Questions

1. What is Congressional Oversight?
2. What is the source of Congressional Oversight power?
3. Why is Congressional Oversight important?
5. Should Congressional Oversight be political? Discuss 2 opposite risks of excessively political oversight?
6. Discuss at least 4 forms Congressional Oversight can take.
7. Who does the work necessary to make Congressional Oversight effective?
8. Identify 6 reasons for the erosion of the Congressional Oversight function.
9. Can the President influence Congressional Oversight?
10. Is Congress the only organization that can investigate government action, failures and other issues? Give an example.
11. What is the General Accountability (formerly Accounting) Office?
12. What is the presidential “zone of autonomy?” Is it real?
13. How do the Senate and House differ regarding committee independence to investigate?
14. Should there be constraints on committee independence?

Congress as Watchdog: Asleep on the Job?
Legislative analysis of May 22, 2004
By David Nather, CQ Staff

Over the years, Congress has become known as the staging ground for televised investigations that have turned lawmakers into minor celebrities and made administration witnesses squirm.

When Defense Secretary Donald H. Rumsfeld testified on Iraqi prisoner abuses before the Senate Armed Services Committee on May 7, live on all the broadcast networks, it seemed likely to produce a classic television moment - such as when Sen. Howard Baker, R-Tenn. (1967-85), asked the most memorable question of the Watergate hearings: "What did the president know, and when did he know it?"

Much of congressional oversight does not rise to that level. But even the more common variety - the poorly attended subcommittee hearings and the quiet exchanges of letters and phone calls - has allowed Congress to act as the watchdog that keeps the executive branch in check.

Lately, though, the watchdog is gaining a reputation for sleeping on the job. On such high-profile issues as Iraq, intelligence, appropriations, energy policy, the 2001
education overhaul law (PL 107-110) and the anti-terrorism law known as the Patriot Act (PL 107-56), there has been a growing pattern of breakdowns in congressional oversight. In some cases, Congress has been blindsided by revelations dug up by outsiders. In others it has been stalled by the administration or, its critics say, simply has not made much of an effort in the first place.

And even the Senate Armed Services Committee hearings on the abuse of Iraqi prisoners, which promised to be some of the most aggressive since the days of Watergate in 1973-74 and the impeachment of President Bill Clinton in 1998, have started to fall short of their billing. (CQ Weekly, p. 1060)

Chairman John W. Warner, R-Va., defying pressure from some of his Republican colleagues to tone down his investigation, promised to "go where the evidence leads us, no matter how embarrassing or incriminating it may be." Instead, veteran investigators who watched the committee's questioning of top generals May 19 saw unprepared and uninformed senators. Many asked questions based on accounts in newspaper articles, leading to some embarrassing moments in which the generals flat out denied the accounts and senators were forced to back down. (Warner, p. 1196)

"Rule No. 1: You always have to know the answer before you ask the question," said Winslow T. Wheeler, a defense specialist who worked for Sen. Jacob Javits, R-N.Y. (1957-81). "In other words, your staff is working its tail off finding out what is going on and feeding it to the senator. That's not happening."

To some, it should be little surprise that oversight would fade during a period of one-party government. "Our party controls the levers of government. We're not about to go out and look beneath a bunch of rocks to try to cause heartburn," said Rep. Ray LaHood, R-Ill. "Unless they really screw up, we're not going to go after them."

Others, though, see an erosion of one of Congress' most important powers. "In this Congress, there are no checks, there are no balances. There is no oversight," said Rep. David R. Obey of Wisconsin, the ranking Democrat on the House Appropriations Committee.

And while some Republicans say the decline has been going on for years, not just recently, they are worried that their party has not gotten a handle on it.

"I just don't think our side has ever learned those skills," former House Majority Leader Dick Armey, R-Texas (1985-2003), said of his fellow Republicans. Armey used to give awards to members who demonstrated skillful oversight in an effort to encourage them.

Some say the White House has placed obstacles before Congress that prevent it from getting information, though defenders of the administration maintain that it has cooperated with lawmakers' oversight efforts. There is nearly universal agreement, however, that congressional Republicans themselves have not made oversight a priority.
"I don't think we have been doing the job we should have been doing for several years on oversight," said Rep. Jim Kolbe, R-Ariz., chairman of the House Appropriations Subcommittee on Foreign Operations, Export Financing and Related Programs.

