

THE BROOKINGS INSTITUTION

DID THE 110TH CONGRESS MEND THE BROKEN BRANCH?

WHAT TO EXPECT IN THE 111TH CONGRESS

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P R O C E E D I N G S

MR. WEST: Good morning. I'm Darrell West. I'm the Vice President and Director of Governance Studies at Brookings, and it is my pleasure to welcome you to this discussion entitled "Did the 110th Congress Mend the Broken Branch, and What to Expect in the 111th Congress."

And, of course, now is a great time to have a session, a panel, on Congress, because we all know Congress came back in session this week. We've all noticed, I'm sure, traffic is much worse this week because of that fact.

But it's interesting when you look over time at Congress, there have been many concerns expressed about the ability of that institution to address important policy problems. We've witnessed the failure of attempts to reform health care, immigration, and Social Security, to name just a few issues.

And in 2006, Oxford University Press published a terrific book entitled "The Broken Branch: How Congress is Failing America and How to Get it Back on Track," written by Tom Mann and Norman Ornstein.

This book was chosen by the Washington Post as one of the best books in 2006. And, as the subtitle suggests, it argues that Congress has been an institution in decline, but that there are ways to improve its performance.

And, indeed, since the publication of that book, the authors have provided periodic updates arguing that Congress, to some extent, has mended itself and done a better job passing legislation and getting its work done.

Today, we have the latest installment on this important project. Copies of this report are available out of the hallway, if you have not already gotten one; and also will be online at our website www.brookings.edu.

The authors, Sarah Binder, Tom Mann, Norm Ornstein, and Molly Reynolds, do an outstanding job in this report documenting changes in congressional workload, productivity, and passage of key bills. It is a rich source of information about congressional performance, and I recommend you read the full report.

To review this report and look ahead to the current Congress, we have put together a set of distinguished authors of this report.

Tom Mann, of course, needs no introduction to a Brookings crowd, but I will, nonetheless, introduce him anyway. He is the Averell Harriman Chair and Senior Fellow in Governance Studies at Brookings. He's the author of numerous books on Congress, elections, and political reform, including Vital Statistics on Congress, The New Congress, Renewing Congress, and Inside the Campaign Finance Battle. And he also is one of the co-authors with Norm Ornstein of the Broken Branch.

Tom is a well respected commentator on Congress and elections. You can read his commentary on Politico.com and in leading newspapers across America, and you can also see his analysis on major television shows in the United States as well as around the world.

Norm Ornstein is a Resident Scholar at the American Enterprise Institute. He has written many distinguished books, including The Permanent Campaign;

Intensive Care: How Congress Shapes Health Policy; and
Debt and Taxes: How America Got into its Budget Mess.

You may think that book just came out, but it actually was published in 1994, but, Norm, I think, it may be time for another version of that book, given our current fiscal problems.

Norm serves as an election analyst for CBS News. He writes a weekly column on Congress for Roll Call Newspaper. He's a frequent guest on leading new shows, such as ABC News Nightline, PBS' Charlie Rose, and the NewsHour with Jim Lehrer.

And if you aren't sufficiently impressed with those credentials, you should know that he also was the first pollster for Comedy Central with Al Franken in 1992.

And I think all of us can agree that both Al and Norm have come along way since 1992.

Our last speaker will be Sarah Binder. Sarah is a Senior Fellow in Governance Studies at Brookings and Professor of Political Science at George Washington University.

She specializes in Congress and legislative politics. She is the author of Stalemate: Causes and

Consequences of Legislative Gridlock; Minority Rights,
Majority Rule; and Politics or Principle:
Filibustering in the United States Senate.

She also has a new book coming out this year
on judicial nominations, and she's working on a
project assessing the congressional role in the
housing and mortgage crisis that we're going through
right now.

The format of this panel will be as follows:
we will start with comments from Tom, Norm, and Sarah,
and then we'll open the floor to questions from the
audience.

So we will start with Tom Mann.

MR. MANN: Darrell, thank you very much.
You can see why we're delighted to have him here as
our Director of Governance Studies. He gives such
kind and generous and interesting introductions. And
welcome to all of you.

We hereby declare the broken branch mended.
Everything is back in shape. Government is running
smoothly. And there's nothing to worry about.

Well, it isn't quite that good. It's a
little more complicated, and maybe we can share with

you some of the complications as we look back over the 110th Congress and ahead to the 111th.

This is a very exciting time for any of us interested in public affairs in the U.S. and government and policymaking. We've had an extraordinary election, following hard on the heels of yet another Democratic wave election in 2006, creating now a unified Democratic government with enlarged Democratic majorities in both the House and the Senate and a President with a very ambitious agenda, but an identified style of governance that seems very much designed to counter the very pathologies that have characterized our politics in recent years -- excessive partisanship, ideological rigidity, a constitutional system out of balance, a culture of corruption and administrative incompetence.

Now along with that sort of political momentum comes perhaps the worst policy inheritance awaiting a new president of any since Franklin Roosevelt in 1933.

We face a financial meltdown, a global economic recession, towering fiscal deficits today, which are sure to be and must be enlarged over time,

two active wars, a perilous situation between India and Pakistan, a continuing war on terrorism, you name it. It is a very daunting set of challenges.

But, at least for many of us, it seems to offer an opportunity to break through some of the political obstacles to overcome the dysfunctional government that we have all taken as the norm in recent years.

There are hopes of rebalancing relations and powers between the executive and legislative branches and making those relations more constructive.

There is the hope of seeing some actual deliberation, serious deliberation, on Capitol Hill on the major problems facing the country and hopes of chipping away at elements of the culture of corruption that have led many people to be deeply discouraged about Congress and about Washington more generally.

We have a president who aspires to change both the character of our politics and the nature of policy itself with electoral winds at his back.

We have plenty of crises to create the opportunity for action. The question is, is Congress able to rise to the occasion?

We had something similar, you recall, two years ago. We had a rather dramatic midterm election, a country up in arms against a war in Iraq, a decisive Democratic victory.

Part of the substance of that campaign was about Congress and its dysfunctions. In fact, the words "the broken branch" managed to get some discussion during the active phase of the campaign.

The four of us, who've written this report, decided early on would be worth putting together a project to take a look at how the new Democratic majority responded to their election mandate to the extent to which they were able to deliver on promises made during the course of the campaign.

We've done that over time. This is our sort of penultimate report. It's based, one, on some fairly systematic quantitative tracking of behavior and performance of the Congress, which you'll see in an extended chart on the House, the Senate, and the Congress as a whole at the end of this report.

And we try to draw some inferences by comparing the 110th to the previous Republican Congress, the 109th, but then look back to a more

comparable situation, namely the 104th Congress after Republicans took control following their 40-year wandering in the desert of minority status.

So we have comparative statistics from the 103rd Democratic Congress to the 104th Republican, then the 109th Republican Congress to the 110th Democratic Congress and providing measures of activity, of various forms of performance, of process as a way of - of public opinion as a way of trying to gauge how these two new congresses, the Republicans in '95-'96 and the Democrats in 2007-08 responded.

