2009

Administration Oversight: An Analysis of the Effectiveness of the U.S. House Committee on Oversight and Government Reform During Recent Presidential Administrations

Chantel Witt
University of Northern Iowa

ADMINISTRATION OVERSIGHT: AN ANALYSIS OF THE EFFECTIVENESS OF THE U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM DURING RECENT PRESIDENTIAL ADMINISTRATIONS

A Thesis or Project

Submitted

in Partial Fulfillment

of the Requirements for the Designation

University Honors with Distinction

Chantel Witt

University of Northern Iowa

May 2009

This Study by: Chantel Witt

Entitled: Administration Oversight: An Analysis of the Effectiveness of the U.S. House Committee on Oversight and Government Reform During Recent Presidential Administrations

has been approved as meeting the thesis or project requirement for the Designation University Honors with Distinction

5/4/2009
Date

Chris Larimer, Honors Thesis/Project Advisor

5/5/09
Date

Jessica Moon, Director, University Honors Program

I. Background

The American democratic system of governance employs a system of checks and balances as well as one of separation of powers. It is because of these two systems that the United States has been able to maintain a constitutional form of government for well over 200 years, and it is likely our democracy would have a much different face if these two systems had not been put in place. It is ingrained in Americans at a very young age that the legislature makes laws, courts interpret laws, and the executive branch then enforces these laws. What are taught only to more advanced learners are the powers that each branch has in providing a check on the other two branches. Even at this level, however, the ability of the legislative and judicial branches to monitor the activities of the executive branch is often limited to a study of the impeachment power of Congress and that of judicial review by the courts. Having the *power* to place a check on the other branches is a concept that in itself should be used with caution as it fails to recognize the importance of *responsibility*. Just because an entity has the advantage of a given power, that entity is not guaranteed to in fact use it.

During the last four years of the Bush Administration especially, no matter where one turned it was impossible to escape the constant accusation that President Bush had vastly expanded the powers of the executive branch. Many even claimed that these actions represented an unconstitutional use of executive power. In a system that embodies separation of powers and a method for enforcing this division of authority, what was allowing this to take place?

Because the judicial branch must act retroactively, there is often a great deal of time between when an action takes place and when the courts have a decisive impact. Turning

instead to focus on the legislative branch appears to be a logical starting point. Congressional committees form the foundation for the development of policy within the United States legislative branch of government (Grant, 2003). There are over 200 committees and subcommittees today that divide the legislative, oversight, and internal administrative tasks of Congress. The main responsibility of these committees is to consider bills within their specified area of jurisdiction as well as to recommend measures to be considered by the full legislative body.

There is a great deal of political research today that focuses on pinpointing every attempt presidents have made to increase their power. Very few of these studies, however, focus on what is allowing this transformation to take place. Gina Yannitell Reinhard, an APSA Congressional Fellow with a history of involvement in congressional committee affairs, recently argued that there is a need to move past the laws and rules that govern congressional committee behavior and begin an analysis on congressional investigations themselves (Reinhard, 2008). Too often studies of congressional committees focus on the rules set forward and how basic committee operations conform to these rules. Instead, as Reinhard (2008) has suggested, there is a need in political research to move beyond the concrete guidelines and instead focus increased attention on pressures, unrelated to structure, that effect decisions at the congressional committee level.

The purpose of this essay is to examine more specifically the House Committee on Oversight and Government Reform, one committee that holds some responsibility for monitoring executive branch abuses of power. The thesis that emerges from this study is that there are numerous internal and external factors causing this committee to fail in providing effective oversight. While this one congressional committee can not be held accountable for

allowing executive branch abuses to occur, it is perhaps a place to begin assessing where the blame belongs.

The responsibilities of each committee varies to a large degree, but the main duties committees have are to gather information, identify current policy problems, compare and evaluate the different alternatives that exist, and propose solutions. Whether it is through the development of a committee report or a recommendation on a newly proposed bill, committees are accountable for providing specialized insight to the full chamber. It is difficult to generalize committee operations as each develops its own rules of organization, structure, and procedure.

A basic understanding of committee divisions and structure is an essential beginning point in comprehending not only the role of committees but also in explaining outcomes. There are three basic types of committees in place today: standing, select, and joint. Standing committees refer to those permanent committees that are identified in the chamber rules. These committees are responsible for considering bills within their areas of jurisdiction and they then recommend measures to be considered by the full chamber. Joint committees include members of both the House and the Senate, and they often conduct studies or perform housekeeping tasks that are necessary in the operations of both chambers. Select committees, on the other hand, are established through a resolution by either chamber and their duties often involve conducting investigations and studies. The areas of select committee jurisdiction usually relate to emerging issues that do not necessarily fit into the jurisdiction of any existing committee. Most of these committees, regardless of type, then break down further into subcommittees that provide additional specialization.

While a relatively new committee by name, the concept of a committee dedicated to oversight has had a long and turbulent history that has included a number of different name and jurisdictional changes. *The Guide to Federal Records in the National Archives of the United States* provides a comprehensive history of the committee that is illustrative of these unstable experiences (National Archives, 1999).

The Committee was originally developed as a special committee to monitor the use of public money. In 1802, the Ways and Means Committee was given the power to review federal expenditures, and by 1814 Congress had transferred this duty to the Committee on Public Expenditures. Two years later, six standing committees were developed in order to examine expenditures of various government departments. From 1816 to 1927 the six Committees reviewed the financial accountability of all federal departments, but it is often noted that this was infrequently followed by investigations. The Committee was seen as relatively unimportant and membership was not always regarded with prestige. The Budget and Accounting Act of 1921 combined the six auditing committees to create the General Accounting Office. After the First World War, Congress began to realize the limitations of its control over expenditures and the Budget Act was designed to increase this congressional control. In 1927, the Committee on Expenditures in the Executive Department was developed and its duties evolved to include recordkeeping requirements for a variety of government agencies. This was a great shift in responsibility from primarily a financial oversight panel to one of more generalized oversight duties.

When the Legislative Reorganization Act of 1946 was implemented, the Committee on Expenditures in the Executive once again became active and its duties evolved into evaluating reorganization laws, examining financial reports, and studying the overall

operation of government activities and intergovernmental relationships. The direct predecessor to the present day Committee was the Committee on Government Operations, which was created on July 3, 1952. This Committee's jurisdiction was further expanded as it was allowed to hold hearings for investigative purposes. While its history represents a diversity of value as well as responsibility, the continued existence of an oversight committee speaks to Congress' relatively ongoing desire to maintain some level of continuous oversight.

The current jurisdiction of the Committee on Oversight and Government Reform is set forth in House Rule X, clause 1, and includes:

- Federal civil service, including intergovernmental personnel; and the status of officers and employees of the United States, including their compensation, classification, and retirement;
- Municipal affairs of the District of Columbia in general (other than appropriations;
- Federal paperwork reduction;
- Government management and accounting measures generally;
- Holidays and celebrations;
- Overall economy, efficiency, and management of government operations and activities, including federal procurement;
- National archives;
- Population and demography generally, including the Census;
- Postal service generally, including transportation of the mails;
- Public information and records;
- Relationship of the federal government to the states and municipalities generally; and
- Reorganizations in the executive branch of government (Committee on Rules, 2008).

It is obvious from a glance at these responsibilities that the jurisdiction of the Committee is extremely broad. While this paper will focus much more narrowly into one area of oversight, specifically executive branch oversight, it is important to note the widely differing responsibilities that the Committee must divide its attention between.

Specifically related to oversight, the Committees responsibilities are outlined in House Rule X and include:

- The application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction;
- The organization and operation of federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction;
- Any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation addressing subjects within its jurisdiction; and
- Future research and forecasting on subjects within its jurisdiction (Committee on Rules, 2008).

Of great importance as well is House Rule X, clause 4(c)(2) which provides that the Committee "may at any time conduct investigations of any matter without regard to the above classes conferring jurisdiction over the matter to another standing committee," (Committee on Rules, 2008). This clause implies that the Committee assumes primary investigative responsibilities in the House and thus has jurisdiction over virtually every aspect of oversight within the federal government.

