of Homeland Security. There’s never been an authorization bill. Why not? Because responsibility is so fragmented within the House and the Senate that they can’t get a bill out. ... What this means is that the power of the Congress is sharply diminished. And it shifts over to the executive branch because they don’t have any guidance ... from Congress.”

To get an authorization bill [for the Coast Guard] requires that bill to be sent to a lot of committees because they have jurisdiction over portions of the bill. ... In my four years as commandant of the Coast Guard, I did not get an authorization bill in any year. So every year I was appropriated money. But to the extent that there were changes in law needed for how we deal with oil spill response, the safety of vessels, these kinds of things, there was no vehicle by which to make those policy changes or seek changes in those laws for four years.<sup>33</sup>

—*Thad Allen, retired Admiral and  
23rd Coast Guard Commandant*

While DHS is not the only department hampered by the recent trend toward operating through appropriation and continuing resolutions, the negative effect of this lack of guidance on a relatively new department is

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more severe. In the words of Caryn Wagner, DHS Under Secretary for Intelligence and Analysis during President Obama’s first term, “The lack of an effective authorization process for the Department headquarters compounds the difficulties of the Department in maturing its foundational business processes and in properly structuring and resourcing itself to achieve the type of synergy envisioned when the Department was created.”

Moreover, the messages regarding homeland security that come out of Congress sometimes appear to conflict or are drowned out altogether. With so many Congressional voices dictating to DHS, there is little cost to the department in ignoring the messages that it dislikes or the policies it wishes not to implement. As Chertoff puts it: “When many voices speak, it’s like no voice speaks.”<sup>34</sup>

The [DHS] winds up getting a mixed message. ... So either the department has no guidance or, more likely, the department ignores both because they’re in conflict. And so the department does what it wants to do.<sup>35</sup>

—*Michael Chertoff*

***The erosion of interest in serving on the Committee has been accompanied by a decline in the age, homeland-security experience, and influence of its members, and thus in the influence of the Committee itself.***

Among the problematic results is a reduced rather than enhanced Congressional role in protecting the homeland. So, for example, a 2012 study examining the degree of influence that Congress has over policy in various federal departments and agencies found an inverse correlation between the number of committees exercising oversight of an agency and Congressional influence on policy matters. Indeed, looking at DHS, the study said that the “108 committees and subcommittees overseeing the Department of Homeland Security may provide members with access to DHS resources but also affect the ability of Congress to compete with presidential influence over the general direction of agency policy. Members overly focused on securing district resources ... may be unwilling or unable to focus on the larger policy goals.”<sup>36</sup>

Proceeding hand-in-hand with the proliferation of oversight committees has been a decline in interest in serving on the House Committee on Homeland Security. In the immediate aftermath of 9/11, the magnitude of that tragedy elicited a strong desire to serve on the Committee in order to enhance

the nation’s security and resilience. As the memories of 9/11 have dimmed and no comparable attack has occurred, interest in serving has waned.

In the beginning, the committee actually was populated with some of the appropriators and some of the chairmen or more senior members of other committees that would have a vested interest in making homeland security a real being in the Congress. But after a while it became pretty apparent that those chairmen were not really interested in vesting the real meat of some of the problems in oversight issues in the committee, and so soon they fell off of the committee. They decided they didn’t want to be on it any longer, and it became populated by people with less seniority, and today has many, many freshmen on it.<sup>37</sup>

—Rep. Loretta Sanchez (D., Calif.),  
*Homeland Security Committee member*

The erosion of interest in serving on the Committee has been accompanied by a decline in the age, homeland-security experience, and influence of its members, and thus in the influence of the Committee itself. In the process, overall Congressional participation in DHS oversight has — at least in part — degenerated into turf battles, as indicated by the cases of biological and cybersecurity threats and unregulated vehicles noted below. Moreover, where other departments and agencies enjoy the benefits of having a champion on their primary committee, DHS does not.

### 3. Delayed Response to Pressing Concerns

In a fragmented structure, no one committee is tasked with — and as a result accountable for — seeing the big picture. At the same time, getting legislation passed is complicated by competing demands from multiple committees and by a process that is filled with opportunities for intervention by those whose interests are not served by passage of the bill. Routine pieces of legislation that would enable the Department to function more effectively can take months to go through multiple committees with differing agendas, and may never be enacted.