But in addition to that, we've looked more intensely at particular areas, including struggles between the branches, executive and legislative branches; efforts to deal with criticisms under the umbrella of the culture of corruption; and, importantly, to grapple with how Congress has in this last Congress responded to the crises that presented themselves -- itself in the form of a financial meltdown and then a further deterioration of the economy to give us some real handle on the extent to which the first branch of government is able to anticipate and respond to crises, the extent to which

it actually is able to appropriately delegate power, but not too much power to the executive, to hold accountable that executive, to set in place mechanisms that ensure that extraordinary commitments of public finance to cope with these crises are reasonable and sensible.

All of that we try to do in this report, and we will briefly summarize in our initial presentations and then follow up.

Let me say just to wrap up my own comments that elections do make a difference, and I think it's fair to say that the 2006 election produced a clear agenda change in Washington, some mid-level policy reversals, and we can argue about their significance in what was achieved and what wasn't -- certainly, no immediate end to the war in Iraq, but in -- ironically, Iraq has moved off the public agenda as the level of violence has receded over the last six months or so.

We've seen increased congressional oversight of the executive, a strengthening of ethics standards and procedures, and a modest rebalancing of power between Congress and the White House.

But if one is looking at the way in which Congress has operated, you can't help but be struck by the continuing ideological polarization between the parties and the -- a continuation of institutional dynamics in the House and the Senate that, I think, have conveyed to the country a kind of an ugly and destructive partisanship.

The promises made by the new Republican majority and after the -- through the 1994 campaign and into 1995 were initially honored in good faith, but eventually gave way to a desire to utilize the possibilities of a majoritarian institution to centralize the process in ways that allowed them to deliver more easily on their substantive policy promises. That, then, accelerated when George Bush came to office and we had a unified Republican government.

Democrats harshly criticized that departure from regular order, centralization of powers, diminishment of the role of committees, the activity on the floor, the use of conferences, and rightly so, and promised to change that.

They too began with a good faith effort, but the dynamic of the permanent campaign, the intense partisan battle to either retain or gain control of the Congress shortly led them to follow the same practices, and there was little of regular order to be seen.

And, as the Congress wore on and the timeframe was shorter, we saw more and more efforts to centralize the writing of law and to use every procedure possible to frustrate the efforts of the minority to stop it or to substantially amend those efforts.

And, in the Senate, we broke records for the number of cloture petitions filed, most of which were in response to filibusters or the threat of filibusters, but not in all cases.

The majority was frustrated by minority filibusters. The minority was frustrated by the early resort to cloture petitions, by the filling of the amendment tree, and the difficulty of actually engaging in deliberate policymaking.

If the pattern of behavior of the 110th were to continue into the 111th, it would be a frustrating

time for the President, for the Congress, for the country.

And the real question before us is, will these new ingredients that have seemed to alter at least in part the broader political environment in which Congress operates and a different president with a very different approach to governing than we have will that lead to changes in process that will make for a more constructive and responsible first branch of government? That's the subject we're going to be discussing with you this morning, and I now turn it over to Norm.

MR. ORNSTEIN: Thanks, Tom. We're, of course, all delighted to be here. I'm particularly delighted that Tom is up here. Just before we started, Molly, Sarah, and I voted 2 to 1 to seat him. I won't say who the 1 was.

As Tom said, moving from broken to unbroken is not an easy thing to do when you have a larger dynamic set in the last 20 years, with culture, political trends, the changes inside the institution and outside.

You can't simply wave a magic wand or change a majority and expect that we are suddenly going to move to a very, very different environment.

That was true for the 110th, and we're also anticipating, despite the dramatic changes externally and internally -- the election results, the new president coming in -- that basically decades of dysfunction in the political arena are going to disappear with a magic wand or a single dynamic leader.

Let me talk a little bit about a few of the areas we discuss in the report, and what we could say about the 110th, and then, at least for a minute or two, just look ahead at what we might have.

And starting with the issue or the area of checks and balances, this has been a particularly interesting time over the last eight years really, because we've had a president and vice president who had the most expansive, assertive, aggressive view of executive power perhaps in American history.

And, as you know if you've read the Broken Branch, the area, I think, in which Tom and I were most disappointed with Congress was its supineness

over basically five years, I think you could say, really from 9/11 on more than anything else, in dealing with the president -- its unwillingness to do serious oversight, the lack of any significant pushback with many of the assertions of presidential power, the unwillingness even to look at abuses in different ways.

So one major question is, was what change would occur when we moved to divided government, a Democratic Congress looking at a Republican president.

This is always a struggle. As we note in the report, one of our greatest constitutional scholars in history, Edward Corwin, referred to the relationship between the Executive and the Congress as an invitation to struggle. When you have a Congress asserting itself, it can go in one of two ways or a combination of the two.

One is basically simply using its authority to hamstring, hogtie, embarrass, and block presidential initiatives. Another is to assert itself and basically try to defend the constitutional prerogatives of the first branch, while also providing

a constructive role in criticizing or overseeing the actions of the Executive.

And we've seen a mixture of both in recent years. If we look back, even, for example, at the two years -- the first two years of the Clinton administration, when we had a--or the -- after the first two years, when we had a Republican Congress facing the Democratic president, there was a significant amount of the former, including, as we noted in *The Broken Branch*, far more hearings than looking at potential abuses of the Christmas card list in the Clinton White House than we got at a later stage in looking at something like Abu Ghraib.

So look at these past two years, as we move to the 111th Congress, and we could point to a few highlights in the areas where we had these significant disagreements or tugs of war over executive and legislative power.

Probably the most prominent was FISA, the Foreign Intelligence Surveillance Act, and the question of how much power the executive would have and be able to assert completely independently over

some of the most sensitive issues of power in government -- surveillance of citizens and others.

And, of course, we just -- I'm not going to go into detail. Many of you remember the tugging and hauling. We describe it, at some level, in the report. The bottom line here is that Congress, in the 110th, did try to assert itself, and, in a lot of ways, was unsuccessful at one of its major objectives, which was trying to hold telephone companies and others accountable for their actions in working with the administration; but also, in the end, after Congress caved at one point in passage of revision of FISA, but put a time limit on it, and then came back, David Rogers, perhaps certainly one of our most astute if not the most astute reporter covering Congress over many years, said that the act that finally passed actually did give a significant role for the FISA Court, providing a check and balance against executive authority, and was a significant advance in the process.

A second area was over subpoenas and Congress's subpoena power and its ability to hold

executive officials accountable to come in and testify or to provide documents.

This played itself out in several areas. The first most significant one was the Valerie Plame case and then we moved on to the other major area of scandal and controversy, the U.S. Attorneys scandal.

I should note here it's very interesting that in the rules package that the House put through the other day they basically very directly authorized a continuation of the power for subpoenas over the Chief of Staff of the White House, Josh Bolton, and the former White House Counsel, Harriet Meyers, in the U.S. Attorney case.

So they're not, at least formally, giving up on that, even as we move past the Bush administration.

