

THE BROOKINGS INSTITUTION

IS THE BROKEN BRANCH ON THE MEND?  
A CONGRESSIONAL REPORT CARD AND FALL PREVIEW

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## P R O C E E D I N G S

MR. MANN: Good morning. Thank you all for coming. I am Tom Mann, a Senior Fellow at Brookings, and on behalf of the Brookings Institution I would like to welcome you to this session, a session entitled "Is the Broken Branch on the Mend? A Congressional Card and Fall Preview." I am joined by two colleagues and dear friends. Sarah Binder on my right is a Senior Fellow at Brookings and a professor at George Washington University. She is the author of a number of books including one on gridlock and one on the Senate filibuster. On my left is Norman Ornstein, a Resident Scholar at the American Enterprise Institute, co-author of a terrific book on Congress that for about 10 seconds shall go unnamed, and is someone who has worked with me on a range of projects pertaining to Congress and American politics more generally.

The title of our session is indicative of our agenda. We want to look backward but also to look forward to try to get a sense of what has been done by the new Congress, the new Democratic majority, in the months before its August recess. But then realizing that so much remains very much in process, to look forward to the fall schedule.

We all believe that it is sort of kumbaya, that it is going to be peace and harmony between the branches and the parties and everything on the agenda will be passed and signed into law. But on the possibility that it will not work quite like that, we would like to spend a little time investigating what is actually on the agenda, what the politics of it are and how things might proceed.

Our format will be simple. Each of us will make some fairly brief, around 10-minute introductory remarks, and then we will immediately go to you for your questions and comments. I would like to call your attention to materials that were available and still are outside as you came in. One is the first report of the Mending the Broken Branch Project. This is a report that includes data putting the current Congress in its first 7 months in perspective. The second are a series of reprints of pieces that have appeared recently written by all of us. And thirdly, did I mention the Broken Branch? In case some of you managed to miss purchasing that book over the last year, we have conveniently provided for you in the materials an order form. And it is a real bargain on amazon.com, right, Norman?

MR. ORNSTEIN: Yes.

MR. MANN: Exactly. First, a few minutes on a summary of our observations on how this 110th Congress has done. It has been, of course, the subject of partisan attacks, of spin, of some data, and I think a fair amount of misinterpretation of what has actually gone on.

It is important to get a reasonable baseline to begin with. How should we judge this Congress? Should it be compared with the first 7 months pre-August recess activity of the last Congress, the 109th that was controlled by the Republicans? Since that was a period of unified party government, should we look back on the last time we had a change in party control of the Congress that also operated under divided party government, and that of course would be the 104th Congress following the 1994 elections? We could also look historically at

the last two terms of any two-term president and see the extent to which this has or has not been a time of peace, of harmony, of conflict, of productivity, of gridlock. If we do that, we will discover that presidents in general in their last 2 years take refuge in foreign policy which may be a good indicator of what is to come this year. We might also look at the pre-election promises that Democrats made and hold them to their promises and see how well they have been able to deliver.

If we use public opinion as an indicator, this would be an awfully short briefing. As you know, according to Gallup, in mid-August tied its low point as far as approval ratings are concerned at 18 percent. It is not impressive. It is not encouraging. To be sure, most of that is explained by the sour attitude Americans have toward public life and the direction of the country more broadly. Indicators of all branches of government and prominent individuals within it are really quite low. The war in Iraq, economic uncertainty, continuing signs of corruption and scandal I think have all worked to bring Congress's rating down. But so too I think has been the frustration among antiwar activists over the failure of Congress to alter Iraqi policy in the near term. That has certainly been a piece of it. But so too has been the kind of partisan battles that have continued to characterize policymaking in Washington.

Americans have never internalized the Madisonian system. That is to say, James Madison intended there to be disagreement. He expected there to be disagreement in a large heterogeneous society. The trick was for representatives to come to Washington reflecting those disparate views and to engage in real

debate and deliberation to try to resolve them. That entails some heated battles, rhetorical battles. Americans often times think they actually all agree amongst themselves and it is those pernicious politicians in Washington who are looking for fights when the basis for them does not exist in public opinion. Nonetheless, I think that explains the low ratings of Congress.

Democrats are quick to point out that, yes, they are really low, but if you separate the Democrats in Congress from the Republicans in Congress, Democrats have a bit of an advantage, and if you ask the public which party they would like to be on control to make decisions on important issues, they provide a rather substantial advantage for the Democrats. If they ask who would you prefer to make the key decisions on Iraq and a range of other domestic policy issues, they choose the Democratic Congress over the Republican President George Bush. And if you look at indicators of election intentions, Democrats have an advantage. So while it is not clear that this low rating of Congress will have a harmful effect on the majority party, there is no question but that it does call into question the legitimacy and the strength of the institution and Democratic leaders ought rightly to be concerned about them and to figure out what to do about them. Nonetheless, public opinion is a starting point, not an ending point for trying to make some assessments of the performance of Congress.

In this report we basically look at three categories of factors, legislative activity, productivity, what kind of achievements have been realized, and process, how is the Congress, House and Senate, being run. Is there any sign of diminished partisanship, of increased civility, of fairness, of regular order, of

genuine debates occurring between the parties, between the branches? *The Broken Branch* documented the utter collapse of regular order in the Congress in recent years; has that begun to turn around?

To give you a brief preview, activity is up dramatically relative to the last Congress, and in some respects even relative to the Republican Congress that came into office after the 1994 election. All new Congresses with a change of party control are more active, more time in session, and God knows they needed it. We truly had a part-time Congress over the last couple of years, more days in session, more hours, more votes, more resolutions passed. That picked up in 1995, it certainly picked up in 2007.

There has also been a dramatic increase in congressional oversight and this is actually quite a bit more impressive than we saw after the 1994 election. The Senate in 1995 intensified its oversight, but the House did not at all. Its focus was very much on the Contract with America. By contrast, this Congress has been exceedingly active and I would argue it probably reflects the most significant accomplishment and has produced a set of consequences that are in general more important to look at I would argue than particular legislative enactments. Oversight is an absolutely critical part of the job of Congress and of the American constitutional system, and it has been revived.

On the productivity front, there are various ways of measuring achievements. It turns out that for each of the new Congresses, the 104th after the 1994 election and the 110th after the 2006 election, if you just look at measures enacted and signed into law, substantive measures as opposed to symbolic

measures, there has been a bit of a falloff which actually reflects the fact that under unified party government you are more likely to get agreement between the branches than you are under divided party government. But if you look at the 110th Congress in its pre-August legislative achievements relative to the 104th Congress after the 1994 elections, this Congress has produced a bountiful legislative harvest. The achievements while falling well short of anyone within the leadership or the membership of the Democratic Party's fondest ambitions were nonetheless significant, and we list those items and relate it to what has happened in the past. There is no question but that the agenda of Congress changed rather markedly and that a number of items from the 9/11 recommendations, to minimum wage, to foreign investment rules, to a major lobbying and ethics reform bill and others, many of which by the way were incorporated in the original continuing resolution for the current fiscal year appropriations as well as the supplemental, that you realize it has been a reasonably productive time.