I believe that the worst thing that happens by not concentrating oversight into a committee like the Homeland Security Committee is that everybody knows a little bit but nobody is really taking a look at the overall picture. And that's very dangerous because that's how things fall between the cracks.<sup>38</sup>

—Rep. Loretta Sanchez

The Homeland Security Act was successful in creating a single subcommittee on appropriations for homeland security. But the act ... didn't resolve overlapping jurisdictions, gaps in jurisdictions [on the authorizing structure]. One of the things at the 10th anniversary of DHS that's sorely needed is a baseline evaluation of all those statutes that were merely aggregated against what we think Homeland Security ought to be 10 years later. And it's hard to do that with the current oversight structure with multiple committees.<sup>39</sup>

—Thad Allen

During the retreat at Sunnylands, task force members identified vulnerabilities that highlight the need to consolidate oversight as soon as possible: unregulated small aircraft and boats, cybersecurity, and biological threats.

#### *Unregulated Small Vehicles*

Suppose I've got a small plane coming into Teterboro. I walk out to the airport and get into the plane. I don't go through any screening. The same problem occurs with boats. We have to get control of our air space and our waterways to make sure nothing that could harm us comes in by that method.<sup>40</sup>

—Tom Kean

Task force members voiced concern that DHS and Congress have not done enough to protect against the prospect that small, general aviation aircraft and unregulated sea vessels will transport weapons of mass destruction into the United States, be used as weapons themselves (as were the planes on 9/11), or will transport individuals into the country intent on doing it harm. Admiral Thad Allen said that he spent years attempting to advance draft legislation on small-vessel security:

What size vessel should carry an identification device [of the sort] required on aircraft? Should there be licensing so you know who's operating a boat? Should there be areas where small boats shouldn't operate because of the vulnerable infrastructure that's in the area? ... If you try to come up with

a framework to deal with unregulated small boats and the vulnerabilities that exist there, and you look at the number of committees that would have to be involved, it becomes very, very hard. And frankly there hasn't been an appetite to take this on.<sup>41</sup>

### **Cybersecurity**

“A lot of our national leaders — military leaders, leaders of our intelligence agencies — think that one of the great growing threats to American security are these cyberattacks,” notes former Rep. Howard Berman (D., Calif.). Meanwhile, efforts to combat cyberthreats, including those originating from countries such as China and Iran, have been caught up in disputes over whether DHS or the National Security Agency has authority. Task force members fear that divided jurisdiction over this complex issue has made it more difficult for the nation to respond effectively to a major cyberattack, with one participant pressing for much greater attention to the difficulties of managing the nation’s “virtual border in a global commons.”<sup>42</sup>

The Armed Services Committee has thoughts about the subject [of cybersecurity]. The Homeland Security Committee thinks this is about making the homeland more secure. ... So it is harder to get a consensus. It's harder to give the authority to the Executive Branch to create the defense than it might otherwise be. That's a problem.<sup>43</sup>

—*Former Rep. and Foreign Affairs Committee chair Howard Berman (D., Calif.)*

The cyberthreat is a big threat to this country. Congress can't pass a bill on it. They've worked at it for years. They've not been able to agree between the House and Senate. ... What that means is that the House and Senate — the Congress, if you will — is deferring power to the president. The president writes an executive order. An executive order is not as good as a piece of legislation. It pertains to the executive branch. So there are limitations to that.<sup>44</sup>

—*Lee Hamilton*

Cybersecurity is not an issue about partisanship because many of the proposed bills have had bipartisan support. It's really an issue of so many different committees that all have their particular interest and they can't get together with a coherent plan to pass a law to help protect the United States against very real cyberthreats.<sup>45</sup>

—*Arif Alikhan, deputy executive director for law enforcement and homeland security, Los Angeles World Airports*

Attempts to clarify oversight have been frustrated. In 2005, for instance, a plan to give jurisdiction over cybersecurity to the House Homeland Security Committee was met by protests from the Energy & Commerce Committee, and the matter was dropped.<sup>46</sup> The seven Congressional committees that claim some jurisdiction over cybersecurity issues often clash, producing bills that conflict with one another by vesting jurisdiction in favored agencies within and outside DHS. The result: Bills are reported out of commit-



tee but fail to secure the needed votes on the House or Senate floor, or are so watered down that they fail to address the threat.