But, of course, here, while Congress did issue subpoenas for a number of officials and for documents, resisted by the White House, and moved towards contempt citations, nothing much ever came of it. And here we reach another part of, I think, a major thrust of what we have to consider as we assess these issues the relations between the president and Congress are not just a one-way street where you have

a president pushing and a Congress either resisting or accommodating.

It's also a question of how the White House itself reacts and the attitude it takes towards the Congress. Usually, in the past, when we've had Congress issuing subpoenas, threatening contempt, we get some brinksmanship and then you reach a compromise.

We've seen that in many occasions. We had it with the Clinton administration over many of the legal hassles there.

This was one instance in which you have an administration unwilling to compromise, and that's part of the reason why we met with brinksmanship, but it didn't exactly result in a resolution of those particular cases.

When Congress was able to do, and particularly in the U.S. Attorneys case, was also true in the Plame case, but more significant in the U.S. Attorneys case, was to hold a series of hearings to spotlight a lot of the potential abuses, to focus on ways of perhaps resolving some of the administrative issues.

And, in one particular instance, where Congress embarrassed itself by having a provision of law that gave the Attorney General basically the authority to bypass congressional confirmation for U.S. Attorneys indefinitely, they then came back and rewrote the law and got the president to sign a revision bringing back at least a little bit of a check in this process.

Whether the oversight that was done at the time can create a better balance in the use of political power in something as sensitive as the Justice Department is something that we will see play out through the -- into the 111th.

A third area is signing statements. Congress can't block a president from issuing signing statements. And we've had signing statements, moments when presidents say or write something after signing a law into enactment that assert the president's own views.

Other presidents have done it. It was done more with President Bush than we've seen before, but more significantly than the numbers what President Bush did with his signing statements was to make

basically bald assertions that there were provisions of laws he would not enforce, because he did not view them as appropriate or as constitutional.

This was met with outrage by a lot of people, a left and right, over the notion that the appropriate way for a president to object to a law that he believes encroaches on his own authority or is unconstitutional is to veto it, and then let the normal process in the Constitution take effect, not a unilateral assertion of an unwillingness to see that the laws are faithfully executed.

Congress can't stop presidents from making such statements, and we had some interesting issues in the last two years over whether they would be able to do anything in response to the statements.

Now my own view in this is, in part, that this is a little bit like trademark law. If you don't say anything or do anything as a company, then a term like Kleenex, over time, loses its official authority and becomes a generic term.

A Congress that refuses to simply stand up to a president and push back against signing statements is soon going to find that they will become

institutionalized, and that presidential authority will broaden itself.

In the 110th Congress, we did see some hearings. We did have a number of bills introduced by Democrats and Republicans, some of which were much tougher in terms of their impact, using the appropriations process, for example, to try and stop a president from being able to assert this broad authority; others trying to -- by some Republicans to keep from embarrassing their president by watering things down.

None of the bills went anywhere. The hearings didn't do all that much. But at least -- and it's a bit of a straw to hang onto -- we saw a little bit of pushback.

Finally, let me just talk for a couple of minutes about an area of internal process. As we look at whether a branch is broken or moving forward, it isn't just whether it asserts itself against the president, but also how it deals with its own internal processes.

And, in the area of ethics and lobbying reform and also the question of earmarks, here we

would give the Congress reasonably high marks on the former, mixed grades on the latter.

We did see pretty far-reaching ethics and lobbying reform through the first year of the 110th Congress.

And we also saw, after that first wave of reform, in which a number of things were done that left many powerful lawmakers -- things like preventing them from using private planes for travel -- sputtering in anger, which is one test of whether you're actually breaking through a little bit.

We also saw the House come back after repeated efforts and failure in the Senate and create an independent Office of Congressional Ethics, so you could get at least a little bit of independence in terms of moving forward with investigations at an initial stage of potential wrongdoing by members.

This office is just beginning to take effect. One criticism that we would have of the 110th is that after passing this provision, it took them a long time to get it into effect.

And, frankly, the perfect test case for them should have been Charlie Rangel, the Chairman of the

House Ways and Means Committee, with a number of ethics investigations out there, and where the problem with an ethics committee generally, an internal ethics committee, is you're going to have questions on both sides.

What members of his own party would be willing to take on the powerful chairman of the House Ways and Means Committee, while members of the other party have every good partisan reason to try and go after him, a little bit of independent removed to see what real substance there is to these allegations would have been commendable.

Instead, it's being done in the same old fashion.

But the House now has an instrument in place with very good, strong, independent members appointed by the Speaker and the Majority Leader, and that is a major step forward on that front.

On earmarks, we're going to see a major test obviously coming forward with trillions of dollars in stimulus packages and other vehicles. We see some commendable beginnings in the 111th Congress, with both

sides saying they're going to try and limit the earmarks in this venue.

What we saw in the 110th, while there was earmark reform at the initial stage, the number of earmarks, the scope of earmarks, the transparency of earmarks positive changes took place but not to the level at which had been promised, to cut them in half, and not quite with the transparency that we hoped we would see.

It's an interesting challenge ahead, as you get a Democratic Congress facing now a Democratic president, one with an enormously high level of popularity and with a series of crises out there.

It has been interesting to see a couple of things occur during this interregnum period. One is the Senate Democrats basically telling one of their own, a 36-year colleague, Joe Biden, that he would not be welcomed to attend the weekly lunches of the majority party in the Senate, something which Dick Cheney did throughout his period in the vice presidency, and which frankly limited the amount of open dialogue and criticism of the administration that would take place in the Senate.

And, at the same time, Speaker Nancy Pelosi made it clear to her long-time colleague and member of the leadership, Rahm Emanuel, that he would now be the White House Chief of Staff, no longer one of them.

The sense that Congress wants to say to the president we are an independent branch. We want to play a role in the legislative process. We're getting some signals of that.

But the real proof will come in whether we get vigorous and aggressive oversight, whether we see a majority party that works with the president and doesn't fall apart, as happened in the first two years of the Clinton administration.

But what we're also seeing is an administration that is starting out with an enormously high level of sensitivity to the importance of dealing with Congress as an equal branch, through the choice of cabinet members and Chief of Staff, through the initial meetings of the President-elect and the Vice President-elect.

So there are some positive signals out there of change for the future. The larger dysfunctional environment, though, has not gone away.

MS. BINDER: Great. Thanks, Norm. I thought I would use my time to talk a bit about Congress's capacity as a -- what we refer to in the report as a crisis manager, in particular its ability to both anticipate and to respond, in this case to a financial crisis.

If there's one image that's going to stick with me as a Congress watcher for a very long time, it was that day that the House defeated the bailout bill the first time at the end of September.

It was a split screen on TV, and half of it was the electronic tally of the House vote, and you could watch all the nay votes climbing and climbing, and on the other half was the Dow Jones tumbling down at 770, the largest daily point decline ever.

And clearly, it was a graphic, but I think quite telling and troubling sign of financial markets' lack of confidence in Congress' problem-solving capacity.

And, of course, I should point out that neither did the markets go up four or five days later, when Congress, actually when the House, finally passed

the bailout bill. It just tumbled down another 150 points.