There also are, and we will be discussing this shortly, a number of items that have passed one or both houses. Most have not been resolved yet in conference partly because they have not been able to get a motion to appoint conferees approved in the Senate, but there are a number of matters pending that will ultimately determine the likely record of this Congress in its first year.

On the process side of things there are two pieces of good news. One has to do with the ethics and lobbying reform bill. It is a serious piece of legislation and together with changes made by Democrats in their rules at the

beginning of the Congress I think represents a major down payment on the promise of the Democratic leadership. The missing piece of course is the independent panel to help police the new ethics rules and that is still in process and ought to be dealt with in the fall, at least that is the promise of the Democratic leadership.

On that front and on earmarks, the situation is actually quite promising, promising in terms of setting up a more transparent process, and promising in terms of delivering on a commitment to reduce the cost of earmarks by half from the fiscal year before the current one because in passing the continuing resolution for this year, Democrats allowed no new earmarks into the bill. They are on track to deliver, but it is too early in the process to tell. We will not know until the Senate has weighed in fully and we get through conference committees, but I think a number of stories that were written about it that it is all a sham and John McCain who has been a champion of earmark reform denounced it, I think has more to do with the presidential campaign than with the reality of what actually is at work. There will never be an end of earmarks, it is not the most important thing that Congress does, it is a sliver of the dollars actually appropriated, but it did get out of hand and was used and abused in a fashion we have not seen before in recent years and I think the Democrats are on track to deliver.

But on other aspects of the process of trying to return to regular order of having orderly debate and proceedings on the floor, of utilizing conference committees, is the way they are intended. The intense partisan



competition has prevented that from happening, quite frankly. We have not had a return to regular order. We had some initial testing of the waters by the Democratic leadership and they got belted politically. Remember the first open rule I believe featured an amendment denouncing Nancy Pelosi for demanding jet travel to her district? It turned out it was not true, and that came out weeks later, but Democrats took a lesson from that. And the more Republicans took advantage of opportunities for amendments to offer sort of wedge issues and politically embarrassing votes, Democrats said we could be fair and open and have nothing to show from our substantive agenda or we could operate more like the Republicans have in recent years, and they have largely opted for the latter. That has intensified over the course of the first 7 months as Democrats have felt obliged to really begin to deliver on their agenda. The backdrop is so poisonous and the need to sort of deliver on an agenda versus the need to dramatize the differences and the possibility of embarrassing the majority party has kept the reins pretty tight in the Congress, and Sarah is going to say more about how that has played out in the Senate. So the bottom line is that mending the broken branch will be a long, arduous process. There are encouraging signs. This Congress is very different from the last Congress and in some ways different from the Congress following the 1994 elections, but in matters that all three of us have deep concern, the process, there is much to be done.

One final point and then I will turn to Sarah. One mark of the seriousness of a government, of a president, of a Congress, is whether what they are debating and voting on is real and substantive and consequential or whether it

has more to do with symbolic politics. I want to end on a somewhat discouraging note because I think we are about to see a series of symbolic fights waged, it has everything to do with the motivations at both ends of Pennsylvania Avenue, but I would suggest primarily at 1600 Pennsylvania Avenue. The first has to do with the appropriations battles. You all will be following them and fighting them. It is a con. The White House and the Congress are about \$20 billion apart. This is less than 2 months of budget for the Iraq war. It is probably less than the revised estimate of the additional supplemental funding the White House will request for Iraq and Afghanistan. And there have been no substantive discussions. The White House wants to veto bills. If they were interested in working out an accommodation, they could do so, but the politics impel them to buttress their base by showing their fiscal fealty which is ludicrous given the big government conservatism that has characterized the first 6 years of the Bush Administration.

The second is Iraq. It seems to me that the talk is pretty far from the reality of what is going on. Everyone knows and it is written, but no one, and certainly not the president, acknowledges that we will start withdrawing troops in the spring, at least by the spring, because we do not have replacement brigades and we would have to extend tours of duty beyond 15 months. It is not going to happen, everyone recognizes it, so now we have a sort of drama playing out about when my military people tell me conditions on the ground allow it, then we will be able to, and now is the time to begin imagining that that might happen. So sadly, we may be searching in the debate over appropriations in Iraq for substance for not finding it. Sarah?

MS. BINDER: And on that bright note, to the Senate then. I thought I would take a couple of minutes and offer some thoughts about the Senate's performance over the past 8 months and then just quick thoughts about what is likely to come this fall.

Tom made note of the midterm elections, the impact of the elections, and the agenda that Democrats came into office proposing. It seems that some of those issues have made their way through the Senate; many have ground to a halt or have yet to make their way off to conference. Immigration reform, the full range of proposals on Iraq, prescription drug pricing, D.C. voting rights, 12 of the 13 appropriations bills, nominations remain in limbo for the federal courts, Democrats have confirmed under a quarter of the nominations to the appeals courts, just over half the nominations to the trial courts. The question that I thought we would think about a little bit is why. Why is it that given the midterm elections and the arrival of a new Democratic majority does it seem so hard for better or for worse to get things done in the Senate?

So I thought we would focus on the very real constraints that Harry Reid as Majority Leader faces in trying to manage the Senate. Some of these constraints I think are unique to the 110th Congress, but others are really endemic to the very idea of trying to lead the Senate.

There are four factors here. First, the diversity of views within the Democratic Caucus. Second, the formal rules and the informal constraints that Reid faces that makes running the Senate as famous Senate leaders have said something like herding cats. Third, what is called the reality of public opinion or

partisan opinion about the war. And then briefly the impact of events outside the Senate on structure of the agenda within the chamber.

First, in terms of Reid's caucus, it is important to remember something that I think we often lose sight of; this is an exceedingly slim majority, nominally, 51-49 Democrats-Republicans. We now have Senator Johnson just returning to the Senate, Senator Lieberman often voting or always voting with the Republicans on the war. It is really a barely workable majority in a chamber that really requires supermajorities to get anything done.

On top of that, there are at least three freshmen senators who in fact really do not neatly line up quietly or quickly behind Senator Reid, McCaskill from Missouri, Tester from Montana, and Webb from Virginia, Democrats in Red States or call them Purple States, feeling pushed and pulled I think quite a bit by groups on the right and groups on the left particularly on issues like immigration reform where all these three senators are trying to mark on that bill. We are no longer in a world where new senators come in, have 4 years really to learn the ropes, find their niche, create a reputation, and then get concerned about the voters in years 5 and 6, and it is really a constant appreciation I think on the part of these senators for what these voters in these contested states are telling them. So, first, I think Reid has got a difficult time at times managing Democrats within his caucus.