For example, in 2012 the House Homeland Security Committee's Promoting and Enhancing Cybersecurity and Information Sharing Effectiveness Act sought to give cybersecurity regulatory authority to DHS. But it competed with the House Intelligence Committee's Cyber Intelligence Sharing and Protection Act, the House Oversight and Government Reform Committee's Federal Information Security Amendments, and the House Committee on Science, Space & Technology's Cybersecurity Enhancement Act – all of which put the authority elsewhere.<sup>47</sup> None got the traction to pass both houses of Congress.

In April 2013, for the second year in a row, the House passed the Cyber Intelligence Sharing and Protection Act. But the Senate has refused to vote on the measure. Senators now are reportedly drafting bills in at least three committees: Homeland Security, Commerce, and Intelligence.<sup>48</sup>

### ***Biological Threats***

The need for a more systematic approach to bio-threats was voiced at the retreat by retired Sen. Bob Graham (D., Fla.), former co-chair of the Congressionally mandated Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, who said:

Unless the Congress is in a position to look at an issue like biological attacks in a strategic way and not just focus on the one piece of the problem that may be within the jurisdiction of a particular

committee, you're not likely to get it right, and the American people are therefore more vulnerable to what the WMD Commission found to be the most likely weapon of mass destruction to be used.<sup>49</sup>

We haven't been able to get Congress to act because the responsibility for setting priorities for biological mechanisms is scattered in several committees and they have disagreed as to which federal agencies should have the ultimate responsibility for making these priority decisions and about how these decisions should be made. ... If the committee is responsible for, say, the Centers for Disease Control, it would like the responsibility to be in the Centers for Disease Control because then it would have oversight of it.<sup>50</sup>

Though experts say that only a dozen or so deserve close scrutiny, the federal government maintains a list of 75 biological threats. Legislation recently introduced to prioritize those threats failed to pass. One of the primary reasons was disagreement over which agency will retain control. "We've been trying," Graham noted, "...to redo this list and have those 12 or so that are the major threats put in a category where they will get the highest level of attention and security. ... We haven't been able to do that because the Congress has the jurisdiction of the Department of Homeland Security in one committee and the jurisdiction of the Department of Health and Human Services in another, and they haven't been able to decide which executive agency should have the responsibility for managing this new list."<sup>51</sup>

***Americans should not settle for incremental, ad hoc adjustments to a system designed generations ago for a world that no longer exists.***

**—9/11 Commission Report**

## **Structural and Political Barriers to Reform**

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Despite the advantages that would accrue to the nation, task force members and other experts have noted roadblocks to consolidating and streamlining DHS oversight. Chief among them: strong resistance from the chairs of committees who would lose some of their power were oversight to be streamlined and the challenge of capturing the media's attention and the public's imagination with an issue that at first glance appears remote from most people's lives.

Those seeking to reform oversight must take into account the political realities that undergird the jurisdictional structure. Service as chair of the House Committee on Homeland Security or the Senate Homeland Security and Governmental Affairs Committee is unlikely to carry electoral payoffs, since enhancements to public safety are most often experienced at the national level rather than as specific benefits to a district or state. Moreover, if oversight reform is implemented, some existing committee chairs will lose some power and turf.

Members of Congress have tried to keep as much of the power that they had historically through this concept of legacy jurisdiction over the agencies even though the agencies have technically been moved under another committee.<sup>52</sup>

*—Bob Graham*

One of the things I concluded 20 years ago was that members of Congress would just as soon give up their first-born [as] give up jurisdiction over the executive branch in particular areas.<sup>53</sup>

*—David Dreier*

All of this suggests that the most promising strategy for reform lies in convincing Congressional leadership that it is the right thing to do. Only a leadership convinced of the benefits to the country is likely to make such oversight reform happen.

Finally, the issue of Congressional oversight has long been seen as an “inside-the-Beltway” problem, one hidden beneath layers of procedure and mundane logistics. As a result, even though Congress' failure to act may jeopardize the safety and security of the country, it has been difficult to mobilize public interest in remedying the problem. Former Rep. Dan Glickman (D., Kan.), executive director of the Aspen Institute's Congressional program, recently observed that the American people are most concerned with issues that affect their day-to-day lives, and that is why more people have an opinion about the TSA than about most other DHS component agencies.

Americans encounter DHS' FEMA in times of disaster, its Customs and Border Protection during international travel, and its Coast Guard employees in coastal communities and at sea. Yet a decade after DHS was formed, most Americans still don't understand the department's “all hazards” mission, or how all

its components fit together. As a result, the public is unlikely to tell members of Congress that they ought to reform the oversight structure of DHS. And an issue involving oversight is, admittedly, a distinctly unsexy topic, far less likely than others to capture media attention.