And I point this out just to keep in mind that I think the lack of confidence in Congress and its problem-solving ability is important to keep in mind when we reflect on what the 110th Congress tried to achieve and as we think about what the potential is for the 111th Congress to make a real difference in trying to respond and to resolve financial problems.

Well, in the report, we ask two questions about Congress as crisis manager. First, did previous Congresses do enough to anticipate crisis? And then, second, what do we make of a 110th's performance in trying to respond to crisis?

What I want to do is talk just very briefly about the first question; say a little bit more then about the second, about the performance here; and then tack on a third question, what does the 110th Congress really portend for what we'd like to see in the 111th Congress.

So, first, on the question of Congress and its capacity to anticipate crisis, again, just very briefly here -- and there's much more in the report --

I think it's important to keep in mind that the broad push for deregulation starts in the 1980s, and it continues into the 1990s with support from both Democratic presidents and Republican Congresses as well as vice versa in the last eight years.

We saw the breakdown of barriers between the banking and investment businesses. We saw the refusal to really to tackle the question of the transparency of financial derivatives.

We saw a stalemate over the tightening of regulation of Fannie Mae and Freddie Mac, the mortgage giants, even after pretty widespread accounting scandals in '03 and '04.

We point out in the report that there's been a lot of finger pointing in the aftermath of the sub-prime lending debacle, but I don't think we can easily place blame on one party or the other.

Both parties, and really both branches here, are complicit in failing to anticipate and to react early to these unfolding crises. Again, there's more in the report, and we encourage you to take a look there.

On the second question, what do we make of the 110th's performance, what did Congress do to respond to the crisis once it was in full bloom really after August of '07 with the sub-prime lending fallout, and then what do we -- how do we assess that performance?

Congress and the President responded really in four waves. First, they passed a small -- a pretty small in relative terms, \$150 billion -- fiscal stimulus with bipartisan support at the beginning of 2008, although today we have mixed evidence on how much stimulus really those tax rebates actually provided.

Second, Congress and the President overhauled the GSEs, Fannie and Freddie, really setting them up for the government conservatorship this fall.

Third, Congress enacted a plan for foreclosure relief, although it seems, as it turns out, once it was put into place in October that relatively few lenders were willing to step up to the plate to modify loans as they could and were encouraged to do under the program.

And fourth, of course, Congress and the President pumped billions into Wall Street as part of the \$700 billion what we called the TARP bailout bill, although, as we now learned in the fall, banks haven't been willing to say what they been doing with the government's cash.

And finally, just tacking on a fifth, Congress tried ultimately, though failed, to provide on a much smaller scale emergency loans for the Big Three automakers.

Now in the report, we talk about each of these separately. Here I just want to step back and offer some general observations about Congress' efforts, writ large, to try to tackle a financial crisis.

First, to point out the obvious, this is not a record of stalemate; right? It's actually pretty remarkable that in a period of divided government, with slim majorities and with a looming and competitive wide-open presidential election and with polarized political parties, actually quite a lot was done; right? We could easily imagine the scenario

where we have maybe one or two major accomplishments to point to.

Second, having said that, no matter how bad the economy and no matter how well intentioned members of Congress are, blame avoidance really remains the key strategy for members in trying to respond to the crisis.

What do we mean by blame avoidance? Members and Senators like to take credit when visible short-term benefits are at stake; right? It's much easier to pass a stimulus bill that puts money into constituents' pockets; right?

It's much harder, on the other hand, and members are reluctant to cast tough votes or unpopular measures, right, where the effects of the measures can be traced back to members' own votes.

So, again, the stimulus package bipartisan cooperation, right? But in the end, that's a relatively easy vote for members of Congress. Short-term benefits very visible to constituents. It's very little direct cost to members. They're happy to embrace it.

The bailout bill, on the other extreme, was quite difficult. It was framed as this necessary rescue of Wall Street and done only belatedly, claiming that there would be indirect payoff for Main Street.

And in that context, not surprisingly, legislators, first of all, in tough reelection races, they wouldn't vote for it.

And not surprisingly, given whom the money was going for and the context of government involvement in the markets, most strong conservatives and most strong liberals were predisposed against it.

Only by loading up the package with tax sweeteners and other goodies were leaders really able to grease the skids for passage, which leaves us to remember to keep in mind here that Congress can legislate for the general welfare, but you have to appeal very distinctly to their electoral instincts to get it done.

Again, a lesson to keep in mind when we think ahead to what's possible in the 111th Congress. Members of Congress don't want their fingerprints on

something that could potentially go back and come back to bite them.

Third, again, just to keep in mind here, the policy problems at the root of the financial crisis do not fall exclusively on what we think of as red-blue or Democratic-Republican lines.

And this is most visible in the foreclosure crisis. Declining home values, rising foreclosure rates, and these are hitting Republican areas as well as Democratic areas -- Arizona, Florida, Nevada, Southern California. There are several dozen Republicans representing the districts in which we see the highest rates of foreclosure and falling home values.

And these, in fact, are the Republicans we do see crossing party lines to support government intervention into housing markets, even though these members are largely ideologically disinclined to support those types of interventions.

That was very clear when the housing bill passed in the spring and then finalized in the summer, as well as in the Wall Street bailout in the fall.

So if we want to keep alive predictions and make good ones about what Congress can achieve, I think we need to keep our eyes on these particular Republicans, as well as the enlarged Democratic majorities in the coming Congress.

Fourth, just very briefly, institutions matter. The 60-vote threshold that Tom made reference to in the Senate, we know it killed the auto bailout bill, and it will continue to pose a barrier in the 111th Congress, even with much larger Democratic majorities.

And then, fifth, again, complexity of the policy issues. I think it's clear to anyone who's tried to decipher the lingo of these crises -- CDS, CDO, MBS, unlocking credit markets, rebuilding financial regulatory architecture, reforming the GSEs -- these are not simple policy problems. And expertise on these issues is concentrated very narrowly across Congress.

And that, I think, is an impediment to the delight -- type of deliberation that we would like to see in a mended broken branch; right? It's very hard for members to detect a brewing crisis, and it's a

very steep learning curve once they're told there is a crisis for them. It's very hard for them to understand, I think, and vet potential alternative policy solutions and to think about their consequences.

Now all these patterns, it seems to me, came to a head in the enactment of the TARP bill, the bailout bill in October. Congress certainly made a very serious effort, I think, in enacting TARP. They did place limits on executive compensation, on limiting also dividend increases. They required equity stakes in the firms that received the cash. They created several oversight boards to report back to the Congress. They mandated that some of the money go to foreclosure relief.

I think, and we said the report, that those are the high marks for what Congress achieved.

But we also really conclude in the report that a lot, possibly more, went wrong with TARP than went right. Secretary Paulson really did a u-turn. He abandoned the plan to buy up the banks' toxic assets, which he and Ben Bernanke, as Chair of the Fed, had sold to Congress. Instead, he changed the

plan to injecting taxpayer dollars into banks, which Paulson had testified to Congress as part of the bailout testimony that that was a failed -- strategy a failure.