Former Rep. William F. Clinger, R-Pa. (1979-97), who chaired the House Government Reform Committee, said Congress "is becoming increasingly Jess effective in its oversight functions."

And Rep. John D. Dingell, D-Mich., who is remembered by Republicans and Democrats as one of the most aggressive investigators in Congress when Democrats ran the House, worries that the decline will make it hard for future lawmakers to return to vigorous oversight because all the expertise will have disappeared. "Congress can always come back to it," Dingell said. "The problem is that the nexus between those who know how to do oversight and those who want to do it is being broken by the Republicans' behavior."

**Working Out of Sight**

That does not mean congressional oversight has faded away completely. Every week, committees and subcommittees hold oversight hearings of one kind or another. Most focus on run-of-the-mill issues such as ocean policy, but others tackle more urgent subjects such as the future of Iraq.

The two top Republican leaders say Congress has hardly been lax about oversight. Senate Majority Leader Bill Frist of Tennessee says the Senate has opened tough investigations of the Iraqi prison scandal. "Our committees are working aggressively in terms of oversight, taking very appropriate action," he said in a floor speech May 19. "The Defense Department is cooperating fully in these inquiries and has been responsive to all of our requests."

And House Speaker J. Dennis Hastert, R-Ill., says he has been pushing for every House panel to have an oversight subcommittee. "Are there gaps? Will there be bad things [that] happen? Yes," Hastert said May 19. "But I think we've done an extraordinary job on oversight, and we're going to continue to do that."

Furthermore, some Republican chairmen have won bipartisan praise for their willingness to take on bureaucratic waste and occasionally tackle subjects that hit political nerves with the White House. They include Senate Finance Chairman Charles E. Grassley of Iowa, House Government Reform Chairman Thomas M. Davis III of Virginia, and Rep. James C. Greenwood of Pennsylvania, chairman of the House Energy and Commerce Subcommittee on Oversight and Investigations - the subcommittee formerly headed by Dingell. (*Congressional watchdogs*, p. 1194)
Analysts say the Republican majority has been particularly active in trying to root out government waste, and that agencies such as the Transportation Security Administration have been forced to take steps to respond.

Even so, former members and independent analysts say there has been a long-term erosion of Congress' oversight skills, though they believe there is more to the story than one party's reluctance to investigate itself. Long-term institutional changes have contributed to the decline, such as members’ shorter workweeks, packed schedules, term limits on chairmanships and eroding salaries for investigative staff members.

Moreover, the general drudgery of routine oversight, which often involves years of work with little immediate payoff, makes it a poor sell to members whose time is increasingly limited. Sen. Judd Gregg, R-N.H., who used to serve in the House and now chairs the Senate Health, Education, Labor and Pensions Committee, said oversight is harder for senators than for House members because senators have more committee responsibilities.
Former Rep. Lee H. Hamilton, D-Ind. (1965-99), one of the leaders of Congress' 1987 Iran contra investigation and now a member of the independent Sept. 11 commission, takes the long view as well. "I think we've had a decline in congressional oversight for some time," he said. "This isn't anything that's developed over the last year or two.

"Oversight is very tedious work. It takes a lot of preparation, and it tends to be very complicated," added Hamilton, who is director of the Woodrow Wilson International Center for Scholars and author of "How Congress Works and Why You Should Care." "Members are very busy now, and they just don't make oversight that high a priority. Most of them focus on constituent services and legislative work."

Some forms of congressional oversight are less obvious than others. Congress has the "power of the purse," which gives it the authority to check on how its appropriations are being spent. It also reacts to dramatic events, such as the abuse of Iraqi prisoners or the Watergate and Iran contra scandals.

In addition, it has the authority to monitor how laws are being implemented, to scrutinize administration policies on issues such as Iraq and energy, and to look for waste, fraud and abuse in agency programs. It also can scrutinize the private sector, sometimes in ways that are politically sensitive to the administration, such as the 2002 Enron collapse.

To a degree, oversight - a congressional responsibility that is implied, rather than stated, in the Constitution - has often been a lower priority than legislating. As far back as 1885, Woodrow Wilson wrote, "Quite as important as legislation is vigilant oversight of administration." But analysts say it took on more prominence in the 1970s and '80s, partly because of Dingell's efforts, including a 1983 probe of problems with the superfund hazardous-waste cleanup program that led to the indictment of its director, Rita M. LaVelle. Oversight work of various committees led to a series of good-government laws and high-profile investigations.