Second, the formal rules of the chamber, Rule 22, the cloture rule, and informal practices of the Senate including anonymous holds place very real limits on what Reid and the majority leader can achieve in the Senate. We have

had filibusters or threatened filibusters on Iraq, immigration reform, energy, D.C. voting rights, intelligence authorization, Medicare drug pricing, 9/11 Commission recommendations, FDA reauthorization, should I go on? I will just stop there. There been over 50 cloture motions filed, coming at a rate much higher than previous Congresses, just over half of which have been successful. A third of those motions have actually been on procedures, not really filibusters or bills or threatened filibusters, but filibusters of efforts to debate bills. The de facto standard clearly here is 60 votes for getting anything done rather than the constitutional 51 for getting something passed in the Senate.

We should say that it is not an entirely phenomenon. Majority leaders before Reid faced real constraints as Reid does, the reality of needing 60 votes, Trent Lott, Bill Frist, leading Republicans before Reid, but everything has been ratcheted up just a couple of degrees on the Senate floor with more cloture motions, more amendments for the minority party, Reid at least would say more obstruction from the minority party, and so long as the majority party has only a slim lead and given the intense competition between the parties particularly in the run-up to the 2008 election, we really should not be surprised at all to see the intensity of combat on the Senate floor over getting those 60 votes. Again and again we hear criticisms of Senator Reid and the Democratic Senate for failing to act. I think it is important to keep in mind institutional constraints that Reid and any majority leader is going to face under these conditions.

That does not even touch on the nature of these informal holds or informal obstruction where senators tell the leadership staff if you take that bill to

the floor I am going to have to object, I am not going to give you unanimous consent, and the seemingly innocuous electronic disclosure bill was held up by an anonymous senator, a court security bill held up for a little while, the nominee to head the Consumer Product Safety Commission, Jim Nussle, the president's nominee for OMB, his nomination was held up by both a Democratic and Republican senator for a while, the Mental Health Parity Act, on a daily basis the majority leader faces all sorts of challenges on all sorts of bills and nominations. Why? Often because senators can do it. The leader needs unanimous consent and that elevates the power of individual senators.

And as to the Senate Ethics Bill, to the senators' credit they have tried to make a fix on these anonymous holds to make them a little less anonymous. We will see whether it works or whether it in fact increases the incentive to place holds in the coming months. So, first, the nature of the caucus, second, the nature of the rules.

Third, I think sometimes we lose sight of the partisan structure of public opinion particularly on the issue of the war. As Tom made reference to the low public opinion ratings of the Congress that are in part due to many Democratic voters concerned that nothing has happened in terms of changing the course of the war in Iraq. In terms of numbers, it is the problem of not being able to get Republican votes. Why not? I often look at public opinion, a groundswell, two-thirds of any type of polling says it is time to end the war; it is time to withdraw troops. But if you look carefully at public opinion, it is not really across the board in favor of withdrawing troops. If you ask voters, and this was last

month, "Did the U.S. do the right thing in going to war against Iraq?" Overall, only 42 percent say yes. Only a quarter of Democrats say yes. But if you ask Republican respondents, it is three-quarters of them say, yes, we did the right thing. "Should Congress set a timetable for withdrawing troops?" Overall, yes, 63 percent, that nearly two-thirds amount. Democrats, three-quarters of them say we should set a timetable for withdrawal. For Republicans, under half support setting a timetable for withdrawal. This is not just a difference in policy views; these are fundamentally different perceptions of the war, whether we should be there, the extent of progress, the implications of the policy and so forth. And so long as the President retains broad or reasonably broad Republican support, that is another powerful constraint on Senator Reid in trying to secure Republican votes. That type of public support for the Republican position may start to erode as you move into 2008, but at the moment it is hard to see Reid picking up too many more votes unless the Democrats change the nature of the proposals and it may be that that is where Senator Levin among others is trying to go to secure more Republican votes.

Fourth, just briefly, the impact of other events on what the chamber is going to be doing. The fall agenda will no doubt be governed by episodes outside of the Senate. The report on the surge by General Petraeus, the reaction to a GAO report which is coming to the Hill this week on Iraq, on domestic affairs, that October 1 deadline for passing appropriations bills, the president himself will submit a supplemental request for funding in Iraq, there is really only so much that Reid can do as majority leader to try to control the

agenda. Reid and the Senate Democrats really have to react to these external events, and those events are going to shape what is going to come this fall.

It is very hard in the end to talk about the domestic issues Democrats came into office to talk about when the reality is they have to talk about the war and they have to come to terms with the administration about what role Congress is going to play and to what exchange they are going to change the course of the war.

MR. MANN: Thank you, Sarah. Norm?

MR. ORNSTEIN: Thanks. It is a real pleasure and privilege to be up here with my two colleagues who know so much about Congress and to talk about this very interesting set of issues. We had high hopes for how this Congress would be able to operate in a period of divided government, believing to some degree that divided government offered opportunities actually for action and for the two parties to work together because of the common interests of a president facing the end of his presidency, the desire to have accomplishments at the final stages, his final opportunity to do so in this office to develop a legacy, and of course the very strong desire on the part of Democrats to show that they could be the do something Congress.

The model here in part was what happened after the 1994 elections when Bill Clinton was stunned at the prospect of facing a Republican Congress, had a year of terrible conflict to deal with, but then saw the president able to work with Congress with some degree of harmony despite the fact that his own party members really did not want anything to happen, but because he had an interest in



winning the reelection, becoming the first Democratic President since Franklin Roosevelt to win a second consecutive term at the polls, and Newt Gingrich, the speaker, had just as strong an interest in showing that the Republican Congress which had won a majority for the first time in 40 years could for the first time in 68 years win a second consecutive term. Unfortunately, many of those expectations have not been met for a variety of reasons, some of which Tom and Sarah have talked about, and I want to elaborate just a little bit more as I try and frame this in my own way.

As we look toward whether Congress is doing what it should do, what the Framers intended, what we hope, we have to separate some things out. We have to separate out what is controllable by the majority leadership and by its membership, what is controllable by the minority leadership and its membership, and what is driven by the larger forces that they have talked about so eloquently including of course the polarized high-stakes politics, and in this case, I think the fundamental reason for the inability of the parties to work together in this moment of opportunity, which is the profound weakness of the president with approval ratings hovering in the twenties and low-thirties, embattled by an unpopular war, and by a succession of scandals among other things, and of course, Exhibit A in this case is the president's strong desire to have as his centerpiece achievement in domestic affairs this year a comprehensive immigration bill and basically not even being able to get a third of his own Republicans in the Senate to support his bill, barely a quarter. It is the weakness of the president ironically that has stymied Democrats in their ability to move forward with much of the legislative

product more than anything else. And unfortunately, the incentives of a president who has to fall back on even an eroded level of support in his own base is far more now to threaten vetoes, to use vetoes, to draw contrasts between his resolute conservative support and that of the Democratic Congress more than anything else. Tom mentioned the appropriations. To put that into even greater context, we have about a \$3 trillion budget, so the differences here which the president is threatening to shut down the government when we reach the new fiscal year would be the equivalent of quibbling over \$20 out of a \$3,000 budget, not much, but that is where those incentives lie.