The Treasury admitted in November that it had no way of accounting for how the banks actually were using the funds. It doesn't seem that banks are lending it, and, in fact, they seem to be surviving on government cash and hoarding it to get through lean times. Third, there's been no money spent on foreclosure relief, as mandated by Congress.

Fourth, despite the billions in government cash, markets are still volatile and heading downwards along with housing values.

Now, clearly, there's much went wrong in the design and the execution of TARP, and both Congress and the Treasury here contributed, right, to the mess, the economic and the political mess, we see.

But I think it's important to keep in mind, from our perspective as Congress watchers who care about how Congress works, that Congress really designed a financial package that allowed the Treasury to spend nearly \$350 billion with a no accountability

for how the money was going to be used, a little transparency in how the institutions were selected for cash, and no metrics for determining whether the program was working, and then no mechanism really for forcing the Treasury to comply with the terms of the law which required action on mitigating foreclosure.

So what do we conclude from all this? Two thoughts here: first, in the end, I think Congress really erred on the side of excessive deference to the executive branch, a problem that we saw, as Norm pointed out, in other areas in the 109th and 110th Congresses.

They mandated very few accountability standards to guide how Treasury was going to spend the money. Blame avoidance and complexity of the problems discourage legislators from fully vetting policy alternatives, and, instead, really turn the mess over to the Treasury.

Secondly, we've been struck by Congress's really inability to step back and consider the broader role of Congress and the federal government in restoring the economy. As one Senate staffer put it to us, "Congress has lurched from crisis to crisis

this fall, but we haven't really done much policymaking." The list of problems isn't getting any shorter, and the solutions aren't getting any easier. And granted, there's not a lot of time for Congress to do its work here, but there really needs to be a wholesale rethinking of the appropriate balance of government intervention into the economy, and those -- that type of thinking really hasn't taken place yet.

So what does that portend for the 111th?
Just two thoughts to conclude.

First, I think the state of the economy will make it possible for Democrats actually to assemble bipartisan support for a very large, multi-faceted stimulus package. I don't think this will be '93, where Republicans were willing to filibuster a \$33 billion stimulus package. I think the consequences of not acting are far too steep, and there is Republican and conservative economists support for doing something large that I assume that this will actually happen quite swiftly.

That said, there are lots of problems and questions that won't be solved by the stimulus -- foreclosure relief, the second half of the TARP funds,

rebuilding the regulatory architecture for the financial system, the future of Fannie and Freddie and the government's commitment to backing their debt, the appropriate role of the Federal Reserve in all of this.

The hard work for Congress unfortunately lies far beyond the massive stimulus that will engage our attention for the next month to six weeks. I think the problems that are out there are much, much harder than most of us are giving thought to. So I'll stop right there.

MR. MANN: All right. We've had our say. Now it's yours. We'd be delighted to take your questions. We have mikes. Let's begin.

MR. MANHEIM: Thank you. My name is Frank Manheim from George Mason University, where President-elect Obama I believe is speaking right now.

First, I rarely read books, but I have to say that every page of *The Broken Branch* I thought contained -- was informative and insightful, and surely they proved their case.

MR. ORNSTEIN: Could you repeat that?

MR. MANN: Would someone take that down?

MR. MANHEIM: However, having said that --

MR. ORNSTEIN: Oh, oh.

MR. MANHEIM: -- I suggest that there -- that two even more fundamental flaws have been overlooked, especially when you compare with the EU. The first is that since the 1970s, Congress has essentially abandoned any constraints on involving themselves in the details or meddling in areas such as science, and technology policy, finance, economics, or they have no essential professional expertise.

And the second one is that unlike the leading nations in the EU, parliaments, and the EU parliament itself, there's no mechanism to filter and allow the creation of holistic lawmaking with vetting for short- and long-term impacts.

MR. MANN: Well, what I would suggest is that the Congress itself, in our constitutional system, is designed to do the very meddling that you find unfortunate relative to the EU, and that the legislative body within the European Union is a pale shadow of the Congress as an independent body. It's a very different institutional arrangement, and I think the comparative advantage of Congress is that it has

the constitutional tools and resources to actually have experienced staffers roll up their sleeves and do independent investigations and oversight of the performance of executive agencies.

And, by and large, I think that's a good thing. Yes, at times, it gives -- empowers individuals, somewhat idiosyncratic members, to engage in nitpicking. In general, I think that power is a good one, and the problem is more the unwillingness to utilize it properly to achieve some broader ends.

On the ability of Congress to think in longer-term, more holistic ways, Sarah's discussion of the financial crisis is -- certainly reinforces the difficulty of that.

One of -- I thought one of the unfortunate things done by the new Republican majority in 1995 was to abolish the Office of Technology Assessment.

This is an institution created for the very purpose of bringing scientific expertise to bear and to be forward-looking, anticipating some of the problems and challenges and opportunities.

So one of the very tools for Congress to try to deal with that challenge was removed, and it's, in

my mind, it's unfortunate that was not rectified.

Norm? Sarah?

MR. ORNSTEIN: Just a couple of observations, partly to bolster your case. I think the area of earmarking that has been the most pernicious is the academic earmarking, which has arisen over the last 20 years or so --

MR. MANN: Yeah.

MR. ORNSTEIN: -- where you really have had the peer review process and the notion of really setting serious priorities of how your research funds would be channeled obviated by members of Congress stepping in, and, in many cases, basically trying to channel money to their home universities or other places, not because they were necessarily the best places to do that work, but for the obvious reasons.

Now I think we could use a little bit more oversight of the peer review process, which has its own very serious problems put into it. But one would hope that we would get an earmark reform that goes beyond looking at bridges to nowhere, foolish as they are, and looks at some of these other broad areas. And that has been a problem.

On the holistic front, a couple of points that I would make. One is there is a real problem in Congress where a committee structure basically makes it very difficult for an executive branch to reorganize itself, because you get resistance from Congress simply because you're treading on turf.

That, I think, has been one of the problems even, for example, with getting oversight of the Homeland Security Department. And if you want to make changes in that department or in other places, we're seeing it now on the environmental front, on the international economic policy front. Congress resists not because it's a bad idea to make some of the changes, but for, again, is very bad reasons.

And on the holistic front, Tom is absolutely right about the Office of Technology Assessment. The other thing we have to keep in mind is we have lost a lot of the expertise and professional staffing capabilities on committees and elsewhere, as people who used to make careers of this now, to some degree, are drawn by the lure of six- and seven figure salaries on K Street. Maybe that will change, but I doubt it.

And Bob Kaiser's brand-new book, which was excerpted in the Post, is a powerful way of looking at the changes in the Washington culture. And it's not just that, of course; it's also moving from the Democratic majority to the Republican majority. A lot of purging took place that -- but we've lost some of that capacity that enable Congress to be able to into details of financial affairs, science, and the like, because they did have people who had deep expertise. We just don't have as many anymore.

MS. BINDER: I would just briefly to throw in this question of long-term thinking; right? If you give a member a choice between a package that has short-term benefits, but is paid for, right, by long-term in the future -- right, that's when we pay the costs -- versus telling them okay, we want to solve a long-term problem, but we have to pay the costs up front for future benefits, if you're seeking reelection in two years, which are you really going to go for; right? You're probably going to opt for the short-term benefits and push the costs off for the future.