**The Casualties**

Now, there is mounting evidence that the oversight process has been faltering on some of the most urgent issues before Congress.

Just weeks after lawmakers demonstrated palpable outrage at the abuse of Iraqi prisoners, the momentum of the investigations has slowed. The Senate Armed Services hearing May 19 did little to advance the inquiry, and House Armed Services Chairman Duncan Hunter of California and other Republicans have urged the Senate to back off and let the military investigations proceed. Indeed, Warner himself refused to call the hearings an investigation.

The Iraqi prison abuse scandal has become part of a pattern in which lawmakers have promised to become more aggressive in overseeing the war, then have backed off under pressure from the White House and Republicans' own ranks.
Senate Select Intelligence Chairman Pat Roberts, R-Kan., promised to "Jet the chips fall where they may" in the panel's investigation of prewar intelligence, only to have the probe hobbled by partisan tensions. Foreign Relations Chairman Richard G. Lugar, R-Ind., vowed in April that "we need to offer answers" in hearings on the administration's plans for Iraq, then declared himself satisfied with lower-level administration witnesses after the higher-ranking ones he wanted refused to show. (Intelligence, CQ Weekly, p. 730; Iraq hearings, CQ Weekly, p. 974)

And when President Bush asked for an $87 billion supplemental spending bill for Iraq and Afghanistan last fall, many Republicans promised to ask tougher questions about the administration's Iraq policies, then approved his open-ended request with few changes. (2003 CQ Weekly, p. 3105)

Frustrated by the quality of the information the administration was providing on the war, Rep. Christopher Shays, R-Conn., traveled Iraq to find out for himself what was actually happening. He was scolded by L. Paul Bremer II, chief of the Coalition Provisional Authority, for ignoring warnings not to come. In return, Shays berated Bremer for making Congress' oversight of the Iraq operations unnecessarily difficult. (CQ Weekly, p. 1004)

"If we had been visiting these prisons in August, September, October of last year, I don't think any of this would have happened," Shays said of the scandal. "We probably would have had someone saying to us, 'You won't believe what's going on here. Some people are about to go over the edge.'"

A report in Bob Woodward's book "Plan of Attack" that the administration spent $178 million from the $40 billion emergency supplemental bill in 2001 (PL 107-38) on projects in Kuwait - months before Congress authorized the Iraq war - prompted demands for full disclosure from Democratic appropriators Obey and Sen. Robert C. Byrd of West Virginia, who said they believed Congress had been hoodwinked. (CQ Weekly, p. 1037)

Republican appropriators did not share their concerns, and administration officials said the money was spent on the global war on terrorism, not specifically on Iraq. But the response to Obey and Byrd - the delivery of three binders full of general information on how the supplemental appropriations were spent - succeeded only in reinforcing Democrats' belief that the administration's reports are too vague to be of any real use to Congress.

**Upstaged by Commissions**

Adding to the injury, Congress has also been outperformed lately by the independent commissions that increasingly are taking on the work it used to do,

The Sept. 11 commission has pried out more disclosures about the 2001 terrorist attacks than the congressional joint inquiry that preceded it. And it generated enough
public pressure to force national security adviser Condoleezza Rice to testify publicly, and Bush and Vice President Dick Cheney to brief the panel in private - all witnesses that the congressional panel never heard from.

On other issues, Congress has been successfully stalled by the administration. Cheney was able to defeat the General Accounting Office (GAO), the investigative arm of Congress, in its efforts to obtain the records of the energy task force he headed in 2001 to determine who advised the administration on its energy policy. (2002 Almanac, p. 1-15)

Despite warnings by lawmakers such as Rep. Henry A. Waxman, D-Calif., that the defeat would permanently damage the GAO's ability to obtain information from the executive branch, Comptroller General David M. Walker, who heads the GAO, said his investigators have not had any of their requests turned down since a federal judge dismissed the GAO's lawsuit in 2002.