When it comes to what is controllable by the majority and the minority, I find myself rather disappointed in all of them. In this case, I do believe that the majority leadership in the House in particular really did start out, and I think Speaker Pelosi still has the very strong intention, of trying to create a much more open Congress and created some opportunities at the beginning. But far more often than not as we have gone along, as the nice paper that Sarah and Molly Reynolds have done cataloguing where this Congress is up to now would suggest, when facing a crossroads as bills hit the floor between opening up the process to more debate and more opportunities or closing it down to get done what they what to get done, the leaders have gone for the latter rather than the former, but they have been provoked far more often than not. To create an open Congress, there is a responsibility on the part of the majority to act, there is also a responsibility on the part of the minority to be responsible, and what has happened here, as Democrats have in many cases opened up for example a motion

to recommit with instructions, the opportunity for Republicans to offer an alternative, and they have had 15 of these actually offered and accepted, where in the previous Congress Democrats in the minority got zero because they were shams, the Republicans basically made each of those a procedural vote and demanded that their members all vote against them. But more often we have seen motions to recommit that were not alternatives to legislation representing a different partisan point of view or different ideological point of view, but gotcha amendments, things designed far more to try and isolate the votes of a small number of members from marginal districts to make it difficult for them, or to score political points. The majority has not done anywhere near what it could do to create a better atmosphere to allow for more open deliberation and debate. And I think it is also true that leaders are very much limited by their own members. In this case, where there has been for a long time a pretty strong working relationship between John Boehner, the House Minority Leader, and Steny Hoyer, the Majority Leader, Roy Blunt and Steny Hoyer, what we saw in a very ugly flap at the end of the last session before Congress left for its August recess was a set of Republican leaders who were basically told by their membership that they had better get tougher, draw lines more sharply in the dust, show more partisan backbone, that would make it tougher to work these things out.

As we look at that though, there is a very interesting and striking anomaly here. Look at the House floor, or look at the Senate floor for that matter as Sarah has described it. What you see are sharp lines drawn and partisan tensions high and an ugly atmosphere very, very frequently. But if you walk

through the committee halls, we do see a very real change from what we had in the last Congress, and a real change, by the way, that is a reflection of and underscores how much the previous Republican majority Congress was an autocratic one driven by the leaders where Republican rank-and-file members were denied opportunities to have input and offer amendments. And in many cases now if you look at the Senate Armed Services Committee, the Senate Foreign Relations Committee, the Senate Governmental Affairs Committee where they actually now do not have the Democrats on one side of the committee room and the Republicans on the other, but they are actually intermingling the members. Or look at the House Ways and Means Committee, the Foreign Affairs Committee, or the Financial Services Committee, we are seeing a great deal of harmony sometimes mixed with what is inevitable partisan division and tension, but far more than we saw before. I have talked to a very significant number of rank-and-file Republican members in the House, not all of them who would fit the category of moderate however loosely defined, who say that they actually have more opportunities in committee now to offer their input or to get something in bills than they had by far under their own party's majority. So there is at least a sliver of hope here that what is happening at the committee level which breaks down when these bills get to the floor as it did in fact with the last bill that resulted in this ugliness, an appropriations bill, might from the bottom up build into something a little bit different. But that is going to have to come I think far more from rank-and-file members than it will from leaders who are being pushed

and pulled by their own instincts and by some of their more aggressive partisans to go in a different direction.

Just a couple of other things that I would underscore. Whenever you look at a Congress you really have to start two-house rule, what happens in one house will often be limited or stymied by the culture and the institutional constraints of the other, and that really does mean the Senate problem for the House. Back in 1995 when Newt Gingrich brought forth the Contract with America, had the forced march getting them all through the House in record time and looked to the promise of the most productive Congress in modern history, I wrote what was not a particularly striking observation to any of us sitting here that it was not going to happen because he was going to discover that his enemy was not Bill Clinton, it was the Senate under the leadership of Bob Dole which had no great interest in moving forward with any kind of forced march, had no particularly strong interest in dealing with the Contract with America, and had a set of rules and constraints that Sarah has described so eloquently that would limit things, clog up the works, and before very long of course we had this dramatic tension between Gingrich and Dole. We have not seen that visible tension between Pelosi and Reid on the surface here and that is partly because Reid has had I think a greater interest in trying to move things forward.

But what we have seen this time really is a much more widespread use of the filibuster weapon and the nature of the Senate in a far more widespread way. When you look at the chart in the materials that you have that shows the invocation of cloture motions with this huge jump up for 2007, what you see is,

and what was reflected in a statement by Trent Lott, the Minority Whip, sometimes obstructionism works, sometimes it does not, and we are making it work. This is deliberate obstructionism which minorities try to use frequently but do not always get away with. In this case they are getting away with it, and part of the reason they are getting away with it is that Democrats have not been very artful at pointing it out as obstructionism, partly it is I think a serious deterioration in the quality of reporting of what is going on in Congress and an ability to put it into context that is as much as anything as we sit here in the National Press Club a reflection of the economics of the journalism business.

Let me also add just one other little note on the Senate. Here again to underscore what Sarah said, it is not always just the intent of the leaders. In the Senate, rogue members can go off and do things where even in some cases leaders do not want them to. I know that Mitch McConnell, for example, and Trent Lott, have been driven to distraction more than once by Jim DeMint, a freshman Senator from North Carolina, who does what he wants to do and does not much care what his own leaders which is not an unusual thing in the Senate, but it is, again, a reflection of the culture and where we are now.

Looking ahead, there is a strong desire to legislate. As you will see from these materials and as you know, there is a lot on the table and a lot in areas where there is bipartisan agreement. That is some of the tragedy of what we face here in areas that the American people care about and in which they want movement, education, health care, energy, the environment, there is a common ground to be found and a common ground that we are finding in committees and

in some cases on the floor in both houses. But some of these larger dynamics and the strategic positions taken by leaders as they are looking toward the high-stakes election ahead are going to make it very hard to make them happen.