### **What Should Be Done Now and When the New Congress Convenes in January 2015**

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To meet the ongoing security challenges our country faces, the task force recommends specific actions by the executive and legislative branches, as well as a role for the media:

#### **1. Congress**

Fragmented oversight, the task force concluded, increases security risks for the United States by reducing the coherence of our national focus on prevention, protection and planning at a time when more needs to be done. Under the current arrangement, retired Coast Guard Admiral and task force member Thad Allen said, Congress all too often “engages in random acts of after-sight.”

Consistent with the 9/11 Commission’s recommendation, this report has argued:

*To ensure that the oversight process works efficiently, Congress should significantly reduce the number of committees with jurisdiction over homeland security and consolidate primary oversight of the key DHS component agencies under one committee in the House and one in the Senate, with coordinated jurisdiction.*

Task force members were united in the conviction that:

*Consolidating Congressional oversight of DHS would enhance accountability.*

*If it is to function effectively, such oversight should be consistent with that of Cabinet departments that bear similar levels and kinds of responsibility for the safety and resilience of Americans in the face of both man-made and natural threats and disasters.*

The task force believes that the oversight process in both houses should be significantly streamlined and the Senate and House oversight structures aligned with each other to the extent possible.

The task force noted that previous studies agree that streamlined Congressional oversight of DHS would benefit the nation. Their reform proposals include separating the supervision of DHS’ immigration and homeland security roles and retaining the main oversight committees while canceling the jurisdiction of other Congressional committees considered redundant.

This task force believes that Congress is best positioned to decide which structure best satisfies the 9/11 Commission's goal. But it recommends that any structure be consistent with the following principles:

- The oversight structure for DHS should resemble the one governing other critical departments, such as the departments of Defense and Justice.
- Congress should align the jurisdictional oversight of the House and Senate committees to the greatest extent possible.
- Committees claiming common jurisdiction should have some overlapping membership to encourage the sharing of information and curtail redundant requests.

The consolidation and simplification of oversight depends largely upon Congressional leadership. The best chance for major reform comes during reorganization at the beginning of a new Congress. In the meantime, there are ways that Congress can enhance the effectiveness of oversight without requiring committees to relinquish jurisdiction. For instance, it can pass authorizing legislation and ensure expedited action by imposing time limits on committee referrals.

**Pass Authorizing Legislation** The need to pass authorizing legislation extends beyond DHS. By some estimates the country is operating with approximately \$400 billion of spending unauthorized annually. As this report contends, passing authorizations improves Congressional oversight and prioritizes programs within DHS. When large

segments of the Department of Homeland Security operate with "unauthorized appropriations," the administration is able to set its priorities unguided by Congress and might not be spending money on programs that Congress considers important.

**Limit the Time for Action** When a bill comes under the jurisdiction of multiple committees that ask to review it in sequence after the primary committee acts, the process is all but stopped awaiting committee action unless there is a time limit on the referrals. Time may run out with nothing enacted. The task force believes that Congress should limit the time for action of sequential referrals to another committee, ensuring that if committees fail to act on what has been sent to them within a set period of time their jurisdiction would lapse, with the matter returning to the primary committee.

## 2. The Executive

The White House could increase the likelihood that pressing issues move onto the national and Congressional agenda by creating a more robust role for the Homeland Security Adviser, and by placing the Secretary of Homeland Security on the National Security Council.

## 3. Media and Public Information

If Kean is correct that Congress is unlikely to reform itself, then reform must be jump-started by external demand. As shown by the country's experience with the Boston

Marathon bombing, recent ricin threats against public officials, and natural disasters from Hurricane Sandy to the May 2013 Oklahoma tornado, the fourth estate has a vital role to play in informing the public about national security concerns, and the nation's editorial pages have the capacity to increase the likelihood that Congress will see the wisdom of implementing this important recommendation of the 9/11 Commission Report.

### **The Bottom Line**

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In sum, while reform of Congressional oversight can't make the nation 100 percent safe, it is a key component of any national effort to manage evolving threats. We close with the words of two task force members:

We have a really important issue. How do we keep America secure? And we have a structure in the Congress that makes it harder to maintain that focus on that very important issue. And that's not good.<sup>54</sup>

—*Howard Berman*

If the [oversight] recommendation of the 9/11 Commission on Homeland Security is put into law and becomes effective, the American people in their pursuit of their daily lives will be safer.<sup>55</sup>

—*Lee Hamilton*

## NOTES

<sup>1</sup> Lee H. Hamilton and Thomas H. Kean interview, 6 April 2013, The Annenberg Retreat at Sunnylands.