Walker warned, however, that GAO investigators are experiencing a lot of delays from federal agencies, which "undercuts our ability to provide timely information" to help lawmakers' oversight efforts.
Similar delays frustrated House Judiciary Chairman F. James Sensenbrenner Jr., R-Wis., in his early efforts to oversee the implementation of the Patriot Act, which has raised civil liberties concerns among conservatives and liberals. The Department of Justice's answers to his first set of written questions in 2002 were so incomplete that he threatened to subpoena Attorney General John Ashcroft to get better ones.

Since then, Sensenbrenner aides say, Justice has improved its response time, and its answers have gotten better. The initial problems, however, have left lingering doubts about the department's responsiveness.

"We gave the Justice Department a huge increase in power," Armey said. Congress made a point of designing key provisions to expire, he said, "on the theory that would make them more responsive to oversight."

With the education overhaul measure known as the No Child Left Behind law, oversight efforts have been more halting. The Senate Health, Education, Labor and Pensions Committee has held no oversight hearings on its implementation this year, even as complaints mount from state and local officials that the law is underfunded and too demanding.

Sen. Edward M. Kennedy of Massachusetts, the panel's ranking Democrat, said he has asked Gregg to hold oversight hearings and has been turned down. Gregg said he has held off because the Education Department has been revising its regulations implementing the law to address some of the complaints, and "I would rather let it percolate for a while rather than stirring the pot."

The House Education and the Workforce Committee has held field hearings on the law, and Chairman John A. Boehner, R-Ohio, said that beyond the partisan disputes over funding, "there's no backing away from it." However, Kennedy and Rep. George Miller of California, the ranking Democrat on the House panel, said they have tried to deal directly with the Education Department to urge leniency in complying with the regulations. Without Republicans on their side, they have gotten little response.

"Have we been doing our job? Well, it's a little late now," Miller said.

Within Congress, one-party government gets much of the blame for the breakdowns. Lawmakers from both parties, as well as outside analysts, agree that one-party government is a recipe for weaker oversight, and this Congress is no exception.

Some Democrats say that has not always been the case, and argue that they were never shy about investigating their own presidents when they were in power. Obey, for example, noted that Harry S Truman made a national name for himself as a Democratic senator from Missouri (1935-45) by investigating President Franklin D. Roosevelt's national defense program before he became Roosevelt's vice president.

And Dingell, who became famous for his "Dingell-grams" - detailed and time-consuming
document requests he would hurl at federal agencies during his investigations - says he took on every administration regardless of who was in charge. "I didn't give a damn whether it was [Jimmy] Carter or Clinton or [Ronald] Reagan or [George] Bush. It didn't make any difference to me."
However, Republicans and outside analysts say that in general, both parties have been guilty of softening their oversight when they controlled the White House. Grassley, for example, notes that he "got a lot of help from Democrats" in exposing Pentagon waste under Reagan and President George Bush, but they became less helpful during the Clinton years.

"I think that's the history of Congress. It's not a new phenomenon," said Rep. Jim Leach, R-Iowa, who helped lead one of the Whitewater investigations in the 1990s.

Oversight generally bounces back, Leach said, during major events such as foreign policy crises or scandals such as the Enron and WorldCom bankruptcies in 2002.

Grassley, who has gone from exposing Pentagon waste in the 1980s to fighting Medicare waste and tax scams today, and Davis, who has held hearings on Iraq reconstruction contracts, say they have not let one-party government stop their oversight efforts.

Davis, who has been urged by ranking Democrat Waxman to hold hearings on the role of private contractors in the Iraqi prison scandal, said he may do so despite House GOP leaders' opposition - though he has not decided whether to focus on the abuses specifically or on the role of contractors in general.

**Pressure From the Top**

Lawmakers have also faced active resistance from the Bush administration in their efforts to get information. And Republican leaders have not always been helpful.

In their fight against private groups seeking the energy task force records, now before the Supreme Court, Cheney's lawyers argued that the Constitution gives presidents a "zone of autonomy" from scrutiny of the legislative advice they receive. The implication if such an argument prevails, Waxman said, is that "they can operate in secrecy without the Congress or the public knowing how they reached their decisions."

More recently, Cheney led a backlash against the accelerating congressional investigations into the abuse of Iraqi prisoners. On May 8, the day after Rumsfeld testified in back-to-back hearings of the Senate and House Armed Services committees, Cheney issued a statement declaring that Rumsfeld's critics should "get off his case."