One of the great challenges it seems to me that Harry Reid faces now is changing one element of the culture of Congress, something he started to do at the beginning and we saw a great pushback from people in both houses. It was something that we criticized very harshly in the way things had worked out in previous congresses in this book "The Broken Branch," \$17.16 on amazon.com, which is basically the Tuesday evening to Thursday morning work schedule that Congress had gotten into when they were around which was not very many weeks as fewer and fewer members have established residence in Washington and want to get out of town or want to do their fundraising. Harry Reid and Nancy Pelosi started out talking about a five-day work week, something that most Americans do not find terribly revolutionary, and what we have recommended strongly is because you do need time back in the district and for travel, 3 weeks on and 1 week off. But members who are used to a different rhythm and schedule, some of those who have teenage or younger children back home going to school back home and do not want to leave them all week long have strongly resisted it. You cannot deal with a Senate culture where individuals can block unanimous consent, can offer holds, can bring up cloture motions and you can have three opportunities at least on any given bill to be able to do so, and even if you have 60 votes, you can clog up the works for a week with a bill by offering cloture motions, having them succeed, and then having some period of time of debate before you move to

the next one. Three on a bill, that takes up a lot of time. The only way to begin to move in a reasonable, balanced fashion toward moving past that to get legislation through is by having a full five-day work week where you can actually have some debate, where in the House you can begin to offer other opportunities for the minority by having at least debate on the floor, and move along. Until Senators and House members come to the conclusion that they are going to have to be in Washington Monday morning until Friday afternoon three weeks out of four except for August and maybe a couple of other periods, we are going to have a hard time reconciling the desire to move legislation through with the ability to actually make it happen that one component of the broken branch that is a bottom line for most Americans.

One final note, too, where clearly Congress has transformed itself from the last is on the oversight front, a dramatic difference, and far more positive oversight than we saw before, not just the gotcha scandal-driven investigative stuff some of which is also very important. Of course, it is always easier to do so in divided government. The real test for whether we are on the mend with a broken branch that is developing its own sense of institutional identity again comes when we have united government again. We will inevitably see a toning down of oversight, but whether we see a level much higher than we had in previous congresses of really looking at how the laws are executed, looking at whether people are operating in good faith and not just trying to act as members of a team for the president, and there is a pretty good chance that we will get a test of that in 2009.



MR. MANN: Thank you, Norman. We are now ready to turn to your questions. C-SPAN has asked that you wait for the mike to arrive; you identify yourself and your affiliation, and then let it rip. Who would like to have the first question? Right here, and the mike is coming right around.

MS. WEST: Jane West with the American Association of Colleges for Teacher Education. I wonder if you might comment on the No Child Left Behind reauthorization as a case study of some of these dynamics that you have mentioned. Congressman George Miller chairing the Committee on Education and Labor in the House has introduced a draft discussion bill, there will be a hearing next week. He has made it clear that he intends to move it. It is a bipartisan draft. There are a lot of controversial issues around that as you know. This is something the president wants to do. I wonder what you think the prospects might be for an accomplishment there.

MR. ORNSTEIN: This is I think a great example, and of course going back to the only real bipartisan accomplishment in the first Bush term, No Child Left Behind, where the president at the beginning signaled that he wanted to work not just with Ted Kennedy in the Senate, but with George Miller in the House. When we got a couple of years later to the Medicare prescription drug benefit he was more than willing to work with Ted Kennedy but then decided to use a very partisan process in the House which caused a breakdown and a substantial partisan division.

And we are back, and in this case even in this atmosphere, George Miller, a partisan liberal Democrat has been more than willing to try and work

this out in a bipartisan fashion. There are is some considerable pushback from the education community outside on some of the provisions of this bill, but I think we are going to see this move forward to the floor in a bipartisan way. The interesting question is when this gets to the floor will that general predisposition of the Republican leadership driven by its own membership to use the motion to recommit with instructions, maybe to return to not allowing illegal immigrants to use the public schools or some variation of that, cause another breakdown in the process. This becomes a particularly interesting test of that because of course the Republican who worked most closely with George Miller in the first No Child Left Behind was John Boehner, the House Minority Leader.

MR. MANN: Yes, sir. Right here, please.

MR. KING: Good morning. I am Arnold King. I would like to know does Congress plan on addressing business issues? And also, how do citizens get involved in dealing with Congress for the rest of this year?

MR. MANN: The agenda of Congress is filled with items of great relevance to the business community. One of the more interesting ones is a tax issue that has to do with the standard by which capital gain or ordinary income that hedge fund executives are subject to. But if you go down the list of issues, for example, SCHIP, the Children's Health Insurance Program bill, has business tax relief proposals built into it and therefore the business community cares deeply about that. Student loan provisions affect greatly that part of the business community that is in the business of underwriting and repackaging student loans, and that will be important.

The FDA reauthorization is absolutely critical. It expires at the end of this fiscal year and has enormous bearing on what transpires. Then if you look at the energy bill, it is filled with provisions of enormous consequence for the community. Then there is the farm bill that is relevant or terrorism risk insurance. What you are struck by is if you look at the important matters that are in stream now compared with the time available to Congress in the rest of this session, knowing that the appropriations battles will take a good deal of time, knowing that Iraq will dominate a lot of the attention, the great challenge is going to be to figure out how in the world even a fraction of that actually finds its way to the floor.

We also know the president has indicated a substantial interest in vetoing a whole host of matters, not just appropriations bills, but there have been warnings placed on a half-dozen major bills that are pending in Congress right now. By the way, I recommend not making any early holiday plans. This Congress will stay in session a very long time.

MS. GALBRAITH: Sue Ellen Galbraith with Anchor. I wanted to give you all a second shot at a case study, and you just mentioned it, CHIP, the State Children's Health Insurance Program. When you look at some of what you have related about the Senate and opening up and you look at the history of strong bipartisanship and then the president's announcement prior to any bill of a veto, if you would comment on that.

Secondly, what role do you see for messaging or the marketing of messaging that a bumper sticker versus a 40-page policy brief has placed today versus maybe 10, 15, or 20 years ago?

MS. BINDER: Just briefly on the first part of your question about the SCHIP and the nature of the politics here, I think what we are seeing in part is a reflection of Norm's reference to the president's public standing here having an impact or the lack of public standing having an impact on his own members within that Republican conference in the Senate. That is, yes, the president has staked out a veto position before the bill comes to the floor, but you do not see Republican Senators lining up lock-step behind that position. There is a pretty diversity of views with some Senators lining up behind Bush, but also a number of Senators actually quite engaged in working with Democrats to come up with a middle road there. So it is too early to see what happens there, but I think the fact that the president's public approval is so low and we are approaching the end of his second term, it really opens up a wide playing ground here for Republican Senators to play a constructive role even if they do not see that type of leadership coming from the other end of the avenue.

MR. ORNSTEIN: Getting back to the committee relationships, Max Baucus and Chuck Grassley have formed a strong partnership on a whole range of issues for a number of years now and this is a very good example of where they worked together, came up with a package and we saw rather extraordinarily that when the president issued his first veto threat it was Baucus and Grassley versus Bush. Chuck Grassley is not your garden-variety moderate

Republican, but he saw the need to do something here and thought that the Finance Committee had come up with a pretty good balanced package. The president has a very different set of constraints on him now.