The House Committee on Oversight and Government Reform (hereafter referred to as "Committee") is the focus of this study for numerous reasons. Because it is the main

investigative committee in the House, it presumably has the greatest ability and responsibility in providing oversight of the executive branch. It should be noted that there are other committees with similar jurisdictional responsibilities that also handle matters of a similar nature. The Senate Homeland Security Committee and Government Affairs Committee, as well as both the House and Senate Judiciary Committees, have such jurisdiction. While much of this essay would relate to these committees as well, because of the difference in jurisdiction and structure, it became necessary to focus solely on one committee. Because House Rule X awards the House Committee on Oversight and Government Reform supreme oversight responsibility, it seems fair to assume oversight responsibilities not carried out have an increased burden on the Committee. While all blame can not be placed on a small group of Congress for ineffective oversight, it seems a logical place to begin assessing what has gone wrong.

A number of comments by members of Congress uphold this view of the responsibility the Committee holds in this area. The current Republican Ranking Member of the Committee, Darrell Issa, states, "Our primary responsibility, however, is oversight over virtually everything government does – from national security to homeland security grants, from federal workforce policies to regulatory reform and reorganization authority, from information technology procurements at individual agencies to government-wide data security standards," (Minority Office, 2009). Another insightful example comes from a letter written by Ranking Member, Henry Waxman, to then Chairman Tom Davis. Because the committee chair yields such great influence over the issues actually investigated, oftentimes the session's agenda reflects the interests of the chairman himself. At the beginning of each session, the chairman is responsible for publishing an agenda for the upcoming legislative

session. It was this agenda with which Mr. Waxman took issue. The Ranking Member writes to explain twelve topics that he felt the Committee's agenda for the year failed to reflect, and interestingly, all of these issues were specifically related to executive branch abuses of power. Waxman states in the note, "As the primary oversight committee in the House, our Committee has a constitutional responsibility to provide a check on the abuses of the executive branch," (Waxman, 2005). He continues to provide an explanation of these twelve areas he would like to see investigated, some of which included abuse of detainees, use of covert propaganda, and issues of conflict of interest. This letter highlights both the power that the committee chair yields in setting the agenda as well as the politics involved in deciding which investigations will be pursued. Importantly, it also explicitly mentions the duty the Committee has to responding to allegations of executive branch abuses of power. The recognition of this duty by one of the Committee's own members is a strong indication that acknowledgement of this responsibility exists.

As noted in the above discussion about the basic structure of congressional committees, the Constitution and legal precedent have given Congress vast investigative powers. The chamber rules then go into greater detail regarding the matters each committee is responsible for. The committee chair, ranking minority member, and the committee staff, are all key decision makers that yield a great deal of influence over the operations and outcomes of committees. While the chairperson and ranking member may be obvious players, the committee staff that operates on behalf of the committee chair provides support in such a way that he or she inevitably affects the committee itself. These three players have an immense impact on deciding what issues will be investigated and how the probe will be handled.

The outcomes of congressional investigations are of obvious interest, but the very attention a committee pays to a potential problem can perhaps provide just as much insight into the committee's interests and pursuits. Because the committee chair is a member of the majority party and has the main authority in setting the agenda, this person yields an incredible amount of power when we consider the vast array of jurisdictional topics that any committee is responsible for. As will be seen, it is possible for the leadership to divert the committee's attention away from, or onto, specific topics of interest.

Gina Yannitell Reinhard (2008) recently published an article titled, *An 'I' on Congress: The Process and Products of Congressional Investigations.* Due to her experience spending time working with congressional committees, Reinhard provides a great deal of insight into how congressional committees conduct investigations. She notes that there are two main factors that influence the decision to pursue an investigation in a given area – legal jurisdiction and decision makers' interest. Since the legal jurisdiction and specifically investigative jurisdiction, as set forward in House Rule X, clause (c)(2) allows the Committee to hold investigations at any time regardless of whether or not other committees might share jurisdiction in the matter, the jurisdictional limits on the Committee don't appear to play a substantial role in the investigative process. As was stated in *Watkins v. United* States (1957), however, Congress' power in conducting investigations is not completely unlimited – there is no authority given to Congress to press matters of an individual's private affairs. There must be some jurisdictional relevance to the hearing. Reinhard (2008) also notes that an interest in investigative topics is often spurred by reports of possible abuse through outlets such as the media and watchdog agencies. After the determination of a potential problem and the decision to pursue an investigation, various agencies are asked to

begin collecting information. Some of these agencies include the Congressional Budget Office, Congressional Research Service, and the Government Accountability Office. The Committee retains the ability to subpoena documents, and the chair of the Committee is one of two Congressional members with unilateral subpoena power.

Staff members begin investigating the existing laws related to the assigned topic in an attempt to aid the discussion of whether these laws should be changed or supplemented to aid in the area in question. It is important to remember that while a hearing may be the most publicized or evident work done during an investigation, it is oftentimes only one step in the process. There are situations in which hearings are the end of the investigation – the Committee could be satisfied with what currently is taking place or the Committee may choose to alert other agencies that would be better be equipped to handle the issue at hand. Because the primary responsibility of Congress is to make laws, investigations are oftentimes held either coinciding with the introduction of a bill or in an effort to assess need for a new bill to be introduced. Committee investigations allow for public awareness about current policies or happenings that are potentially problematic, and in this way can also place pressure on government agencies to conform to congressional advice and public opinion.

The next section provides a number of case studies analyzing the effectiveness of the Committee under a variety of situations. The studies that follow cover the administrations of William Clinton and George W. Bush. Not only were these the most recent administrations, but they provide a unique opportunity to analyze both a Democratic president under a Republican and Democratic-controlled Congress, as well as a Republican president under a Republican and Democratic-controlled Congress.

While examining committee meeting records may also be helpful in determining what topics were considered for investigation, this study looks directly at hearing reports. This works under the assumption that the topics over which hearings are held can be assumed to reflect the Committee's judgment upon the specific areas that compel further investigations. A glance at proposed bills and committee reports can identify those areas the Committee has attempted to actually impact policy decisions rather than acting in an advisory manner. There are thousands of possible areas of oversight the Committee has the option of investigating in a given session, but the topics over which hearings are held represent the vast majority of those issues the Committee ends up having an influence on.

Each section that follows will focus on specific investigations of executive power that were pursued in the given session and what, if any, influence the Committee ended up having on the relevant problem. Based on the findings this process yields, it should then be possible to identify factors that influenced the Committee's actions. Being able to point out these factors is the first step in identifying how the Committee can become more efficient and effective in this area of its responsibility.

Under each administration, a number of power abuse accusations are considered. Issues the Committee did investigate will be compared to the areas in which whistleblowers, watchdog agencies, and legal scholars identified perceived violations. This part of the analysis is intended to examine the politics of the agenda setting process. There are dozens of whistleblowers and other watchdog agencies that focus on identifying abuse in the federal government. Media organizations also provide much of the information we have regarding potential abuses of power. Between these sources, a variety of accusations will be identified and explained. If no hearing was held on a given topic, a short analysis of why this may

have been the case follows. If a hearing was held on the other hand, hearing minutes, legislation logs, and committee reports were consulted to determine what impact the Committee ended up having on the given issue. In some situations there may have been an investigation by another congressional committee exercising similar or overlapping jurisdiction. Regardless of whether or not another committee heard the case, because the Committee on Oversight and Government Reform has universal jurisdiction as it relates to oversight, it is still relevant to consider what action this Committee took, if any.

II. Case Studies

While accusations of executive abuses of power may appear to be on the rise, the charge is certainly not a new one. Each administration has a new set of problems it faces and each has a different way of handling these obstacles. Oftentimes those in political opposition to the president argue that he has expanded executive powers, as opponents attempt to discredit his actions. There are, however, a variety of accusations of expanded powers that do have merit. Too many studies today focus on these executive branch abuses in an effort to shake their finger at the executive and few accomplish much more than this. Not enough emphasis has been placed on discovering what has allowed these issues to arise in the first place.