This is not to say that Congress can't think long-term and they have to in terms of Social Security and Medicare and the future of those programs, but it often takes a little more crisis and sort of build up in order to get members to think long-term, or it thinks it requires some sort of delegation to an external commission or something like of that sort to have the tough decisions made so that members can avoid blame when things don't look so good.

MR. MANN: All right. Yes?

MR. RAFFERTY: Yeah. Scott Rafferty --

MR. MANN: Hang on. Here, Scott. Here's a mike right here.

MR. RAFFERTY: Thank you. I just wanted to follow up on your comments about oversight. I think the current Senate Oversight to the subcommittee chairman takes the view, which many people share, that the Senate is just temperamentally unsuited to oversight, and Mr. McCarthy proved that. But going beyond that, back to Roosevelt, there was very effective oversight of the New Deal and of war profiteering, which seems relevant to our current

situation, and it created opportunities for some Senators.

And on the House side, we have the Chairman of the Oversight Committee moving to a committee which has jurisdiction over practically everything except finance. How is this likely to play out in a united government? Is Obama going to be as receptive to oversight as Roosevelt was in the New Deal and World War II?

And the related question, just following up on what you were saying, is there any prospect in the Senate for Senator Warner's comments about campaign finance reform and breaking the cycle of where even the Senate is in perpetual reelection mode and would that affect the quality of Congressional oversight or Senate oversight?

MR. ORNSTEIN: You know, it's -- I do think, first of all, that Henry Waxman's move from the Oversight and Government Reform Committee takes somebody who's been the most assertive and effective overseer in many, many years, and his replacement does not have those qualities or talents.

But oversight, if we think of it only in terms of the Senate Permanent Subcommittee on Investigations or the House Oversight Committee, we're missing the larger picture.

The most significant oversight should take place through the authorization process and the appropriations process. Both of those have been lost over the last decade, partly because we really moved away from any significant authorization process, where programs or agencies, every five years in most cases, would be subject to a review, and you use that review to look back at what was working and what wasn't working, whether something ought to be kept or not kept, and an appropriations process, where, in the past, the appropriators were really the most knowledgeable about what was going on inside agencies, and used the annual review to scrub them.

And that's been lost partly because we haven't had an annual appropriations process. You know, seven, eight, nine, 10 or more appropriations bills aren't done. They get put off into continuing resolutions or into a different kind of budget fandango.

That's where I look more than I do those subcommittees. Now those subcommittees are supposed to look at malfeasance or non-feasance inside and outside government, as are others, and one hopes that that will take place. Every president tends to resist things that provide embarrassment to the way one's own administration works out. Every president is wrong, because a minor embarrassment is a whole lot better than a major disaster.

A minor embarrassment over the failure to integrate FEMA into the Department of Homeland Security would have been a lot preferable than what followed with Katrina, and there are many other examples of that sort.

I -- it's not clear to me at this point whether both the House and Senate will have the cajones to do this, perhaps not early on, but it's mandatory. And one very encouraging sign that I see him getting back to what Sarah's been saying about the stimulus package as we move forward is a lot of members of Congress very concerned about having a tree in dollars sloshing around out there, and trying to make sure that this doesn't result either in

corruption inside Congress or inside an administration, or a sloppiness in terms of what's done and at least some attempt perhaps to learn from the lessons of TARP and hold them a little bit more accountable.

And we'll see if that actually plays itself out. But it's a major test of a Congress and whether they're willing to take on their own president in this front.

MR. MANN: I can't be very encouraging on the campaign finance front. Money is problematic in Congress. Actually, it's much more problematic than in presidential elections, where new developments are kind of helping to right a system that's had difficulties and overcome and superseded the regulatory structure now in place.

But in Congress, it really is quite different. A much higher percentage of the money raised is interested money, not the sort of small donors buying a piece of a president in the best sense of the term, but just hoping for access and feeling obliged to respond to requests. It's not a healthy

process, but I don't see any possibility of sort of major change in that direction soon.

I'm banking frankly more on developments of figuring out incentives to try to move the small donor movement from the presidential level to the congressional level. It's very hard and tricky, but we need to begin to think creatively to bring that about.

We also need to think about how the whole nature of campaigning may change in this digital age in ways that begin to diminish somewhat the need for ever larger sums of money.

MR. MANN: All right. Please.

SPEAKER: The recent move by the House Democratic leadership to remove the term limits on committee chairs, do you see that as a further mending of the broken branch or as maybe a twig falling from the branch near the trunk?

MR. ORNSTEIN: I see it as a positive step. I think that, you know, commendable as the motives behind term limits on committee chairs, if you look at the way it played out and the way that these things tend to play out, they bring internecine warfare

within the majority party. What ends up happening is that as you approach the end of a term where you know somebody is going to be gone from a chairmanship, you'll have a half dozen members of the majority on that committee working full-time to undermine the others and to advance their own prospects.

And it tends to have a pernicious effect on the legislative process. So you want to have some system of accountability. If you have chairs who have either gone past their useful half-life or who are not operating effectively, it's very hard to do that without its own internal schisms, as they move in the Commerce Committee shows. But it's -- it can be achievable.

It's better, though, than moving to something that sounds good on the surface, but doesn't really work.

MR. MANN: Sarah, you want to weigh in on that?

MS. BINDER: Weigh in and also supporting what Norm said. Look, there's something to be said for the expertise that accrues by knowing that you're going to be there for much longer than six years. And

I think if there is a down, sort of institutional cost of the term limit it was the type of change in seats every six years. And, granted, it didn't affect that many, because Democrats lost control of the House.

But for whatever we think of Chairman Dingell at the Energy and Commerce Committee for so long, he knew those areas. He knew them well. He knew the rules. That couldn't have occurred had he been imposed a six-year term limit back in the 1950s when he first arrived.

So I think the value of dropping those term limits I think will be seen pretty soon.

MR. MANN: A consensus is developing up here on the panel. You know, unlimited terms for committee chairs were in a problem in an era of arbitrary and unchecked power of committee chairs. But that era has passed with a whole host of reforms that particularly in the House -- the Senate is a little different -- but in the House with the empowerment of the caucus, with the spreading of power within committees and empowering subcommittees as well with the growing strength of the party leadership, committee chairs are no longer in a position to dominate. Their power

flows from their expertise, their skill, and their ability to identify and build majorities on their committees and on the floor.

Let's take an example. I would submit to you today that the most effective chairman in the House is Barney Frank. It's not an arbitrary exercise of power. It's not ruthless. Ironically, he's among Democratic chairs and within House committees, he's probably more open to Republican engagement in the process and genuine cross-party negotiations than almost any other committee and chair. And I think it would be ludicrous to cut him off at some point, because he served six years.

So, I, too, think it was a good move.

MR. MANN: Let's move around here. Someone -- how about all the way in the back there? And then I'll come up front here.