The interesting question to me on this issue and a number of others as it moves forward is I think congressional Democrats were perfectly happy with a veto threat when it comes to snatching away health insurance from children, and I believe the health insurance issue plays out very differently than it did in 1994 when the vast majority of Americans were insured and the idea that they were going to have to sacrifice for the uninsured was not particularly pleasing to them. Now far more Americans are fearful that they will lose their insurance, that this could hit them, and we have this very substantial number of people who we would view widely as middle-income and in the past would have been viewed as upper middle-income who are maybe consultants who do not have employer-provided health insurance and it would take an enormous chunk of their disposable income to insure themselves and their kids. So it plays out in a different way, but the question here is how much time is there on the floor of the Senate or the floor of the House for that matter to bring a bill up, get it through, have the president veto it, go back, bring it up again, and do this repeatedly which would score political points and maybe ultimately result in an override of a veto, when there are so many other things out there? They cannot play out their strategy the way they would hope to, so there will be maybe one or two bites at the apple here to see if we can come up with some balanced or constructive package.

MR. MANN: At the beginning of the Congress I listed SCHIP as one of those items on which you are likely to see agreement reached between the parties and between the branches. That agreement is still possible. Democrats have made it more difficult in the House by connecting to it the reduction in the subsidy for Medicare Plus, it has something they have been champing at the bit to do for some time and Pelosi I think had to allow a vote on that. But if the administration wanted to cut a deal, that could be negotiated and the conference would be relatively easy and you would see substantial increase, part of it to simply allow those now eligible to actually take advantage of the benefit but also some upward movement in the income level as a way of trying to deal with this.

But the administration has seen it as a challenge to its broader conception of health reform which is to basically begin to replace public programs, Medicare, Medicaid, SCHIP, with a system depending very much on individual responsibility and health savings accounts. So I think they are drawing an ideological line. This is a classic case of where Orrin Hatch says are you huts? You are going to veto this bill? But where the administration's more ideological line which resonates more in the House Republican Conference than it does among Senate Republicans, reflecting the fact that so many more of them are safe, representing overwhelmingly Republican districts, that complicates this issue. Yes, let's go back here, please.

MR. FARRELL: I am Chris Farrell with the Retired Federal Employees Association. With nine of the dozen appropriations facing a veto, is there a best option for an override which would be to play out regular order, and

perhaps beginning with the House to determine if the comity that exists at the committee level that Norm had spoken about might prevail in an override vote?

MR. MANN: It is a good question. Democrats have not yet decided on their strategy for the appropriations. But if you look at what Reid has said and what appropriations bills he has scheduled, it is military construction, and is it homeland security?

MS. BINDER: That is the one they have done.

MR. MANN: That is the one they have done, and the veteran's bill, are ones that he is going to move ahead on, but it is not clear there is any other time in September to deal with the individual bills much less conference those and then move for final approval. So they may be developing a sort of strategy of a continuing resolution and try and negotiate the best kind of deal they can there. Originally the idea was to send bills that did not violate the spending cap to the president or that were enormously popular first and sequence them in a way that would complicate it. But listen, I think the president is looking to veto. He wants to veto bills and we will probably have such vetoes, we will have veto override attempts, they may succeed on one but fail on others. There is a sufficiently group of House Republicans who have committed to upholding the veto that suggests the president can get his way, but in substantive terms I am guessing, first of all, Democrats will not allow the government to shut down, they will always pass a clean continuing resolution to keep government going, and then they will do their best to publicize what the differences are. It is not like R2-D2, environment, energy, Medicare, Medicaid, remember? Clinton would always

use those as the source of disagreement, and actually the president had the popular side of the issue, in this case the Congress probably has the popular side. I am going to move around here. Yes, back here, please.

MS. GROPPÉ: Maureen Groppe with Gannett News Service. I was hoping Norm could elaborate on the points you made about media coverage of the Senate floor action and where we are failing.

MR. ORNSTEIN: Not you, Maureen. I think partly because there are so many other stories out there, partly just because of the diminished resources available to cover Washington. We have fewer reporters who are covering Congress in Washington. We have still a tradition in a lot of places that people will cover a beat for a few years and then they will leave it. So the number of real veterans who understand the ins and outs and nuances of the process is down. The news hole for those reporters is down. So when things happen whether it is an ongoing process as in the Senate where we have seen this dramatic increase in threats of filibuster, denial of unanimous consent, the hold as an attempt to invoke filibuster, and a response by Majority Leader Reid to as soon as a bill comes up just invoke cloture, is a story that is a big story and the motives of the party behind it, the outcomes that ensue including clogging up the process and keeping legislation from going through, is just not covered. Reporters either do not see it, they are caught in the details of a particular bill going through without looking back at the larger picture, or they do not understand the rules. Of course, we saw a lot of that with the reporting over several days on this controversial stolen vote as it were in the House of Representatives at the end as well.



As I say, I do not blame individual reporters or in a larger sense the journalistic community for what is I think a larger set of forces out there that just does not provide the resources or the opportunity to take stories that ought to be covered because they are big and just do not do them at all.

MR. MANN: Let me just add a couple of suggestions. You see good stories on this in some papers and magazines and broadcast outlets, but not otherwise, that have to do with earmarks and appropriations. I think earmarks have now probably gotten much more attention than they deserve. This all came to light because of Cunningham and the corruption involved, but ironically, he did not work by earmarks, he would actually increase program funding and then put pressure on executive branch officials to steer funds to particular firms. This has nothing to do with earmarks.

Secondly, yes, there was, has been a dramatic increase in the number of earmarks over the last dozen years and trying to get to the root of that, why has the guardianship of that broken down, the appropriations committees used to be pretty good about this. And by the way, the geographical distribution of benefits is as old as the republic and some of that can be perfectly reasonable. The corruption ends up when members are involved in steering resources to entities that in turn do them favors with personal gratuities or campaign contributions.

What members ought to be called for is when they get away with saying the way they are going to deal with the fiscal imbalances is to rein in earmarks. That we know is a fraud and is a con and, therefore, the more stories

that can provide that framing of why they are problematic, what has changed recently, what are sort of ordinary, what are not ordinary, what fosters corruption, what does not, and how it does not have anything to do with fiscal policy in any meaningful sense.

I would say the other thing is framing these appropriations battles so that the public has some notion of what is actually at stake here and where it fits in the larger picture and if the president won every one of those battles what impact it would have on our fiscal imbalance short-term and long-term. Yes?

MS. BROWN: Tracy Brown with Associated Press Television. I wonder, it may be a little repetitive, but if we could go back to the situation with Iraq and how much that is going to dominate this next session and possibly take out the oxygen in the room for anything else in Congress.