The Clinton Administration

Without even being prompted with the phrase "abuse of power", the Clinton Administration is perhaps best remembered by the average citizen for the Monica Lewinsky scandal, lying under oath, and the Clinton impeachment trial. In an effort to examine abuses of policy of a more universal nature I will not examine these issues here, but they nonetheless provide an additional example of executive branch abuse of power.

Issue 1: Line-Item Veto

Article I, Section 8 of the Constitution states, "No money shall be drawn from the treasury, but in consequence of appropriations made by law..." For the vast majority of American history this statement has been taken at face value, no exceptions allowed. On April 9, 1996, in front of a crowd of supportive congressional figures, President Bill Clinton signed into law the Line-Item Veto Act of 1996. The new law granted the chief executive the power to cancel any spending item within five days of signing a bill into law. Article I of the Constitution does not explicitly give the president the inherent power to veto only portions of a bill.

The legislation was supported by virtually everyone in the Republican-controlled Congress in a bipartisan fashion. It may seem odd that in a time of divided government Congress passed a bill granting increased power to the president. Because of a policy interest in lowering the federal deficit and limiting pork barrel spending, the bill was first introduced by Republicans in both the House and Senate. Clinton's predecessors, Ronald Regan and George H.W. Bush, both unsuccessfully urged Congress to grant them the line-item veto power as well (Jost, 1997).

Before signing the bill, President Clinton again reiterated his support, stating that it would, "give us a chance to...permit presidents to better represent the public interest by cutting waste, protecting taxpayers, and balancing the budget," (Remarks 1996, 3). By appealing to the same interests that the Republican-controlled Congress was interested in, President Clinton gained an enormous amount of power not explicitly granted in the Constitution. With regard to this prerogative, many budget experts made public statements regarding the minimal impact the line-item veto power would have on overall federal

spending (Jost, 1997). Many argue that the line-item veto is an infringement on Congress' constitutional responsibility to control federal spending. Some also take issue with a contradiction with the Presentment Clause of Article I, Section 7 of the Constitution, which does not provide a basis for the executive to approve some but not all portions of a bill presented for his consideration.

Regardless of individual positions related to the policy issue, it is impossible to deny the dramatic change in constitutional policy the law provided. "It fundamentally alters the balance of power in the area of appropriation and budgeting," says Michael Gerhardt, a constitutional law expert from Case Western Reserve Law School (Jost 1997, 3). Advocates of the line-item veto maintain that the legislature still has the opportunity to pass a new law appropriating money to any projects the president may veto. While this is true, the problem with this line of reasoning suggests another way in which legislative power is altered under the law. Bills normally only needing a simple 1/2 majority for passage would need a 2/3 majority vote in order to override a potential presidential veto of the new individualized spending bill.

President Ulysses Grant first asked Congress for a Constitutional amendment giving him line-item veto power in 1873 and nearly a dozen presidents followed in his request (Jost 1997). At the time the Line-Item Veto Act was signed into law, 43 of the country's 50 states granted their governors this power. While it is obviously not a new concept, what was different about congressional attitudes in the 104th Congress that allowed this change to take place? As stated by Robert Spitzer (1997) in his article, *The Constitutionality of the Presidential Line-Item Veto*, "Stated in its simplest terms, constitutionalists and institutionalists should be extremely interested when an entirely new theory of the exercise of

constitutional powers emerges two centuries after the document's construction," (Spitzer 1997, 262). While his statement perhaps neglects thoughtful reflection regarding previous administrations' intention to gain this power, it nevertheless illustrates apprehension that would presumably follow such an attempt to change the status quo.

Granting the president the power of the line-item veto was the topic of the first hearing held by the 104th Congress' House Committee on Oversight and Government Reform. Working in concert with the Senate Government Affairs Committee, it may be first noted that the Committee did indeed invest energy and resources into the matter. The problem that this investigation demonstrates, however, lies in the reasoning behind the investigation and hearing. The chairman of the Committee at the time, Representative William Clinger, was actually the sponsor of the bill the investigation sought to question. Mr. Clinger introduced the bill on January 4, 1995, and the hearing took place eight days later. The entire process from the introduction of the bill, the committee hearing and report, to passage of the bill, took only one month. As was discussed earlier, hearings can be set by the Committee for a variety of reasons, but there is no reason to doubt that this hearing was held in an effort to garner support, rather than consider the balance of power implications this law would have. A lack of oversight is evident when a hearing is introduced in order to gather support rather than question a proposed measure.

The report published by the Committee provides that, "the purpose of H.R. 2 is to change the tilt of the game from one that favors spending to one that favors saving," (Hrg. No. 104-01, 1995, 7). The report also states, "Among the arguments against the line-item veto, is that the measure will not solve the deficit problem. No one claims that it will," (Hrg. No. 104-01, 1995, 10). The Committee expressly states that it won't necessary fix the

problem, but it *might* eliminate pork barrel projects. "Greater presidential authority to rescind funds will create a better balance between executive and legislative interests," (Hrg. No. 104-01, 1995, 10). It seems difficult to assert the integrity of an investigative hearing and published report when both are organized and written by the same person that sponsored the bill in the first place. It is evident that this is an example where congressional figures were willing to give up some of their constitutional powers in order to advance a given policy. It eventually took the United States Supreme Court's involvement to restore the balance of power Congress willingly gave up.

Justice Steven's majority opinion in *Clinton v. City of New York* (1998) held that the Line-Item Veto Act of 1996 allowing the president to amend or repeal parts of duly enacted statutes by issuing a line-item veto, violated the Presentment Clause of the Constitution. Stevens argued that the Clause specifically outlines the practice for enacting a statute. It seems odd that it took a third branch of government stepping in and stating that Congress was trying to give away too much of its power to another branch of government. A red flag also arises when considering that a Committee given the responsibility to provide oversight to the executive branch would actually recommend a bill that transfers constitutional powers vested in Congress to the executive branch. It seems evident that policy interests triumphed oversight responsibilities in this example.

Issue 2: Presidential Pardoning Power

Article 2, Section 2 of the United States Constitution provides that "The President... [shall] have [the] power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment." A quick analysis of the following chart would not suggest

any initial irregularities regarding the number of pardons issued by President Clinton in comparison to other presidents, especially those in recent history.

President	Number of Pardons	President (term of office)	Number of Pardons
George Washington	16	Grover Cleveland	1,107*
John Adams	21	Benjamin Harrison	613
Thomas Jefferson	119	William McKinley	918*
James Madison	196	Theodore Roosevelt	981*
James Monroe	419	William H. Taft	758
John Quincy Adams	183	Woodrow Wilson	2,480
Andrew Jackson	386	Warren Harding	800
Martin Van Buren	168	Calvin Coolidge	1,545
William H. Harrison	0	Herbert Hoover	1,385
John Tyler	209	Franklin D. Roosevelt	3,687
James K. Polk	268	Harry Truman	2,044
Zachary Taylor	38	Dwight D. Eisenhower	1,157
Millard Fillmore	170	John F. Kennedy	575
Franklin Pierce	142	Lyndon B. Johnson	1,187
James Buchanan	150	Richard Nixon	926
Abraham Lincoln	343	Gerald Ford	409
Andrew Johnson	654	Jimmy Carter	566
Ulysses S. Grant	1,332	Ronald Reagan	406
Rutherford B. Hayes	893	George H.W. Bush	77
James Garfield	0	Bill Clinton	456
Chester Arthur	337	George W. Bush	176

*indicates estimate
Source: United States Department of Justice (USDOJ); University of Pittsburg, Jurist Legal Intelligence

As the Committee later noted in its report regarding the Clinton clemency investigation, there are virtually no checks provided on the president's power to grant executive clemency. While individual pardons have come under question from time to time over history, the Clinton Administration came under a great deal of attack when the president issued a number of pardons during the last hours of his term. In an insightful article published in *The American Criminal Law Review,* Paul Haase (2002) goes to great lengths in providing a description of the oddities of President Clinton's pardoning actions that had led to the inquisition. Included in his description of irregularities are:

1) While Clinton granted no pardons during his first four years as president, a great deal of pardons were granted in the last hour of his presidency;

2) A number of the pardons did not go through the standard pardoning process by the Department of Justice; and

3) An analysis of the identities of those pardoned and their relationship to the Administration provides a number of controversial connections.