<sup>2</sup> Bob Graham interview, 1 August 2013, New York, N.Y.

<sup>3</sup> Thomas Kean interview, 12 August 2013, Far Hills, N.J.

<sup>4</sup> "Untangling the Web: Congressional Oversight and the Department of Homeland Security," 10 December 2004, Center for Strategic and International Studies-Business Executives for National Security.

<sup>5</sup> "Tenth Anniversary Report Card: The Status of the 9/11 Commission Recommendations," September 2011, Bipartisan Policy Center.

<sup>6</sup> "Consolidating the House's Homeland Security Efforts: The Time to Act Is Now," 29 December 2004, George Washington University Homeland Security Policy Institute.

<sup>7</sup> Norman J. Ornstein and Thomas E. Mann, "When Congress Checks Out," November/December 2006, Brookings Institution.

<sup>8</sup> Jessica Zuckerman, "Politics Over Security: Homeland Security Congressional Oversight In Dire Need of Reform," 10 September 2012, the Heritage Foundation. See also "Stopping the Chaos: A Proposal for Reorganization of Congressional Oversight of the Department of Homeland Security," 4 November 2010, the Heritage Foundation.

<sup>9</sup> Lee Hamilton interview, 8 August 2013, Bloomington, Ind.

<sup>10</sup> Michael Chertoff interview, 6 April 2013, The Annenberg Retreat at Sunnylands.

<sup>11</sup> Kenneth Wainstein interview, 6 April 2013, The Annenberg Retreat at Sunnylands.

<sup>12</sup> Loretta Sanchez interview, 17 July 2013, Washington, D.C.

<sup>13</sup> John Tanner interview, 16 July 2013, Washington, D.C.

<sup>14</sup> Michael Chertoff interview, 25 July 2013, Washington, D.C.

<sup>15</sup> Michael Chertoff interview, 6 April 2013, The Annenberg Retreat at Sunnylands.

<sup>16</sup> Caryn Wagner interview, 16 July 2013, Washington, D.C.

<sup>17</sup> David Dreier interview, 19 July 2013, Los Angeles, Calif.

<sup>18</sup> Jeff Plungis, "TSA to Mica: You Have No Jurisdiction," *Bloomberg*, 27 November 2012, <http://go.bloomberg.com/political-capital/2012-11-27/tsa-to-mica-you-have-no-jurisdiction/>.

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<sup>20</sup> "Inside Washington: DHS Most Overseen Department," Associated Press, 17 May 2011, <http://www.npr.org/templates/story/story.php?storyId=136382414>.

<sup>21</sup> Sarah Laskow, "Is Congress Failing on Homeland Security Oversight?" Center for Public Integrity, 16 July 2009, <http://www.publicintegrity.org/2009/07/16/2822/congress-failing-homeland-security-oversight>.

<sup>22</sup> Aliya Sternstein, "House Homeland Security Lawmakers Request Sole Oversight," *Nextgov*, 25 January 2012, <http://www.nextgov.com/cybersecurity/2012/01/house-homeland-security-lawmakers-request-sole-oversight-of-dhs/50515/>.

<sup>23</sup> Kenneth Wainstein interview, 16 July 2013, Washington, D.C.

<sup>24</sup> Data provided by the DHS Office of Legislative Affairs.

<sup>25</sup> Thomas Kean interview, 12 August 2013, Far Hills, N.J.

<sup>26</sup> David Dreier interview, 19 July 2013, Los Angeles, Calif.

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- 41 Thad Allen interview, 17 July 2013, Washington D.C.
- 42 Thad Allen interview, 6 April 2013, The Annenberg Retreat at Sunnylands.
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- 51 Bob Graham interview, 6 April 2013, The Annenberg Retreat at Sunnylands.
- 52 Bob Graham interview, 1 August 2013, New York, N.Y.
- 53 David Dreier interview, 19 July 2013, Los Angeles, Calif.
- 54 Howard Berman interview, 19 July 2013, Los Angeles, Calif.
- 55 Lee Hamilton interview, 8 August 2013, Bloomington, Ind.