MR. ORNSTEIN: It will and has, and of course the public reaction to Congress as much as anything is a disappointment that the expectation that the change from the election would result in a change in Iraq has just not been met. The Congress lost a lot of early ground. We talk about these appropriations and the possibility of reaching some kind of a deal, the House acted with some dispatch on its appropriations, the Senate is lagging behind. They are going to reach the new fiscal year without having passed a lot of them, they are going to be forced into a confrontation over continuing resolutions, but a good part of that is because the leadership was so caught up with trying to figure out what to do about Iraq.

The news has been so much about Iraq that even where Congress has had accomplishments like the minimum wage which happened to be wrapped up in Iraq funding, they have been lost. People do not even know what has been done where they have had that success. And the divisions within the parties but especially within the Democratic Party, the majority, over what to do about Iraq which will expand as we go forward especially now as a number of Democrats went to Iraq over the break and came back with a somewhat different point of view than their own leadership or their activist base, people like Brian Baird of Washington, causing complications in this matter.

Iraq, to overuse the cliché, is truly the 8 million pound gorilla in the room and it will dominate everything else, making any attempt by leaders in Congress to convince Americans that Congress is actually doing something in its usual halting fashion more difficult.

MS. BINDER: I would just add in that I think on the influx of reports and testimony that is going to start coming this week that everything will get harder, as Norm suggested, it is going to be much harder than it was even back before the surge was proposed. In part, remember that the influx of reports here and testimony is because of the sort of patchwork compromises that were made back in the winter and given that Democrats could not get the withdrawal deadlines that they wanted they said let's have some reporting to see what is really going on on the ground, let's give the surge a chance. In the next coming weeks there will be the stark choice between what do you do when you have military progress but no political progress on the ground in Iraq, and I do not even think

Democrats have really reached a consensus of how they are going to deal with that new reality of the choices they have to make if they want to be engaged partners in trying to shape congressional policy here on Iraq.

MR. MANN: Let me say that I think the elections have made a difference in our Iraq policy. The surge itself was one consequence of it, not what the public had in mind, certainly not what the Democrats had in mind, but the need to finally face up to the reality that the situation in Iraq was a disaster, it was not getting better, let the president to roll the dice and he has the room as commander in chief and the politics are such that he could put that very much into action.

But I have seen a different response on the part of putting Gates instead of Rumsfeld, actually having to respond to some of the serious issues that have been raised, that the existence of the benchmarks in law and now the report on them builds pressure. I think the most significant thing said by a member of Congress about Iraq over the last 6 months was from Mitch McConnell. Mitch McConnell said there will be a new Iraq policy that is unveiled in September, and in effect, he said he expected the administration to announce it on its own and if not, then the Congress would have to play a more active role. Is there any doubt that the administration has heard that? Yes, they are being aggressive, yes, they are trying to pump up the military gains that have been made in selective parts of Iraq, but that is why the president said what he said in Baghdad yesterday, that I can now see the possibility of drawing down the troops, but we are going to do it

not because of some political pressure, we are going to do it because it makes sense and it is the right thing to do.

What is missing in this of course is serious discussion about the pace of withdrawal, the nature of it, the primary mission of U.S. troops who remain, whether there is any plausible chance of avoiding a full-fledged civil war, all of that remains up in the air, the president bides for time, it will be slower, there will be votes, some will pass, some will be vetoed, Reid will try to do both. He will find measures that let Democrats speak firmly to the constituents and decisively, and he will also find votes that attract Republican support. Yes, it will take a lot of time, it will be the dominant issue, there will be no clear resolution on law, but there will be a continuing series of steps that move us gradually to begin to draw down our forces.

By the way, in the end there is no way the Republicans have any chance of winning the 2008 elections if Iraq remains front and center as an issue with a huge number of troops, so it seems likely at some point you will begin to get a number of presidential candidates as well as congressional leaders pulling away if the president is not moving fast enough.

MS. ORCHOWSKI: Peggy Orchowski. I am the congressional correspondent for "Hispanic Outlook Magazine on Higher Education" and cover lots of the immigration stuff, and the two have gone together a lot. I am really glad to hear you talk about all the activity in committees because I have found just fantastic stories covering committees. There were over 20 hearings in the House just on immigration, just fantastic stuff. I am sorry more of the press is not there.

With the end of the immigration bill there were a lot of indications that they were going to try to attach pieces of it to various legislation. For instance, the DREAM Act onto the higher ed authorization or the Student Loan Act, or even legalization of illegal workers onto the ag bill. Yet in the Senate that did not happen. I was really surprised. Dorgan and Kennedy spoke passionately about the DREAM Act in the Senate but they did not attach it to any of the bills that they said they were going to.

So I am wondering if you are seeing in Congress also perhaps an urge right now or an urgency not to attach other pieces of legislation onto bills like the higher ed authorization which passed unanimously in the Senate because it was fairly clean. Do you see this as kind of maybe a new trend that they are going to try to pass clean bills because they really want them?

MR. ORNSTEIN: No, I do not see it as a trend. I think we will find some examples of that, but as time passes as they get closer to the end of their effective period of being able to legislate, as the desire to move to that final stage of getting something through but there is no floor time to deal with it takes over, then those trains that are leaving the station that you are pretty sure will reach a destination are going to end up loaded with all kinds of additional baggage. So I am fearful that what we are going to see is another one of these rushes and a bunch of catch-all omnibus bills that include a lot of extraneous stuff. Of course, one of the problems with that is that those bills that have not gone through the full deliberative process often include a lot of things that should not be there.

MR. MANN: I think Democrats may be reluctant to add on pieces of immigration because of a fear that the piece that has the most legs is the most punitive part that would attract some Democratic votes in the House and Senate and more Republican mixed districts. So rather than start that process, they would rather let it sit. I think in political terms they believe the Republican Party has harmed itself especially in the Hispanic community, but in the naturalized citizen community more broadly and letting that fester a while is probably not a bad thing for them politically although some members clearly care about the substance and would like to get something done. Yes. Over here, please.

MS. MARRERO: I am Diana Marrero with Gannett News Service. I wanted to know what accomplishments do you think Democrats can point to as far as global warming and what will we see in the next few months.

MS. BINDER: If there is an accomplishment here, again it comes back to this issue of taking initial steps at the committee level. There seems to have been a little less attention over the last couple of months, but at least at the start of the Congress with a little procedural tiff between leaders in the House toward settling of due process how they might examine global warming. It does seem to be there is a growing, slowly, agreement or consensus that in fact there may be ways to structure efforts to limit greenhouse emissions that sort of capture business interests in a positive way, to create incentives for businesses to lower emissions whether it is trading of emissions and so forth.