Other than setting forth the president's pardoning power, the Constitution says very little else and certainly does not consider the appropriateness of the pardons issued by the president. While 28 U.S.C. does set forward the goals of pardons, this provides only an advisory opinion (Haase, 2002).

The Committee did initiate an investigation into the controversial pardons of the Clinton Administration during the 107th session. A hearing was set forth specifically examining the pardon of Mark Rich, an international fugitive, and a combination of the

hearing notes and a later report filed by the Committee lend credibility to the Committee's interest in conducting a thorough investigation on the matter. In its report, the Committee quickly acknowledges the duty it has to provide oversight in the matter. "Because the President can grant clemency to whomever he wants for whatever reasons, it is crucially important that certain grants of clemency be subject to legislative and public scrutiny," (Hrg. No. 107-11, 2001, 14). Because the investigation was held after Clinton was out of office, the Committee made sure to set forth its goals for the investigation. One of these intentions was to aid in public awareness regarding the president's abusive use of clemency power, but the Committee also noted its interest in making a statement for future presidents. They sought to calculate the effectiveness additional safeguards could create in protecting against this type of abuse in the future.

Jumping to the resolution of the issue by the Committee, besides publishing a report on the matter that took a very critical stance towards Clinton's actions, the Committee was not successful in pushing forward legislation that substantially altered the president's ability to do this in the future. Haase's article (2002) provides an analysis of the obstacles the Committee faced that may have contributed to this. Congress has attempted to limit the effectiveness of presidential pardoning power in the past and two US Supreme Court cases have deemed this unconstitutional (See *Ex parte Garland* and *United States v. Klein*). In short, the Court held in both situations that the Constitution does not allow for Congress to "change the effect of...a pardon any more than the executive can change the law," (*Ex parte Garland* 71 US 333 (1866)). Given this knowledge, it may seem that the Committee's first goal of making the public aware of the abuses that occurred was the extent to which the Committee had any leverage. Hasse (2002) points out, and I agree, that there was still a

possibility for a Constitutional Amendment to be created. This issue was never addressed in the Committee report. The only legislation proposed by the Committee in response to the investigation was H.R. 577 that would require any organization that is established for the purpose of raising funds for a presidential archival depository to disclose the sources and amounts of any funds raised.

It must be acknowledged that the Committee had its hands tied to some degree in regard to making any effective laws due to the earlier Supreme Court decisions. The Senate Judiciary Committee did propose a bill, however, that seems to have taken a much stronger stance than the Oversight Committee. S 645 was a bill that would require individuals who lobby the president on pardoning issues to register under the Lobbying Disclosure Act of 1995. This bill never made it to the House floor for a vote, but it does provide an example of possible legislation that would have directly affected the transparency of presidential pardons. Credit must be given for the Committee's attention to the matter, the investigation that ensued, and the attempt to make the abuses public. Not even going so far as to propose a Constitutional Amendment, the Senate bill is evidence that more could have been done on the part of the Committee to address the transparency issue. The bill that was proposed (HR 577) related only to transparency in presidential library fund donations and did not go as far as the Senate version that looked directly at those lobbying the executive for pardoning purposes. This case provides an example of the Committee successfully responding to an issue of executive abuse, but failing to make any lasting impact on the problem.

Issue 3: Compliance with Committee Subpoenas

Likely because it was a time of divided government, there were a number of investigations and hearings done by the Committee in the 104th and 105th Congress directly

related to executive branch oversight regarding policy decisions. Take the hearing titled "Will the Administration Implement the Kyoto Protocol Through the Back Door?" as an illustration of the political nature of these inquires. The hearing was held in an effort to address the Clinton Administration's justification for a $6.3 billion increase in funding for climate change studies, as well as the possible effects of the Koyto Protocol (Hrg No. 105-196 1998). While the hearing involved questioning of the Chair of the President's Council on Environmental Quality regarding why a number of congressional subpoenas for documents have gone unanswered, the Republicans disagreement with the policy at hand is evident within the first few pages of the transcript. "The Kyoto Protocol, which was negotiated by the Clinton-Gore administration last December, in my view, goes too far, too fast, and involves too few countries," (Hrg. No. 105-106, 1998, 2). It is plausible that an interest in obtaining various documents may have provided a cover-up for the political nature of the questioning. The vast majority of the dialogue that took place during the investigation centered upon the individual from the President's Committee advocating the current environmental policy stance of the Clinton Administration. All the while, the Committee spent its time denouncing this plan. Any discussion related to the subpoenas in question and a possible executive order initiating this program behind the doors of Congress, makes up very few of the 83 page review of the hearing.

Agenda Setting during the Clinton Administration

An overall analysis of the hearings held by the Committee over the course of the 104th and 105th Congresses suggests an interesting balance of perceived objectives. Over the course of the 104th Congress, there were exactly twenty hearings held related to drug control and enforcement of narcotics laws. The hearings did vary in scope to include a variety of

locations and laws, but the time given to the topic seems astounding compared to other issues that would seem essential to a committee dedicated to oversight and reform. In the next session, the Y2K problem appears to be the topic of choice, as nine hearings were held regarding different aspects of the potential threat. Hindsight being 20/20 allows us to gauge the unnecessary time wasted on this investigation, but nonetheless the sheer number of hearings, regardless of final outcomes, again speaks to the priorities of the Committee.

In light of the time and resources dedicated to the above mentioned topics, it becomes necessary to then ask what areas the Committee failed to dedicate resources to. There were a number of other executive abuse allegations that appear to have gone unanswered by the Committee, including an expansion in the use of executive orders, the use executive privilege, and the constitutionality of Clinton's use of Commander-in-Chief powers to institute peacekeepers around the globe without prior approval of Congress. There is no doubt that the Committee is asked to provide oversight on policy issues, but as is seen through a comparison of a time of united government, these policy questions seem to play a much greater role under the oversight of the Clinton Administration. Perhaps divided government can create a policy distraction for the members of the Committee who should be equally, if not more interested in, the expansion of presidential power taking place.

Bush Administration

There is no doubt that some presidents have notably usurped a great deal more power than others. The legal research surrounding the Bush Administration's abuse of executive power is extensive. Many scholars, including Charlie Savage (2007) who has written numerous articles on the topic, identify the Bush Administration's efforts in concentrating power as part of the unitary executive theory. The doctrine this theory follows is that by

combining the Take Care Clause of the Constitution with the Vesting Clause, the president should not be hindered by either of the other two branches regarding his oversight and management of any executive branch activities. Basically, the theory holds that there are a number of inherent powers the president has that are not explicitly laid out in the Constitution, but the president nonetheless should enjoy complete use of them. Regardless of one's stance regarding how much power any one branch of government should yield, anytime we are considering issues of separations of powers and checks and balances, we must recognize the costs and benefits that simultaneously occur. As we will see through an analysis of the specific issues, it appears that the Committee was incredibly open to allowing President Bush the benefit of the doubt when it came to increasing his powers – perhaps to the detriment of the balancing system in place.

Issue 4: Executive Privilege

The right to executive privilege is not a controversial idea in itself – virtually no scholars would argue the right never exists. The contention instead arises in its application and use. Executive privilege refers to the right of the president or his advisors to withhold information from the other two branches of government, as well as the public under certain circumstances (Rozell and Sollenberger, 2008). This right has commonly been invoked as related to issues of national security where harm could result from information being released. The topic received a great deal of attention when President Nixon asserted executive privilege in an effort to conceal the famous audiotapes involved in the Watergate scandal. In *US v. Nixon* 418 US 683 (1974), the Supreme Court addressed the difficulty with which claims of executive privilege must be managed. The justices acknowledged the president's need for executive privilege, but they also held that this is not an absolute

privilege. "To read the Article II powers of the President as providing an absolute privilege as against a subpoena essential to enforcement of criminal statutes on no more than a generalized claim of the public interest in confidentiality of nonmilitary and non-diplomatic discussions would upset the constitutional balance of a 'workable government'," (*US v. Nixon* 418 US 683 (1974)).