An aide to Cheney said that while the statement may have been interpreted as a slap at Congress, it was not meant that way, and was simply "a straightforward description of the exceptional job the defense secretary is doing." But the remark prompted Lindsey Graham, R S.C., a member of the Senate panel, to say the White House should "let us do our job." And it acted as a brake on the growing demand for congressional investigations, prompting Republican conservatives in Congress - notably House Majority Leader Tom Delay of Texas and Sen.
James M. Inhofe of Oklahoma - to prod critical members to tone down their outrage.

Not all committee and subcommittee chairmen say they have felt pressure from the leadership to soft-pedal their activities. From the accounts of those interviewed for this article, Senate chairmen feel relatively free to take on the subjects they want, while House chairmen have been more likely to encounter friction with their leaders.

Grassley, for example, says he has "never had leadership discourage anything I've been trying to do," adding that oversight is not up to the leadership anyway: "I think it's up to the individual committee chairmen to do it."

In the House, not all chairmen feel constrained. Boehner said he has never felt pressure from the leadership not to examine complaints about the No Child Left Behind law. And Kolbe says one-party government "absolutely makes no difference. What's important is for us to carry out our constitutional responsibility."

Some House chairmen, however, have gotten definite warnings that investigations are not welcome on topics hitting too close to home with the White House. Combined with the complaints they get from the administration itself, these signals can have a chilling effect, since every chairman knows that he serves at the pleasure of the leadership.

For example, Greenwood says he encountered resistance from some members of the leadership, whom he will not name, when the subcommittee was preparing to investigate the 2002 collapse of Enron - whose chairman, Kenneth Lay, had been a top contributor to Bush.

Although that was an issue of oversight of the private sector rather than the executive branch, Greenwood said, "I kept hearing, 'What do you want to do that for? The Republican Party is associated with big business . . . and with Bush being from Texas, he's associated with Enron; it's been a big part of our fundraising and all that.'"

"My response [to the leadership] was, 'Let's think this through. Either the Democrats are going to investigate the heck out of Enron, and we're going to look like we're covering it up, or we're going to do it ourselves.' " By going ahead with it, Greenwood said, "we essentially took that issue off the plate for the '02 elections."

Overall, Congress has lost some of its ability to mount sustained investigations, according to some outside analysts.

Paul C. Light, a senior fellow in governance studies at the Brookings Institution, said that while congressional Republicans have been skilled at tackling government waste and abuse, Congress has become less successful at "deep oversight," the investigative work needed to pry out embarrassing information that is not in open view.

That is partly because staff salaries have eroded, making it harder to retain good investigators, Light said. "You need good investigative staff members who know what
doors to knock on, and that's just not the case," he said.

Joel D. Aberbach, director of the Center for American Politics and Public Policy at UCLA, found an increase in congressional oversight hearings in the 1990s, the latest figures available in his research. But the numbers say nothing about the results the hearings achieved, he said, and at a time when the congressional leadership is getting stronger and committees are getting weaker, Congress is not rattling a lot of cages.

"Even though they may still be holding a decent number of oversight activities . . . you can have lots of formal activities and no real influence," Aberbach said.

In more routine activities, such as requests for GAO reports, the trend is toward more reactive oversight and less work to anticipate problems. When problems arise, such as the prison scandal, "Congress does not hesitate to get involved," Walker said. "At the same time, there's not as much ongoing, proactive oversight as there may have been in years past."

While GAO has been getting fewer requests for reports from lawmakers, Walker said, the quality of the requests has been better - a development he attributes to the agency's efforts to work with lawmakers more closely to let them know what are legitimate requests.

But some members say Congress underestimates its own powers. "The power of Congress when it comes to oversight is extraordinary. A principled member must be careful not to use it in a capricious way," Leach said. "A congressional subpoena is very powerful. Taking the oath is very powerful."

And others, such as Grassley and Kolbe, say Congress faces no real obstacles to oversight. If it is failing at that task, they say, it is only because lawmakers themselves are not taking it seriously enough.

"I think to be successful at it, you have to treat administrations equally, whether they're Republicans or Democrats," said Grassley. "You have to have a good staff. And you have to remember that even though oversight is hard work, it is our constitutional responsibility."

Staff writer Joseph C. Anselmo contributed to this report.

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