SPEAKER: I guess going back to the question of oversight, Sarah, you mentioned briefly -- you were talking about oversight of TARP, and I'm always just struck at how much attention there is on TARP and \$700 billion. At the same time, the Fed has expanded its balance sheet to almost \$3 trillion and obviously the

relationship with the Treasury versus the Fed, which is supposed to be an independent body, is somewhat different, and Congress has to take a little bit more of a hands-off approach. But the Chairman of the Fed comes out and says we're going to buy up to \$500 billion of Fannie and Freddie bonds. Two lines in the newspaper, and nobody really pays attention to it.

So there is a role in bringing up the Fed Chairman to the Finance Committee, the Banking Committee, and talking to them.

I'm just curious what your thoughts are on that part of the crisis management?

MS. BINDER: Well, I think you put your finger on a rather large problem for Congress and potentially for the Fed as well; right? If we're thinking about counting up the number of TARP bills we've had, as you said, it's not just one TARP. We've had several; right? There's been the weekend bailouts of investment banks. There's been the AIG infusions, twice. There's been the Federal Reserve's new lending facilities. And granted, the Fed, of course, has authority to make those on their own, and we like to

think that central bankers have this autonomy, that they're not going to be challenged.

That said, these are commitments of government cash, and the question is how do we know whether these programs work, and what -- how would we set up a system for knowing whether they work or not.

And, of course, there are mechanisms by which the Chairman of the Federal Reserve comes twice a year to testify before the banking committees in the House and the Senate. I think part of this gets back to this question of expertise and who really has the expertise in Congress to know what questions to ask on the first hand; right? As much as we all think of Barney Frank, he had a comment this fall in reference to the balance sheet, when Bernanke said I'm going to put \$700 billion into X, and he said, "no person in a democracy should have \$700 billion to walk around with."

Well, that's not quite how the lending facilities work, and the sentiment was correct that there should be some oversight of how these programs are working. But I think the lack of expertise in understanding how the Federal Reserve works and its

appropriate role it poses a real problem for Congress in trying to understand what's appropriate in terms of oversight and what are the bounds of that investigation.

But if we care about how far the government should go in intervening into markets and what their responsibilities are, we have to think not just about Treasury. We have to think about the relationship of the Fed with the Treasury and how much independence of the Fed does have and given that it's worked so closely with the Treasury Secretary over the last couple of months.

MR. ORNSTEIN: You know, we're going to have a real test coming up in the next three months. We know the Obama administration is going to follow its massive stimulus package with an aggressive move to change the oversight and regulatory role in the broader financial world. What will Congress do with this?

Will they, first of all, inject themselves and make sure that there is effective oversight of whatever emerges, if we get some super regulator or we get these changes? And will they offer their own

views and make sure that they're incorporated into some kind of a change?

And the related part of that is, will they let their own blinders, parochial interests because of committee jurisdictions in terms of figuring out whether we have an enhanced role for the SEC or as opposed to the Fed or the Treasury, moved in and effectively hamstring an attempt to get a new regulatory architecture in place. It's going to be a very interesting challenge.

MR. MANN: Yeah. A question over here.

SPEAKER: This is a follow-up question for Tom.

SPEAKER: Sir, wait for the microphone.

SPEAKER: Sorry. Looking to the authorization to the second half of the TARP, what kind of limitations do you think, you know, specifically Barney Frank is going to put on the Obama administration to kind of prevent what happened with the first TARP?

MS. BINDER: I think so far from what we can tell, there's been some pretty serious thinking by Barney Frank and Financial Services as well as on

Dodd's side of the Hill about trying to repair what was done probably not very well the first time around. So there have been discussions about stronger limitations on executive compensation. There has been better -- discussion about creating better limits on bonuses, limits on dividends, none of which really were nailed down the first time around. There's been discussion about mechanisms for proposing more concretely a foreclosure relief plan so that it's not left up to the Treasury to think about and not act on.

There's been some discussion of requiring banks to lend the money they receive. In the end, I suspect that all this will be subject to some negotiation with the incoming Secretary of Treasury; that, in the end, Treasury doesn't want to be micromanaged by Congress. They want to keep that flexibility that Secretary Paulson had to run the process.

So I think there will be some effort at greater accountability, but I don't think there will be -- I'm not sure I've talked -- heard much about increasing the transparency of how the monies are used. We may yet be in six months back to the

situation where we really don't know how banks or other institutions are chosen to receive the cash. And we still might not have the type of metrics we might want to understand really how reliant these banks are on the cash and what they're doing with it.

MR. MANN: Yes.

SPEAKER: Thank you. I had a question about climate change policy. It's one of the issues in your report that you say could be sort of jeopardized if President-elect Obama and congressional Democrats look to fast-track, using institutional levers and the like.

And also the President-elect will have pretty sweeping executive branch power to regulate greenhouse gas emissions through the Environmental Protection Agency. I wondered if you could elaborate a little bit on how an issue as broad and complex as climate change finds room on the congressional agenda when all these other issues need to be grappled with; and whether or not -- if you could elaborate a little bit more how a strong push from the executive branch could complicate matters and potentially aggravate

problems on the Hill moving a legislative package forward.

MR. MANN: That's such an important question. I would put sort of climate change, energy policy, and health reform out there as examples of the two most ambitious policy agenda items that the Obama administration has. In some quarters, he is being advised to move early, comprehensively, take advantage of his political capital; get it done early, because your power will recede over time.

And yet, we know in both cases they would run the risk of the enterprise collapsing if it moves too early before the negotiations are done that would sustain it through the entire legislative process.

My own sense is that health reform will move before climate change; that, on the latter, what we'll do is begin with the incentives for renewables, partly in the stimulus package, and then moving ahead beyond it.

But I don't think the wherewithal is there for either to move forward with an ambitious cap and trade system or more productively an energy tax,

carbon tax, of some kind. I think it isn't there, and it will take time to work towards that.

But on healthcare, it's more interesting with Tom Daschle in charge of this enterprise. Daschle actually has written about this, talked about it. He wants to use the budget reconciliation process to move on healthcare.

His argument is not because he wants to ram it through with only Democratic support, but he wants Republicans to realize something is going to happen, because with 50 votes something will happen. And that would entice them into serious negotiations rather than into an opposition mode.

I think if they try to do that at the beginning of this budget year, it would almost certainly fail. And so I'm guessing if they look for protection of the reconciliation process, it would come somewhat later than otherwise.

But in my view, both issues are too complex. There are too many difficult trade-offs to imagine a party, even with the electoral winds at its back and move quickly. The executive can put this together, and sort of basically ram it through Congress.

I think both policies will be written on Capitol Hill, partly in a piecemeal basis. In the meantime, and I'll end with this, you alluded to the court decision effectively giving EPA the authority to move on its own in a regulatory arena. I bet you Carol Browner would like to do that, but it's a -- I'm skeptical if that authority will be taken up early on.

MR. ORNSTEIN: I'm more of a view that it is -- the temptation is too great. And I see this moving in a two-track way.