The need for the president to maintain some degree of protection must be balanced with many other objectives, including Congress's need to access information that is essential in its duty to carry out executive branch investigations. Many note the beginning of the Bush Administration's invoking executive privilege rights as dating back to 2001 when the president attempted to withhold Justice Department documents that were over 20 years old (Rozell and Sollenberger, 2008). During a scandal involving the FBI and the misuse of informants, Bush invoked executive privilege to deny disclosure of information. Even though the House was made up of a Republican majority at the time, they did not take this lightly.

Perhaps the most notable use of executive privilege came in 2007 when President Bush made multiple claims in an effort to conceal White House documents and prevent presidential aides from testifying regarding the forced resignations of a number of US attorneys (Rozell and Sollenberger, 2002). As a background note, Congress had given the president the responsibility to appoint US attorneys with the advice and consent of the Senate. The passage of the Patriot Act Reauthorization in 2005 included a statement eliminating a time limit that had been in place limiting the Attorney General's ability to replace US Attorneys. While vacancies could previously be filled for a maximum of 120 days, this time limit was dropped and the appointments were allowed to be indefinite in

nature. Taking advantage of this change, the Bush Administration began considering the removal and appointment of new US Attorneys almost immediately. Documents were created regarding attorneys' political activities as well as a number of other attributes, and nine US Attorneys were eventually forced to resign their positions. As an obvious policy advantage, Bush was then able to appoint attorneys of a similar ideological stance as his own and avoid Senate confirmation.

Congress first became involved with the situation on January 9, 2007, when Senators Patrick Leahy and Dianne Feinstein wrote to Attorney General Gonzales showing their concern over the situation. The House and Senate Judiciary Committees held hearings, numerous subpoenas were issued, and presidential aides were asked to testify. President Bush made claims of executive privilege as a way to not respond to the subpoenas or requests for testimony, and eventually the House Judicial Committee issued contempt citations for a number of those aids it had requested to testify. Because the Justice Department is responsible for enforcement of contempt citations, they did the Committee little good.

What did the House Committee on Oversight and Government Reform have to do with the scandal? The answer is very little. During the course of the 110th Congress, the House Judiciary Committee held six separate hearings into the US Attorney controversy, and the matter has still not been disposed of to date. Even though final findings have not been made, it seems safe to assume that some level of executive branch abuses took place. The first issue that appears problematic is the ease with which the provision limiting the Attorney General's interim appointment power was removed in the Patriot Act Reauthorization Act. One problem that may have allowed this to occur is that there is not one committee or subcommittee committed to solely investigating issues of separation of powers or executive

branch expansions of power. With the Reauthorization Act covering hundreds of different issues, it is nearly impossible for one committee, or even two in this situation, to contemplate each individual clause in the proposed legislation.

The time that has passed since the issue arouse provides another red flag. Bradley Schlozman was the first interim attorney appointed after the change, and he took office on March 24, 2006. For three years, potentially illegal appointments have been allowed to stand. The issue of Congress' inability to enforce contempt citations has also led to both a delay in proceedings and lack of accountability for alleged participators. While both of these issues do not speak necessarily of Committee choices itself, they represent obstacles the Committee has faced in accomplishing its oversight responsibilities. It is difficult to claim that the Committee has been negligent over the matter since there have been investigations and hearings held by of other committees, but again, due to its supremacy as the main oversight Committee, some responsibility for the ineffectiveness of oversight by all of Congress must fall onto the shoulders of the Committee.

Issue 5: Signing Statements

After *New York v. Clinton* (1998) in which the Presidential Line-Item Veto Act of 1998 was struck down by the Supreme Court, it would be logical to assume that the process of Congress passing a bill and the president's choice in either signing or vetoing it is fairly straightforward. Signing statements have recently garnered a great deal more attention than in previous years, but presidents of both parties have issued them dating all the way back to the nineteenth century (Savage, 2007). While referring to an official statement issued by the president as he is signing a bill, a signing statement can involve a number of different messages and thus incorporate a variety of different issues. It has been noted that throughout

history presidents have used signing statements as a way to dedicate a law to a group of people or thank someone for the contributions he has made to the development of the law (Savage, 2007). While not the first to use them, many argue that President Bush used signing statements in a different manner than previous presidents. His statements often included an explanation of his interpretation of the law, instructions to the executive branch on how to interpret the law, or an analysis of his beliefs regarding the constitutionality of the law. The potential effects that these statements could have on the outcome of a new law can best be explained through an example. When signing the Intelligence Authorization Act of 2005, President Bush added the following signing statement, "Section 205 of the Act purports to place restrictions on use of the US Armed Forces and other personnel in certain operations. The executive branch shall construe the restrictions in this section as advisory in nature," (Cooper 2005, 6). Stating that the law should be construed merely as advisory in nature in effect makes the law nothing more than a recommendation. While this has great policy implications, some also note that it has been done in a way that expands and strengthens the powers of the president relative to Congress.

According to Dr. Christopher Kelley of the Miami University in Ohio, President Bush used signing statements to leave remarks on over 1,100 separate bill sections (Savage, 2007). While this number seems large in its own right, compare this to the 600 such statements issued by all previous presidents combined and the number takes on a whole new meaning. Known for the lack of vetoes during his time in office, signing statements appear to have become a way for President Bush to affect a great deal of policy decisions. Even in those areas where Congress had enough support to override a presidential veto, President Bush continued to sign laws he disagreed with by simply attaching a signing statement. By doing

this, Congress then did not have the ability to override the veto and enact the law as proposed. Oftentimes the statement suggested that the law should be interpreted as a merely advisory opinion. In the Consolidated Appropriations Act of 2004, President Bush had 32 constitutional objections with the legislation but nevertheless signed it into law (Cooper 2005). It seems impossible that the law could have the same meaning with this many changes.

If signing statements have been used over such a great deal of American history, why are they appearing as a new controversy? Historically, Congress has not responded well to their use. (Wolverton, 2006). When President Jackson tried to mandate that roads could not be extended beyond the territorial boundaries of states through a signing statement, Congress (ineffectively) denounced the action as a line-item veto. In response to President Tyler's signing statement that questioned the constitutionality of a bill apportioning congressional districts, Congress declared that the signing statement should be disregarded. It was. It seems that these examples provide evidence of congressional distress over the use of signing statements, but the 108th through 110th Congress did not share this feeling. While the use of signing statements themselves might not raise constitutional issues since they are not actually a part of the law, the failure to enact a law according to guidelines set forward by Congress could raise issues of constitutionality.

President Bush began issuing signing statements during his first year in office, and it was not until January 31, 2007, that a hearing was held by any committee in the House. It is important to note that the hearing was the first of the session, a session that marked change in control from the Republicans to the Democrats. A logical conclusion would be to assume that the Republicans were unwilling to pursue an investigation of a president of their own

party on their time. Not only did the first investigation occur after a switch in party control, it seems relevant that the hearing was the first of the session. It is no coincidence that issues before Congress are prioritized, so its first-issue standing is illustrative of the importance of the topic and neglect on the part of the previous Committee.

Between the time President Bush issued his first signing statement and a House Committee's first hearing on the matter, the House Committee on Oversight and Government Reform found itself holding hearings on a variety of issues. Crystal methamphetamine in Hawaii, conquering obesity, and the infamous steroid use in baseball scandal were just a few of these investigations. It is likely this was the type of questionable agenda setting that Representative Henry Waxman was referring to in his letter to Chairman Tom Davis asking him to include executive branch abuses in the committee's agenda.

The hearing that did finally take place in January of 2007 was held by the House Judiciary Committee. Even after losing power and the Democrat's subsequent interest in investigating the use of signing statements, Republicans were still not finding it worthy of Committee resources or time. One Republican Committee member stated in the hearing report, "Yet, this hearing focuses not on courts and judges, but rather on the President's simple opinion about the legislation he is deciding to sign. One has the distinct feeling that this is really a policy debate. If critics of signing statements agreed with the President, we simply would not be here today," (Hrg No. 110-6, 2008, 4). While the statement could likely be ripped to shreds on accusations of hypocracy, it nonetheless demonstrates the continued political nature of such investigations. It is statements like this that suggest party cohesion sometimes outweighs branch-cohesion. The Presidential Signing Statements Act limiting the power of such statements was introduced in both 2007 and 2008, but never made it past

committee referral. There is similar legislation currently pending in both the House and the Senate.

