

Testimony of
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Comments on “Silo Busting: Effective Strategies for Government Reorganization”

"There are certain political duties imposed upon many officers in the executive department the discharge of which is under the direction of the President. But it would be an alarming doctrine that congress cannot impose upon any executive officer any duty they may think proper which is not repugnant to any rights secured and protected by the constitution, and, in such cases, the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President" (Kendall v. United States, 37 U.S. 524, 610 [1838]).

I would like to thank the Task Force on Government Performance of United States Senate Committee on the Budget for this opportunity to provide historical perspective on Congressional efforts to improve the performance of the Federal service. My name is David H. Rosenbloom and I hold the rank of Distinguished Professor of Public Administration in the School of Public Affairs at American University in Washington, D.C. My testimony is largely based on my book, *Building a Legislative-Centered Public Administration: Congress and the Administrative State, 1946-1999* (University of Alabama Press, 2000). The book was written with the assistance of Dr. Henry B. Hogue, then my doctoral research assistant and now an Analyst in American National Government at the Congressional Research Service. We sought to determine whether Congressional enactment of the Administrative Procedure Act, the Legislative Reorganization Act, and the Employment Act, all in 1946, was a matter of passing three major statutes largely independently of one another or part of a concerted effort by Congress to reposition itself with respect to administration of the executive branch. We concluded that it was the latter and that Congress subsequently built upon its 1946 model for involvement in Federal administration through much additional legislation.

Briefly, the executive branch had grown so rapidly and large during the New Deal of the 1930s and World War II that Members of Congress, along with Senator Robert La Follette, Jr. (Progressive-WI), were concerned that the legislature might “lose its constitutional place in the Federal scheme.”¹ It was a time in which Congressman Estes Kefauver (D-TN) could seriously ask, “Is Congress necessary?” and Members of Congress could “give serious thought to the

¹ Robert La Follette, Jr., “Congress Wins A Victory Over Congress,” *New York Times Magazine*, August 4, 1946, p. 11.

possibility that Congress might not survive the next twenty years.”² The “basic problem,” as noted by Senator William Fulbright (D-AR), was “one of combining a strong executive with the maintenance of legislative supremacy.”³ There was no single comprehensive Congressional plan for achieving this objective. Instead there was extensive legislative discussion and debate that produced a common institutional understanding regarding the roles Congress, its Members, and committees should play in Federal administration.

Collectively, the three statutes mentioned above were partially designed to provide Congress with much greater direction of Federal administration. The Administrative Procedure Act (APA) was based on the recognition that the scope of the national government had become so extensive that Congress could not avoid delegating its legislative authority to Federal agencies and, equally important, that it was responsible for regulating the use of that power by the executive branch. The APA establishes procedures for rulemaking, enforcement, and adjudication. As augmented by the Freedom of Information Act (1966), the Government in the Sunshine Act (1976), and subsequent legislation, it provides for transparency in Federal administration. It also established parameters for judicial review of administrative action.

The Legislative Reorganization Act (LRA) revamped the committee structure in both Chambers of Congress, assigning substantially parallel jurisdictions to committees in the House and Senate and designing their overall organization to follow that of the executive branch. A major feature of the act was to improve legislative oversight of Federal administration by charging “each standing committee of the Senate and the House of Representatives” with exercising “continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of the committee.”⁴ The LRA also contains two subtitles, the Federal Tort Claims Act and the General Bridge Act, which shifted historically legislative functions—compensating individuals injured by Federal employees in the course of their official functions and approving the construction of bridges over navigable streams—to executive agencies.

The main objective of the Employment Act was to promote employment by coordinating Federal spending, primarily on valuable public works, with the business cycle. However, it was also intended to ensure Congressional control of Federal agencies’ spending. As Senator Joseph O’Mahoney (D-WY) emphasized, the act was “a bill to restore the functions of Congress” and “does not authorize the Executive to spend a dime,”⁵ a point amplified by Senator Alben Barkley (D-KY), “No matter what the national budget may provide, no matter what the recommendations of the President may be, no matter what his annual [economic] report may contain . . . under this bill no project can be carried out or begun unless Congress later on separately, by other legislation, shall authorize specifically the things which are to be done.”⁶

Taken together, as legislative debate demonstrates,⁷ these three statutes formed the core of Congress’ overall effort to restructure its roles in executive branch administration by treating

² Estes Kefauver and Jack Levin, *A Twentieth Century Congress* (New York: Essential Books, 1947), title of chapter 1, and p. 5.