It does seem to be that there are a little more legs for that issue than there had been in the previous Congress. Again, that is an issue with these

long-term benefits but very real sort of short-term costs that make it very difficult for members to really want to put their feet onto or to vote for. Until members can figure out a way to make it appear that they can put the costs off to the future or a way to stack it with benefits in the present, to mix up the costs and benefits to make it more electorally positive for members, until they can figure out the right mix of policies that get them there, that issue is going to take a while to get members to cast those types of tougher votes.

MR. ORNSTEIN: This is such an interesting issue in terms of the Democratic dynamic, Diana, in the House especially, because of course it has involved a much larger tug of war between Speaker Pelosi and Chairman Dingell and it reflects the division that Democrats have. We see it in both houses where Michigan Senator Carl Levin, one of the most powerful members of the Senate, stands with his state colleagues in the automobile industry to try and block some very tough emissions standards, CAFE standards, for automobile. But what we are also seeing is a speaker who is out to become a strong speaker who can dominate the larger policy agenda of her party and some committee chairs, old bulls, who are used to a process where speakers when they were in the majority basically brokered among the fiefdoms and a desire on the part of several, not just Dingell, to return to that process.

So when the speaker decided based on the overwhelming views of those members of her caucus to try and move a global warming initiative by creating a special committee under Ed Markey, we got an enormous blowup in the party and now they are struggling to try and figure out ways to reconcile these



things. We are moving toward a consensus, I think Sarah is right, but this is not just an issue of global warming.

MR. MANN: I do think it important to look at the larger picture. If it is just what will this Congress do this year relevant to global warming, the odds are it may not get the key energy bill provisions passed and signed into law, the CAFE standards and the requirement of alternative fuels for electricity generation, those are I think the two key matters. It is possible still, but I think what is important to recognize is that Washington has been a trailing indicator on this issue for a number of years now. The activity is elsewhere. It is in as Sarah suggested the private sector where we are seeing very interesting movement, it is in state and local governments led by Republicans and Democrats, it is across states with compacts of various sorts. And now it is sort of moving its way into Washington with a new political regime symbolized by the shift of the chairmanship in the Senate from Jim Inhofe to Barbara Boxer. There are some bipartisan bills. You just see I think the beginnings of a real change here, but there are some very tricky substantive and political issues that will take time to manage. So do not look for a great harvest this year or this Congress, but recognize that this is an area in which the politics are changing dramatically and rapidly. I think we have time for one more question. Gary?

MR. MITCHELL: I really should ask the Brian Lamb question which is, would you two like to take some time and read from your book?

MR. ORNSTEIN: Identify yourself, Gary.

MR. MITCHELL: I'm sorry, Gary Mitchell from "The Mitchell Report." Tom, you began this session about how the American public has never really internalized the Madisonian system. So here we are with that system on steroids if not worse. The question that I have for all three of you is to what extent is this Madisonian on steroids a function of longer-term structural issues like reapportionment that has given us certain kinds of congressional districts the details of which I do not need to go into, the cost of housing in this metropolitan area that makes it more attractive for members of Congress to stay home, and other factors, versus the role that real political leadership can play to make a difference? I am interested in, A, what is your take on that, and, B, what is the likelihood you think that the branch and branches can continue to mend and can they mend without some fix on the structural issues and can it be done by inspired political leadership?

MR. MANN: That is a weighty question, one on which I am sure all three of us have something to say, and given our time, about less than a minute each to say something about. Let's begin with Sarah, then Norm, and I will sign off.

MS. BINDER: The short answer, all of the above. One note on that Madisonian system is that Madison more or less did not completely anticipate what parties would look like and when they would arise. There is no provision of them in the Constitution. We say he was fearful of factions, he hated factions, I do not think he understood, no one understood, the nature of national parties that would emerge over the next 200 years. And when you put a party system overall,

as you said these decentralizing economic and social issues that may fracture Congress and you have parties that are terribly at least in an historic sense polarized with differences between the parties are quite large, that makes it even harder to get the system to work because as Madison and his colleagues wanted, the system is going to move by supermajorities and for a system that is going to move by consensus you need as we all know Congress plus the president, the provisions for vetoes and overrides and so forth, judgments by the court, nothing was going to happen without broad bipartisan support. But when you have polarized parties, it is very hard to build that middle when there is not anybody sitting in the middle; they are all sitting on the edges.

MR. ORNSTEIN: It is very tough because there are so many things that work against coming together, but let me emphasize first that there is a remarkable amount of common ground out there to build on in some of these critical issues. Whether it is global warming now where you have at least a consensus roughly around an emissions trading system even if economists are now saying it is nowhere near as efficient as a carbon tax, but you have that ground, you have it in plenty of areas of health care if not the large picture. We are seeing it in education. We can find it in a whole range of matters involving financial industries, subprime mortgages, wherever it may be. We see it in committees all over the place. Leadership can make a difference here, and a serious difference.

I believe that we had this enormous opportunity to move mountains after 9/11 and I believe the president did not take that opportunity, an

opportunity to take on a little bit of his base to find that common ground in the middle not on every issue, but to use No Child Left Behind as an example rather than as an anomaly. And instead, when his approvals soured to 90 percent, he used the leverage to try and move policy as far to the right as he could make it move and had some success for a while, but we lost that opportunity.

I do not know when the next opportunity comes. What I fear is we will get a new president coming in and it may very well be under circumstances like 1993 where Bill Clinton came in with Democratic majorities in both houses, but under these conditions the way we are now after what may be a bitter campaign, the attitude of the minority in Congress may be the same as the attitude of the Republican minority then which is all right, you won. You've got your majority. You are on your own. Don't count on us for anything. And we will end up back in the same kind of difficult drift that we have had. But leadership is a necessary unfortunately not a sufficient condition to move out of it.

MR. MANN: I think all three of us are in basic agreement that there is a fundamental tension between strong ideological, responsible parties and the Madisonian design. It was that alone that counts for many of the difficulties we have had over the last 6 years. But leaders as Norm suggests are not merely waifs amid forces. They are in a position to try to affect the structure of the party system in ways that might diminish some of the conflict between the strong parties and the Madisonian system, congressional leaders, but even more important, presidents. They have more of an opportunity to shape and structure opinion than does the Speaker of the House or the Majority Leader of the Senate

and there are some signs of some presidential candidates wanting to actually do that.

The final thing I would say is I am a little uncomfortable with the notion that all wisdom resides at the mean or the center point between two ideological extremes. What I think is going to be required is really creative politicians who can reframe issues in ways that alter those ideological poles and begin to bring people together on behalf of not what everyone feels is a watered-down version of what is important but, rather, something new and exciting that grapples with obvious problems in new ways. That is what we need to try to get us out of this muddle. And whether we are any closer to that at the end of December is a matter we will take up in our second report on "Mending the Broken Branch" project. I thank you all for coming. We are adjourned.

(Applause)

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