Agenda Setting during the Bush Administration

As was the case under the Clinton Administration, there are a number of executive branch abuse accusations that seem to have gone unnoticed by the Committee. A hearing was never commenced by the Committee regarding whether the failure of Congress to authorize the Iraq War created an illegal declaration of war. There was, however, a hearing regarding how the United States is doing and can continue to do better at winning the hearts and minds of the citizens of Iraq (Hrg. No. 108-233, 2004). The accusation of illegal wiretapping and surveillance was never addressed by the committee, nor have many of the issues of the Bush Administration's secrecy in governmental affairs. It is definitely plausible that the reason for the lack of investigation into these matters rests solely on the political nature of legislative-executive party interests. All but one session of Congress was led by a Republican majority, which heightens the likelihood that this was indeed the case.

III. Analysis

The Committee in each of the above described cases has dealt with its responsibilities in a wide variety of ways. Each of the five case studies examined above, in addition to the analyses of agenda setting decisions, can provide us with some degree of insight into the causes of a lack of effective oversight by the Committee.

The problem of policy interests is clearly identified in the Line-Item Veto Act of 1996 example under the Clinton Administration. Even in a situation of divided government, Republicans appeared willing to grant President Clinton the power to alter approved legislation. The Republican's interest in fixing the federal deficit seemed to surpass the

interest of the Committee in maintaining balance of power issues. Re-election is constantly on the minds of members of Congress and it is doubtful that many other than legal scholars and political scientists would pay nearly as much attention to congressional figures altering the balance of power as to policy issues such as maintaining a balanced budget. Whatever the reason, it is impossible to ignore the Republican's lack of investigation into the implications this law could potentially have. The very idea that Congress would be willing to allow the president to usurp this kind of legislative power, *let alone grant it to him themselves*, was likely inconceivable to those who wrote the Constitution and developed the separation of powers system. The assumption at that time of the Constitutional Convention was that each branch would attempt to assert as much power over the other branches as it could, and it would take the other branches disapproval in order to put them back into place. This was definitely not the case in this situation.

The vast agenda setting power of the chairman of the Committee is also a problem highlighted by the line-item veto example. The hearing held in investigation of the Line-Item Veto Act merely provided a mechanism for the chairman to garner increased support for his proposed bill. Because the chairman has the ability and the resources to decide what the Committee will investigate, the success in performing oversight duties seems related directly to the intentions of the chair himself. As was shown in an example from a committee hearing, the chairman is also able to allocate the financial resources needed for conducting hearings, and it is highly probable that under normal circumstances these resources are distributed in a manner beneficial to the interests of the chair himself rather than the interests of true oversight.

Because of the great deal of agenda setting power the chairman holds, it is difficult to find any trends in terms of what it takes to get the attention of the Committee. When the chair is of the opposing part as the president, there appears to be more of a 'watchful eye' attitude that does not exist when the chair is of the same party. Policy interests and general animosity toward the other party are the only motives that were evident through an analysis of hearing reports. Due to the overall lack of investigations held regarding executive abuses of power, there are not enough cases in which to effectively gauge what sets a committee off enough to compel them to conduct an investigation. A more thorough analysis of the Committee meeting minutes themselves may provide additional insight into this question.

The same holds true with locating trends related to committee chairs investigating presidents of their same party. Because this has not happened often, it is difficult to find any trends. A situation where the general public becomes aware and angered over a breach of executive power is the most likely time the Committee would investigate a president of the majority party. When the individual members themselves risk public scrutiny for failing to provide oversight, they are more likely to actually pursue an investigation. Due to the unawareness of the public concerning constitutional issues of the separation of powers though, this rarely occurs.

A lack of attention to possible areas of abuse was evident under both of the administrations studied. It is likely this is increased in times of united government, as was clearly demonstrated by the 108th and 109th Congress' inattention to such a vast number of abuse of power allegations. A simple glance at topics that were considered in this time period reflects a diversion of attention away from areas of potential abuse to other policy and regulatory issues.

Again concerning issues of diversion, the 105th Congress provided an example of policy issues overriding abuse accusations. In this period of divided government, it appears the Republicans had an insatiable interest in oversight of the Clinton Administration's policy decisions. It is inevitable that an opposing party is going to seek ways to undermine executive policy decisions. While periods of divided government would presumably provide a better check on executive branch abuses of power, this example demonstrates negative implications this can have as well. The majority party can become so preoccupied with counterbalancing the executive's policy decisions, that there can be a lack of focus on separation of power issues.

The above examples also provide evidence that at times the Committee did indeed pursue issues of abuse, but failed to provide substantive or timely outcomes. The Committee of the 107th Congress pursued an investigation into the controversial pardons by President Clinton, but failed to provide any favorable outcomes other than increased public awareness (of which there is no purported evidence that this grew). The 110th Congressional Committee's investigation into the US Attorney firings demonstrates the lack of enforcement power congressional committees have when it comes to obtaining information necessary to complete an effective oversight investigation. With the situation still not resolved, there are questions as to how beneficial the committee investigation will be due to the delay.

The final problem illustrated through the above case studies is the overlapping jurisdiction of congressional committees. This does not allow responsibility to be directed at one specific committee and it is easier for each committee involved to point fingers at others.

Summary of Issues Inhibiting Effective Oversight
Policy interests of individual members
Agenda setting and unfair allocation of resources on the part of the Committee chairman
Lack of substantive or timely outcomes
Party cohesion inhibits oversight
Overlapping jurisdiction weakens accountability

IV. Additional Factors

In understanding the above deficiencies in oversight performance, pressures external to the Committee itself can not be neglected. Congressional members are constantly evaluated by the constituency that has elected them into office. With respect to how individual members of the Committee are affected by this, there are a number of possible explanations.

There is a wide discrepancy in prestige between congressional committees and it is inevitable that some have more power than others. The districts that elect members of Congress also have a varying set of needs and desires, and it is the duty of their representatives to uphold and fulfill these obligations. For this reason, members of Congress are often involved in a number of congressional committees and may choose to focus their energy on those committees they are a part of that have the greatest impact on their district's needs. Fixing areas of executive abuse is not something that solves the physical needs of one's constituents, and the duties one has to oversight can be triumphed by these issues that necessitate their attention for re-election purposes. Constituents want their representatives to be involved in those areas that will benefit them the most, and having their advocate represent the interests of upholding fundamental values of our constitutional system of

governance may not satisfy these needs. Somewhat along these lines, members of Congress are constantly seeking ways to make their actions visible, especially for purposes of re-election. If individuals dedicate a great deal of their time to oversight issues, this leaves less time for other interests.

Because representatives must be elected by a majority, they are elected primarily because of their ideological and partisan values. This may be one of the contributing factors to attention to policy over reform issues. Representatives want to remain visible to their constituents both in the sense of meeting their needs as well as upholding the ideological values they were elected upon. Given the opportunity to impact policy decisions often appears more visible and beneficial to a legislator's reputation. For this same reason, if a member is a part of the party in control and it is a time of united government, members have some obligation to represent their party well. "Legislators tend to associate with, to take cues from, and to communicate generally with others on their own side of the aisle; these contacts generate what Kingdon calls a "compatriot feeling", a sense of commitment to the party. This attachment seems most meaningful to those who must defend a President of their own party," (Unekis and Rieselbach 1984, 32).

Another area connected to this obligation to uphold one's own party image is the issue of campaign contributions. If a member speaks out against his or her party and lowers party credibility, they are not likely to receive their party's support financially. According to GovTrack.us, a tool to promote government transparency, "congressional committees are the legislative trenches – and the bigger the bill, the higher the stakes, the more generous the campaign donations to members of the committee with jurisdiction over the issue," (Congressional Committees, 2009). Congressional members are naturally tied to those who

provide financial support for their election. Because of the influence congressional committees have on policy decisions and the ability to push or stall legislation, pressure groups external to committees are interested in effecting member decisions (Williams 1998, 171).