³ U.S. Congress, *First Intermediate Report: Organization of the Congress*, Joint Committee on the Organization of Congress, 79th Cong., 1st sess. (Senate Document 79-36). (Washington, D.C.: U.S. Government Printing Office, April 2, 1945), p. 20.

⁴ Public Law 79-601; 60 Stat. 812, section 136 (August 2, 1946).

⁵ *Congressional Record*, vol. 91, 79th Cong, 1st sess. (Washington, D.C.: U.S. Government Printing Office, 1945), p. 9055.

⁶ *Ibid.*, p. 9131.

⁷ The author and Dr. Hogue perused over 16,000 pages of the *Congressional Record* for 1946 and part of 1945.

the agencies as its extensions for legislative functions (especially rulemaking), regulating their procedures, and strengthening its capacity to supervise their implementation of statutes and spending on public works. Subsequent legislation built upon Congress' 1946 framework for involvement in Federal administration as outlined in the following chart:

**Agencies as Extensions of
Congress for Legislative
Functions**

- Federal Advisory Committee Act, 1972
- Regulatory Flexibility Act, 1980
- Paperwork Reduction Acts, 1980, 1986, 1995
- Negotiated Rulemaking Act, 1990
- Congressional Review Act, 1996
- Small Business Regulatory Enforcement Fairness Act, 1996
- Assessment of Regulations and Policies on Families Act, 1998
- Data Quality Act, 2000

Congress as Supervisor

- Legislative Reorganization Act, 1970
- Congressional Budget and Impoundment Control Act, 1974
- Inspector General Act, 1978
- Chief Financial Officers Act, 1990
- Government Performance and Results Act, 1993
- Government Performance and Results Modernization Act, 2010

Strengthening Oversight for Administrative Productivity

In 1964, with specific reference to transparency, Senator Everett Dirksen (R-IL) placed responsibility for Federal administrative behavior on Congress' doorstep: "These departments and agencies have been invested by us in the Congress with certain functions and duties in the administration of programs we have authorized. . . . I am afraid that means the burden of devising the proper procedures falls upon us in the Congress who have established the administrative system."⁸ Earlier, the LRA had originally used the term "continuous surveillance" in place of "continuous watchfulness"⁹ and provided that each standing committee would have four professional staff to help perform this function, with the exception of the Appropriations Committees which could have additional staff as needed.¹⁰ Along with others who thought the staff would work "in close contact with executive agencies,"¹¹ Senator Dirksen thought they should have an investigatory role and "must go and live in the structure of Government and find the weaknesses and then . . . sit at the elbows of the Members of Congress as they are assembled in committees and say: 'Ask him this question; ask him that question; ask him how he justifies this expense or that procedure.'"¹²

Enactment of the Inspector General Act in 1978 institutionalized much of this monitoring

⁸ U.S. Senate, *Freedom of Information Act Source Book: Legislative Materials, Cases, Articles*, Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, 93rd Cong., 2nd sess. (Washington, D.C.: U.S. Government Printing Office, 1974), p. 106.

⁹ See *Congressional Record*, vol. 92, 79th Cong., 2nd sess. (Washington, D.C.: U.S. Government Printing Office, 1946), p. 6445 for Senate debate on these terms.

¹⁰ Public Law 79-601; 60 Stat. 812, section 202 (August 2, 1946).

¹¹ Representative George Bender (R-OH), *Congressional Record*, vol. 92, 79th Cong., 2nd sess. (Washington, D.C.: U.S. Government Printing Office, 1946), p. 10060.