The stimulus package provides enormous opportunities in the health front and in the environmental front and energy front to put some carrots out there, to get some underbrush. You know, part of the challenge is how can you as you are trying to pull this together in a couple of weeks separate out on the health care front some things, you know, things we know that they will do to try and provide a cushion for people who are unemployed, to extend SCHIP and the like. You've got money to do a number of things -- health care IT -- and make sure that the things you do get integrated with the larger health care plan that you want to do later on.

On the environmental front and the climate change front, the obvious thing to do is to put a lot of carrots in there, whether it's, you know, an expansion of clean coal plants and other areas of moving away from carbon-based technologies, and then use the executive authority to do cap and trade which you cannot get through Congress, maybe not one large bitter pill to swallow, but in steps.

And then the challenge for Congress is what do you do? How much do you try to block what's taking place if you don't like what's going on, punish the administration in other ways for moving forward.

And here the artfulness of not so much Carol Browner, I think, but a president and vice president coming out of the Senate, a Chief of Staff coming out of the House, and others in the administration to make this happen without causing serious, irreparable outrage in Congress will be very, very important.

MR. MANN: Thanks.

MR. MITCHELL: Thanks. Gary Mitchell from the Mitchell Report. I want to touch on two components that we haven't discussed much today. The first is to get your characterization and evaluation

of the leadership in the Senate and the House. How are they doing? How do you characterize them? You know, how do they stack up?

And a related question, I think, which is particularly given the lifting of the term limits on committee chairs, in the same way that in the executive branch we've seen a move from sort of government by cabinet at the government by White House staff. Is there apt to be a shift in the Congress to stronger chairs, more of the agenda driven by chairs, not necessarily as opposed to leadership, but is there a potential struggle brewing there?

MR. MANN: On the latter, I don't think so. I really believe, if anything, the Congress has tilted too much towards the center, centralized leadership, and committees have been diminished in the process. One can see the increase in the number of times that legislation goes to the floor without having been cleared by the committee of jurisdiction; that so much is orchestrated within the leadership.

Now Pelosi, I think, loosened the reins a bit, and but it's still happening. And so, you know, for Democrats this is not change. While they left the

term limit rule in place, it had no -- for the first two years of their new majority, it had no effect on them and the general presumption was within the caucus that it would be repealed at some point.

And so I don't see this as leaning to either more and inappropriate committee government or the inappropriate arbitrary exercise of power by committee chairs. I don't think that's one of the problems. And I think the trick is finding the balance between seizing the advantages of the division of labor, getting genuine deliberation on committees, but also having a leadership that can move matters along so things don't get bottled up.

On evaluating the leadership in both bodies, what I can tell you is that there -- the fact on the majority side that there have been no challenges to leadership tells you a lot. As criticized as Harry Reid is outside the Senate, within the Senate he is not criticized very much at all.

He's doing the job as his Democratic colleagues want him to, if not the finest spokesman for the body. They figure they can speak for

themselves. There's plenty of competition for that role.

I think Pelosi's the strongest, most effective Speaker in my years in watching the Congress. It's been a very impressive performance. She's not seen herself as a San Francisco Democrat, as many critics thought she would.

She's been very effective in working with the more conservative and moderate members, and has frankly had more trouble with the progressive caucus and others than the blue dogs.

I think after some sort of shaky moves, she's established a civil and constructive working relationship with Steny Hoyer, and the two actually form I think an effective team.

MR. ORNSTEIN: Just to -- I'd supplement that with a couple of things. The first is I think Pelosi has had a wonderful couple of months here, including getting a rules package through with barely a murmur that did make some modest, but significant, changes that may give the majority more leverage in the House.

But now it becomes a question of whether you use that leverage appropriately and incorporate the minority in some fashion.

The long-term damage if you don't, if you try to do this on your own, I think is fairly significant. And it's tricky in the House, because the Republican leadership is not a terribly strong leadership. It's not a leadership that can impose its will on the members. It's a leadership that looks to where the members are going and then runs a little bit faster to get out in front of them.

But there's an opportunity there.

What's also important to realize here is that so much of what happens in this kind of a setting depends on the White House. How much does the White House work with the leadership instead of going to the leadership and saying here's what we're going to do and here are your marching orders, here's what you should be doing.

You know, this is -- they have the best opportunity with this White House to make that operate in a different fashion, because you've got a White House Chief of Staff who has deeply -- intimate

relationships with the members of the leadership there, and understands the House fully.

And if you can make that operate, and, you know, the change in the Commerce Committee was not, you know, Pelosi was neutral, at least in theory, but the signal that goes out is to other committee chairs be a little bit careful here.

You've got some very strong-willed committee chairs there, now Waxman, Barney Frank, and many others. But I think they can work out a balance there, if there is a sense that this is a team working together.

And on the Senate side, Tom is absolutely right about Harry Reid. Internally, he has very, very strong support, even if he's had a few rocky moments here.

The critical element there, though, is you've got a president who comes out of the Senate, who has himself a very good relationship with Reid. Reid tapped him when he was a junior senator to be the lead person on the ethics issues; has been protective and supportive of him. And Biden obviously has extraordinary relationships with everybody else.

Their potential to forge relationships with a dozen or more Republicans who really want to make good public policy, not all of them standard issue moderates -- Judd Gregg, Bob Bennett, and Dick Lugar among them -- along with Obama's relationship with Tom Coburn, who's going to be a burr under the saddle for the president, his own leader, and others mean that you have a real possibility here of working with the Senate leadership. And even if you don't have a close relationship with Mitch McConnell, you may be able to overcome the threats of filibusters in many cases because of your own abilities and the meshing of relationships there.

MS. BINDER: I would just throw in two observations. First, it's a little counterintuitive, but I think Congressional leadership is easier in a period of divided government than it is in a period of unified party control, although that may be a little backwards; right?

The danger of unified party control, as we saw with the Republicans under the Bush presidency, is the danger of overreaching, right, which really in

many of the ways is the death knell of the Republican majority.

And I would worry for all the reasons we've laid out here that Democratic leaders have to understand the limits of what they can achieve given the Senate, as well as given the limits of Americans and what they're willing to tolerate.

And second, just to wrap up on Senate leadership, I think it was Baker back in the early 1980s who said Senate leadership was like herding cats, and it really hasn't gotten much better. No matter the skills and the expertise of these leaders, that's an impossible institution to lead, and it probably always will be so long as you have a 60-vote rule that empowers the minority.

MR. WEST: Just to follow up, I've been struck by how both Reid and Pelosi have said we're not going to overreach. We know the limits of what can be achieved. There is not an arrogance, a belief that we're in control now. We've got the numbers. We're on a roll. There's a sobriety about and a worry about failure, and I think that's evident at both ends of

Pennsylvania Avenue, something that has not always been the case at the beginning of new administrations.

So what, in my mind, what I see now is a combination of -- if you will, a demise of rigid ideology, but no shortage of policy ambition, but coupled with a kind of realism and pragmatism that I think will help anticipate some of the natural problems that occur in inter-branch relations.

Now whether they can sustain that and lead, nonetheless, to policy achievements that are commensurate with the problems they face and the promises they've made is another question. But the mandate will continue. We thank all of you for coming, and we are adjourned.

(Applause)

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CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

/s/Carleton J. Anderson, III

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