Just as individual constituents have vested interests in members of Congress, interest groups, PACs, and companies seek to have their policy interests pursued as well. Time dedicated to oversight subtracts from resources available to pursue other policy topics. Since 1973 the majority of congressional meetings and hearings have been made public. With the spread of information technology and increased capability for individuals and other interested groups to analyze how their representative's time and resources are being spent, individual members are increasingly at the scrutiny of their electorate. While it is difficult to speculate why this was the case without an in depth analysis of the individual contributors, it seems significant to note that in the 108th Session of Congress, contributions based on ideology/single issue advocates jumped to take the 2nd highest position of sector support. This is up from the 7th highest reason just one session before. This time period corresponds with a Republican-controlled Congress that did little to investigate separation of powers issues. With more resources being committed to ideological purposes, it seems reasonable that individual Committee members were more invested in individual ideological matters than at other times.

Internally it seems the largest factor impacting Committee member decisions relates to party politics. Parties provide the force by which members of Congress reach their individual goals (Adler, 2002). Party politics can play a role both in the pressure to conform to party interests as well as an interest or disinterest in investigating executive branch power

abuses. It is interesting to note that this can go both ways: There can be an increased interest in reducing credibility of the president *as well as* an interest in trying to cover up executive abuse in times of united government.

Given a majority and therefore the opportunity to, individual members of Congress are forced to balance policy interests with the desire to reduce the credibility of the opposing party. A report was issued in January 2001 regarding the previous Chairman Burton's immense use of resources into the campaign finance investigation of the Democratic National Committee (US Congress, 2001). The report notes that 923 of the 935 subpoenas related to the campaign finance investigations concerned allegations involving Democrats. Of the 69 witnesses called to hearings before the Committee, all 69 of them were related to Democratic fundraising issues. All the while, there was continued interest and questions regarding abuse by the Republican Party as well. It was estimated that the investigation's cost exceeded $8 million – which many contend was a scheme to reduce credibility of the Chairman's opposing party.

In an article in *The Washington Post,* ex-chair of the Committee, Tom Davis, stated, "Republican Congresses tend to over investigate Democratic administrations and under investigate their own. I get concerned we lose our separation of powers when one party controls both branches," (Milbank, 2005). In the same article, it is noted that there were 1,052 subpoenas issued to prove misconduct by the Clinton Administration, which led to a cost of over $35 million. At the time the article was published, the Committee under Chairman Davis had only issued three subpoenas to the Bush Administration. Members of Congress pointed to the Bush Administration's aggressive power-seeking actions as well as

acquiescence on the part of congressional leaders, as causes of the huge discrepancy (Milbank, 2005).

The issue of the implications united government has on oversight of the executive branch is perhaps best shown through the analogous example provided by the ethics committee. *Both Judge and Party: Why Congressional Ethics committees are Unethical,* focuses on how ethics committees are ineffective due to their members being made up of other congressional members. These members are friends – often members of the same congressional party with multiple connections to each other. To give them the responsibility to judge their counterparts can hardly lead to unbiased decision making (Thompson, 1995).

It is noted by some that the last two decades have brought an increased fervor to party politics. John Owens, from the Centre for the Study of Democracy at the University of Westminster, comments on the impact this has had on the legislative process since 1994. In particular he notes the important changes in Congress's policy agenda (Owens, 1997). After interviewing over two hundred members of House committees, Richard Feeno concluded that the members of Congress primarily pursued three goals – reelection, influence from within the House itself, and good public policy (Mayhew, 2004). Research from both of these scholars suggest and this emphasis on party lines may have an effect on how the Committee has conducted its business as well

Committee assignments are made by party committees in each chamber. The party's goals are central to these decisions, in addition to issues of seniority and relevance to member's interests and district representation. Inevitably, a party is not likely to place someone critical of their own party members on a committee responsible for providing oversight. While individual members surely slip through into committees with oversight

capabilities, there is no doubt that the parties have individual tendencies in mind when making committee appointments.

V. Recommendations

Given the above account of internal and external factors impacting individual member decisions, in combination with ineffectiveness within the Committee itself, it does not seem too difficult to point out why the Committee has not been as successful in curtailing executive branch abuses of power as we would hope it would. With this in mind, our attention should next focus on possible reforms that might lead to increased efficiency and effectiveness in this area of responsibility.

At various times throughout this essay, the extreme amount of power the Committee chair has with regards to agenda setting and distribution of resources has been defined. Limiting one person's undue influence over committee affairs appears one initial place reform has the potential to assist. If the rules were changed in such a way that the chair and ranking member were forced to work together on setting the agenda for the session, ideological influence may not be so evident. If the ranking member and minority party were allowed more input into what investigations are worthy of pursuit, times of united government would perhaps not lead to such a blind-eye toward administration abuses like we saw in 108th through 110th Congresses. In a committee dedicated to oversight, it seems a more equal distribution of resources would also allow for more effective balance between parties. If the minority party was allocated reasonable funds for consulting fees, as well as increased staff members to aid in research, it is likely there would be a more accountability across party lines.

Some have proposed the idea of appointing a chair of this Committee from the minority party. While on first glance this appears an attractive idea, it brings with it its own set of potential problems. For one, an interest in policy issues is likely to take precedent over separation of power issues. As we saw in some of the examples of divided government, while they are more likely to confront potential executive branch abuses, minority parties are also more likely to put an increased emphasis on undermining the other party's policy goals. Dedicating too much time and too many resources to these issues would inevitably take away from oversight interests. The other problem that would arise in this situation is that the Committee could become a place of habitually stalling legislation. With another party supplying a great deal of the proposed legislation, if the leader of the Committee were of the minority party there would likely be less of a push to see proposed legislation make it past committee referral. So while it seems an attractive concept and does have some potential benefits, a more balanced distribution of resources would be more beneficial to executive oversight. Forcing the Committee chair to listen to the opposing party, no matter if that party is in the majority or minority, would allow for a more diverse set of allegations to be brought forward and potentially investigated.

The second area of possible reform is combining the responsibilities of other committees sharing similar jurisdiction to allow one committee (or even subcommittee) an absolute responsibility to focus on executive branch oversight. As it stands now, the rules governing which committee a bill is referred to seem overly vague, especially in this area of oversight. By allowing one panel the authority and perhaps more importantly, the responsibility, to monitor the executive branch, there would always be a group to hold accountable. It is easy for committees under the current system to blame inattention to

certain abuses on having too many issues on their plate, but creating one committee with absolute authority and sole jurisdiction would potentially eliminate this excuse. Congress as a whole would no longer be able to escape this duty.

Perhaps the most effective change possible is that of making constituents more aware of Congress' responsibility to both protect its own powers and use that power to make sure the executive branch is not overstepping the boundaries in place. It is the constituents that ultimately hold their representatives responsible for what is or is not done. By forcing their representatives to focus on issues of relevance, individual members are more likely to look beyond mere policy interests to the implications their decisions have on the balance of power. There needs to be more in depth questioning of diversion tactics and the decision on what issues are investigated. If legislators are encouraged by their constituents to pursue potential abuses of power, they are likely to exert greater interest in the matter. If it is not something important to the constituents, it will not be reflected in the interests of the individual members that are responsible for providing oversight.

While this analysis only considered the two most recent administrations, allegations of presidential abuse of power do not appear to be a problem that will disappear in the near future. Presidents of both political parties have continuously sought increased executive powers while in office and it seems safe to assume this will continue. Perhaps we should not focus solely on the excessive use of power by the executive branch, but instead give increased attention to the lack of power being asserted by the legislative branch in maintaining the separation of powers and checks and balance systems that have allowed the American system of governance to thrive for as long as it has.