¹² *Ibid.*, p. 10051.

function in the Offices of the Inspectors General (IGs). Following Senator Dirksen’s approach, the IGs have been likened to “congressional ‘moles’ within their agencies.”¹³ The IGs are charged with keeping Congress and agency heads “fully and currently informed about problems and deficiencies relating to the administration of . . . programs and operations and the necessity for and progress of corrective action.”¹⁴

Studies indicate that the IG function is tilted toward investigation and audit to root out waste, fraud, and abuse, as opposed to designing systems for productivity and efficiency.¹⁵ In 1993, the National Performance Review (NPR) addressed this theme by making “reorienting the Inspectors General” a major component of its overall reform effort.¹⁶ The NPR, claimed that “At virtually every agency he visited, the Vice President [Al Gore] heard federal employees complain that the IGs’ basic approach inhibits innovation and risk taking. Heavy-handed enforcement—with the IG watchfulness compelling employees to follow every rule, document every decision, and fill out every form—has a negative effect in some agencies.”¹⁷ The NPR urged the IGs to devote more time to promoting cost-effectiveness in agency operations and to focus on improving managerial control systems for preventing waste, fraud, and abuse. However, such a reorientation faces significant hurdles because the IG Act institutionalizes the investigatory and audit functions in section 3(d), which provides:

Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.¹⁸

It appears that something different than the approach first embodied in the 1946 Legislative Reorganization Act and later incorporated into the 1978 IG Act might be useful in attending to administrative productivity. The Government Performance and Results Act of 1993 and the Government Performance and Results Modernization Act of 2010 provide important alternatives. However, neither statute follows Senator Dirksen’s call for an official “to go and live in the structure of Government,” which may be necessary to identify broad impediments to greater administrative productivity, whether they are silos within agencies, poor organization, inadequate systems for human resources, problematic information technology, failure to integrate multiple functions, including those related to democratic-constitutionalism such as freedom of information, or other problems.

This is not a propitious moment for recommending that another administrative office be established within each major agency. Yet, in recent years one strategy for trying to ensure that administrative agencies function well has been to appoint “chiefs” with responsibility for specific

¹³ Mark Moore and Margaret Gates, *Inspectors-General: Junkyard Dogs or Man’s Best Friend* (New York: Russell Sage Foundation 1986), p. 10.

¹⁴ Public Law 95-452; 92 Stat. 1101, section 2 (October 12, 1978).

¹⁵ Moore and Gates, *Inspectors-General*, pp. 12, 36. See also Paul C. Light, *Monitoring Government: Inspectors General and the Search for Accountability* (Washington, D.C.: Brookings Institution, 1993), p. 57.

¹⁶ Al Gore, *From Red Tape to Results: Creating a Government That Works Better & Costs Less* (Washington, D.C.: U.S. Government Printing Office, 1993), p. 31.

¹⁷ *Ibid.*, p. 32.

¹⁸ Public Law 95-452; 92 Stat. 1101 (October 12, 1978).

areas such as Chief Information Officers, Chief Human Capital Officers, Chief Financial Officers, Chief Freedom of Information Officers, Chief Learning Officers, Chief Data Officer (in the Federal Communications Commission), Chief Records Officer (National Archives and Records Administration), and Chief Performance Officer (Office of Management and Budget). In some respects, these “chiefs” reflect and may even contribute to the silo problem. With some trepidation, I offer the idea that perhaps agencies now need “Chief Productivity Officers” with *overall responsibility for promoting agency-wide productivity* by identifying and developing managerial strategies for overcoming administrative barriers to better performance. Like IGs, Chief Productivity Officers would “live in the structure” of the executive branch and report to Congress as well as to agency heads. Unlike the IGs, their main objective would be to bring a managerial focus to enhancing productivity by developing effective strategies for integrating agency operations, continuous innovation, and upgrading organizational and technical systems as new knowledge and technologies warrant.

Thank you for listening to my testimony today. I hope the historical background I provided on how Congress repositioned itself with respect to Federal administration in 1946 by viewing executive branch agencies as its extensions for legislative functions and subjecting them to greater supervision will prove helpful to you. I would be pleased to answer any questions regarding my comments or related matters that you may have at this time or after this hearing.