## Appendix

### Task Force on Streamlining and Consolidating Congressional Oversight of the U.S. Department of Homeland Security

#### Task Force Members

Arif Alikhan	Juliette Kayyem
Thad Allen	Thomas H. Kean Sr.
Howard Berman	Loretta Sanchez
Michael Chertoff	John Tanner
David Dreier	Caryn A. Wagner
Bob Graham	Kenneth L. Wainstein
Lee H. Hamilton	

#### Retreat Organizers

Meryl Justin Chertoff	Kathleen Hall Jamieson
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#### Biographical Information on Retreat Participants and Organizers

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##### Arif Alikhan

Counterterrorism and homeland security expert Arif Alikhan joined Los Angeles World Airports as the new deputy executive director for law enforcement and homeland security on Nov. 7, 2011. Prior to that, Alikhan was a Distinguished Professor of Homeland Security and Counterterrorism at National Defense University in Washington, D.C. Alikhan previously served as assistant secretary for policy development at the U.S. Department of Homeland Security. His federal service also includes 10 years with the U.S. Department of Justice as a federal prosecutor and senior adviser to two U.S. attorneys general on cybercrime and intellectual property.

##### Thad Allen

Thad Allen is senior vice president of the Virginia-based consulting firm Booz Allen

Hamilton. Allen supports the firm's work with the departments of Justice and Homeland Security. Allen completed his distinguished career in the U.S. Coast Guard as its 23rd commandant. Prior to that assignment, Allen served as Coast Guard chief of staff. During his tenure in that post, in 2005, he was designated principal federal official for the U.S. government's response and recovery operations in the aftermath of hurricanes Katrina and Rita in the Gulf Coast region.

##### Howard Berman

Howard Berman is a former representative from California who served 15 consecutive terms in the U.S. House of Representatives from 1982 to 2012. In 2008, he was appointed chairman of the Foreign Affairs Committee. In addition, Berman served on the Judiciary Committee and the Subcommittee on Immigration, Citizenship, Refugees, Border Security & International Law.



**Meryl Justin Chertoff**

Meryl Justin Chertoff is director of the Aspen Institute's Justice and Society Program and an adjunct professor of law at Georgetown Law. From 2006 to 2009, Chertoff was director of the Sandra Day O'Connor Project on the State of the Judiciary at Georgetown Law. She served in the Office of Legislative Affairs at the Federal Emergency Management Agency, participating in the agency's transition into the Department of Homeland Security. Chertoff has been director of New Jersey's Washington, D.C., office under two governors, and legislative counsel to the chair of the New Jersey State Assembly Appropriations Committee.

**Michael Chertoff**

Michael Chertoff served as secretary of the U.S. Department of Homeland Security from 2005 to 2009. He is chairman and co-founder of the Chertoff Group. At the Chertoff Group, Chertoff provides high-level strategic counsel to corporate and government leaders on a broad range of security issues, from risk identification and prevention to preparedness, response, and recovery. Before heading the Department of Homeland Security, Chertoff served as a federal judge on the U.S. Court of Appeals for the Third Circuit.

**David Dreier**

David Dreier was elected to Congress from California in 1980 and became a member of the House leadership when he took the helm of the House Committee on Rules in 1999. As the youngest Rules chairman, he played a pivotal role in fashioning legislation for debate in the House. He authored the 1995 Congressional reform package. He is a member of the Council on Foreign Relations

and serves on the board of the International Republican Institute. Dreier is the founding chairman of the House Democracy Partnership and the founding chair of the Congressional Trade Working Group.

**Bob Graham**

Bob Graham is the former two-term governor of Florida and served for 18 years in the U.S. Senate. Graham retired from public service in January 2005, following his presidential campaign in 2004. After retiring from public life, Graham spent a year as a senior fellow at the Harvard Kennedy School of Government. In recent years, he was appointed by President Obama and served as co-chair of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. This followed his service as a commissioner on the Financial Crisis Inquiry Commission, as chairman of the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, and on the CIA External Advisory Board.

**Lee H. Hamilton**

Lee H. Hamilton is director of the Center on Congress at Indiana University. He served in the U.S. House of Representatives from 1965 to 1999, representing Indiana's 9th District. Since retiring from Congress, Hamilton remains at the center of efforts to address some of the nation's major homeland security and foreign policy challenges. He served as vice chair of the 9/11 Commission, co-chair of the Iraq Study Group, and co-chair of the U.S. Department of Energy's Blue Ribbon Commission on America's Nuclear Future. He is a member of the President's Intelligence Advisory Board, the President's Homeland Security Advisory Council, the CIA External

Advisory Board, and the U.S. Department of Homeland Security Task Force on Preventing the Entry of Weapons of Mass Effect on American Soil.