As was stated earlier, there are other congressional committees with jurisdiction similar to the House Committee on Oversight and Government Reform, and many of these committees also share responsibility in providing oversight for the executive branch. While the main focus of this study was on the House Oversight Committee, it seems relevant to at least consider whether the other committees have perhaps been more effective. A short examination of the hearings held by the Senate Committee on Homeland Security and Governmental Affairs suggests that the Committee spends a large amount of time and resources investigating executive branch policies. Many of these investigations, however, focus on the issues for their policy implications rather than any balance of power issues that may also be at play. There are very few examples of the Senate Committee investigating the type of executive branch abuses at issue in this study. Any questioning that did take place usually made up only a small part of a larger investigation into a given policy.

The Judiciary Committee's of both houses provide perhaps the best example of a committee interested in the type of abuses of interest in this study. Especially in times of divided government, both of these Committees took it upon themselves to conduct investigations into issues of executive privilege, signing statements, and possible pardoning bribes. Not only were the Judiciary Committees more likely to hold hearings on these issues, but more often they were able to provide more substantial outcomes than the Oversight Committee. Whether it is because of the jurisdictional responsibilities or a general history of investigating such issues, the Judiciary Committees appear to recognize the importance of executive branch oversight. As was proposed, creating a committee solely dedicated to executive oversight would allow a committee to dedicate all of its resources to the topic. In an effort to create a more meaningful and effective committee, the successes the Judiciary

Committees have seen in this area could be coupled with the more limited success the Oversight Committee has had.

If the above recommendation of combining oversight jurisdiction does not happen, it is likely the House Oversight Committee will continue with little success in the future. The general unwillingness to investigate the president, the party politics involved, and the lack of prestige, all suggest that the Committee has been ineffective. Because of the tendency of the president to attempt to increase his power, it is essential that the other two branches play a key role in limiting his ability to do this. Unless the Committee is going to step up and provide effective oversight, however, it may be undeserving of the financial resources necessary to keep the Committee in place. While individual members appear to recognize the responsibilities they have in this area from time to time, the overall ineffectiveness of the Committee has suggested a purely symbolic existence. The lack of action by the Committee implies that it exists merely to create a perception among the public that the legislative branch is fulfilling this duty. By failing to provide substantial outcomes, however, this perception may be all it is accomplishing. Without considerable reform, resources of Congress may be better dispersed elsewhere.

Bibliography

Adler, E. Scott. *Why Congressional Reforms Fail: Reelection and the House Committee System*. Chicago: The University of Chicago Press, 2002.

Committee on Rules. (2008) *Rules of the House of Representatives: One Hundred Tenth Congress*. Retrieved February 20, 2009, from http://www.rules.house.gov/ruleprec/110th.pdf.

Congressional Committees. (2009) *GovTrack.us: Tracking U.S. Congress*. Retrieved February 12, 2009, from http://www.govtrack.us/congress/committee.xpd.

Cooper, Philip J. "George W. Bush, Edgar Allan Poe, and the use and abuse of presidential *signing statements." Presidential Studies Quarterly, 35.4 (September 2005). http://*www.wiley.com/bw/journal.asp?ref=0360-4918 (accessed February 13, 2009).

Grant, Alan R. *The American Political Process*. New York: Routledge, 2003.

Haase, Paul J. "'Oh my darling clemency': existing or possible limitations on the use of the presidential pardon power." *American Criminal Law Review*, 39.3 (Summer 2002).

House Committee on Oversight and Government Reform and Senate Committee on Governmental Affairs. (1995). *Line-Item Veto* (104-01). Retrieved February 12, 2009, from http://www.access.gpo.gov/congress/house/house07ch104.html.

House Committee on Oversight and Government Reform, *Iraq: Winning Hearts and Minds*, 108th Cong., 2nd sess., 2004.

House Committee on Oversight and Government Reform, *Presidential Signing Statements Under the Bush Administration: A Threat to Checks and Balances and the Rule of Law*, 110th Cong., 1st sess., 2007.

House Committee on Oversight and Government Reform. (2001). *The Controversial Pardon of International Fugitive Marc Rich* (107-11). Retrieved March 3, 2009, from http://www.access.gpo.gov/congress/house/house07ch107.html.

House Committee on Oversight and Government Reform (1998). *Will the Administration Implement the Kyoto Protocol Through the Back Door? Disclosures Act* (105-196). Retrieved February 23, 2009 from http://www.access.gpo.gov/congress/house/house07ch105.html.

Johnsen, Dawn. "What's a president to do? Interpreting the Constitution in the wake of Bush Administration abuses," *Boston Law Review,* 88, no. 2 (2008). http:/web.bu.edu/law/central/jd/organizations/journals/bulr/documents/JOHNSEN.pdf (accessed March 8, 2009).

Jost, Kenneth. "Line-Item Veto," *CQ Researcher*, 7, no. 23 (June 1997). http://www.cqpress.com (accessed March 2, 2009).

Mayhew, D, & Arnold, R. *Congress: The Electoral Connection.* New Haven, CT: Yale University Press, 1975.

Milbank, Dana. *Bush's Fumbles Spur New Talk of Oversight on Hill.* The Washington Post, December 18, 2005. http://www.washingtonpost.com/wp-dyn/content/article/2005/12/17/AR2005121700992.html.

Minority Office of House Committee on Oversight and Government Reform. (2009) *Welcome from Ranking Member Issa.* Retrieved February 12, 2009, from http://republicans.oversight.house.gov/about/.

National Archives and Records Administration. *Guide to the Records of the United States House of Representatives at the National Archives, 1789-1989: Bicentennial Edition*

(Doct. No. 100-245). By Charles E. Schamel, Mary Rephlo, Rodney Ross, David Kepley, Robert W. Coren, and James Gregory Bradsher. http://www.archives.gov/legislative/guide/house/chapter -11.html (accessed February 2, 2009).

Owens, John. The Return of Party Government in the US House of Representatives: Central Leadership. *British Journal of Political Science. 27* (1997) 247-272.

Ranking Member Darrell Issa, "About the Committee," Committee on Oversight and Government Reform – Republicans, http://www.republicans.oversight.house.gov/about/ (accessed January 29, 2009).

Reinhard, Gina Yannitell. "An 'I' on Congress: The Process and Products of Congressional Investigations." *PS: Political Science and Politics* 41 (2008), http://journals.cambridge.org/action/displayAbstract;jsessionid=68F41E4015B77A234FCA18F635C16471.tomcat1?fromPage=online&aid=1906324 (accessed February 18, 2009).

"Remarks on signing the Line Item Veto Act and an exchange with reporters." Weekly Compilation of Presidential Documents 32 no. 15 (April 15, 1996): 645(3).

Rozell, Mark J., and Mitchel A. Sollenberger. "Executive privilege and the U.S. attorneys firings." *Presidential Studies Quarterly*, 38.2 (June 2008).

Savage, Charlie. "Symposium: The Last Word? The Constitutional Implications of Presidential Signing Statements: Introduction." *William & Mary Bill of Rights Journal*, 16 (October 2007).

Spitzer, Robert J. "The Constitutionality of the Presidential Line-Item Veto," *Political Science Quarterly*, 112, no. 2 (Summer 1997). http://www.jstor.org/stable/2657941 (accessed March 2, 2009).

Thompson, Dennis F. "Both judge and party: why congressional ethics committees are unethical," *Brookings Review*, 13 (Fall 1995).://www.highbeam.com/doc/1G1-17440922.html (Accessed March 24, 2009).

Unekis, Joseph K. and Leroy N. Rieselbach. *Congressional Committee Politics*. New York: Praeger Publishers, 1984.

US Congress. House. Committee on Oversight and Government Reform. *Statistics Regarding the Burton Campaign Finance Investigation.* 107th Congress, 1st sess. http://oversight.house.gov/documents/20050124115049-39553.pdf (accessed March 20, 2009).

Waxman to Tom Davis, February 8, 2005. *Proposed Committee Oversight Plan Omits Administration Abuses*. http://www.oversight.house.gov/story.asp?id=787 (accessed January 29, 2009).

Williams, Andy. *US Government & Politics*. Oxford: Heinemann Educational Publishers, 1998.

Wolverton, Joe, II. "Presidential power grab: President Bush has been quietly attaching pronouncements to the bills he signs into law. These signing statements amount to a grab for legislative power belonging to Congress." *The New American* 25, no. 4 (August 2006).