**Kathleen Hall Jamieson**

Kathleen Hall Jamieson is the Elizabeth Ware Packard Professor of Communication at the Annenberg School for Communication and Walter and Leonore Annenberg Director of the Annenberg Public Policy Center at the University of Pennsylvania. She is a fellow of the American Academy of Arts and Sciences, the American Philosophical Society, the American Academy of Political and Social Science, and the International Communication Association. Jamieson is the author or co-author of 16 books. She is co-founder of FactCheck.org, founder of the new political literacy site FlackCheck.org, and program director of The Annenberg Retreat at Sunnylands.

**Juliette Kayyem**

Juliette Kayyem is a lecturer in public policy at the Harvard Kennedy School of Government, a former national security and foreign policy columnist for *The Boston Globe*, and a former contributor to CNN. She served President Obama as Assistant Secretary for Intergovernmental Affairs at the Department of Homeland Security. She served as co-chair of the Congressionally mandated Preparedness Task Force, and as a member of President Obama's Task Force on Puerto Rico and the Defense Department's Council of Governors. Before joining the Obama Administration, Kayyem served as Massachusetts Gov. Deval Patrick's homeland security adviser.

**Thomas H. Kean Sr.**

Tom Kean served as president of Drew University from 1990 to 2005 and as governor of New Jersey from 1982 to 1990. In 1986, he was re-elected governor by the largest margin in state history. Prior to serving as governor, Kean was a member of the New Jersey Assembly from 1968 to 1977. In 2002, President George W. Bush named Kean as chairman of the 9/11 Commission. He headed the American delegation to the U.N. Conference on Youth in Thailand, was vice chairman of the American delegation to the World Conference on Women in Beijing, and served as a member of the President's Initiative on Race.

**Loretta Sanchez**

Congresswoman Loretta Sanchez was first elected to the House of Representatives in 1996, and is currently serving her ninth term as the representative for California's 46th District. Sanchez is the second highest-ranking Democrat on the House Armed Services Committee. She is the ranking member of the Tactical Air and Land Forces Subcommittee. Rep. Sanchez is also a senior member of the Subcommittee on Strategic Forces. She is founder and co-chair of the Women in the Military Caucus and is the highest-ranked female on the Armed Services Committee. She also serves on the House Committee on Homeland Security, where she is the second-ranked Democrat and most senior female member.

**John Tanner**

John Tanner is vice chairman of Prime Policy Group. He joined the firm after serving in the U.S. House of Representatives for 22 years, representing Tennessee's 8th District. In

Congress, Tanner served on the House Foreign Affairs Committee and the Ways & Means Committee. He also served on the House Armed Services and House Science Committees and served as Chief Deputy Whip for the Democratic Congress in the 109th, 110th, and 111th Congresses. In November 2008, Tanner was elected to a two-year term as president of the NATO Parliamentary Assembly.

**Caryn A. Wagner**

Caryn Wagner served as Under Secretary for Intelligence and Analysis in the Department of Homeland Security from 2010 to 2012. She served on the intelligence agency review team of the Obama-Biden Transition Project. She retired from federal service from the House Permanent Select Committee on Intelligence on Oct. 1, 2008, for which she served as budget director and cybersecurity coordinator. Prior to that, Wagner served in the Office of the Director of National Intelligence as an assistant deputy director of

National Intelligence for Management and was the first chief financial officer for the National Intelligence Program. Her final position was that of the senior Defense Intelligence Agency Representative to Europe.

**Kenneth L. Wainstein**

Kenneth L. Wainstein is co-chair of the business fraud group at the law firm of Cadwalader, Wickersham & Taft. In 2008, after 19 years at the Justice Department, Wainstein was named homeland security adviser by President George W. Bush. Prior to his White House service, he was twice nominated and confirmed for leadership positions in the Justice Department. In 2006, the U.S. Senate confirmed him as the first Assistant Attorney General for National Security. In 2004, he was appointed, and later confirmed, as the U.S. attorney in Washington, D.C. In 2001, he was appointed director of the Executive Office for U.S. Attorneys, where he provided oversight and support to the 94 U.S. Attorneys' Offices.



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