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# Rooting Out Waste, Fraud, and Abuse: The Politics of House Committee Investigations, 1947 to 2004

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## Abstract

Scholars have long bemoaned congressional disinterest in oversight. We explain varied congressional attention to oversight by advancing the contingent oversight theory. We show how the structure of congressional committees, partisan majorities, and theories of delegation together explain when, why, and for how long Congress investigated executive branch malfeasance between 1947 and 2004. Divided government, partisan committees, and committees characterized by broad statutory discretion generate more investigations, whereas distributive committees and unified government dampen Congress' investigatory vigor. The conduct of oversight depends on more than a desire to produce good government or the incentive structures faced by individual members of Congress.

## Keywords

oversight, Congress, president, divided government, committees

## Introduction

Committee hearings have been instruments of congressional power from the early decades of American government, but the pursuit of effective and efficient government is only one incentive for Congress and its members to oversee the executive branch.<sup>1</sup> The House Committee on Un-American Activities hearings investigating communist infiltration in the late 1940s are attributed variously to legitimate concerns about Soviet espionage, partisan-inspired Republican attacks on a Democratic administration, and the political ambitions of committee members. Sixty years later, Government Oversight and Reform Committee Chairman Henry Waxman's (D-CA) hearings scrutinizing the use of military contractors were attributed at once to the public interest, partisanship, and personal ambition (Weisman 2007). We explain the decision to launch and sustain congressional investigations with a contingent model of oversight politics, by which we mean that the exercise of congressional oversight varies jointly with institutional-, committee-, and individual-level dynamics. We study the frequency and duration of "fire alarm" style committee investigations of alleged executive branch misdeeds between 1947 and 2004, organizing the analysis around three sets of dynamics: institutions, committees, and reputations. Contrary to theories positing that congressional oversight is mostly a function of member incentives, the pursuit of efficient

government, or constitutional design, contingent oversight theory shows how party majorities, committee structures, and statutory discretion are far more important in determining when and for how long Congress turns its "watchful eye" on the executive branch.

Sustained periods of divided party rule coupled with intensifying partisan and institutional conflict have raised the possibility that extra-legislative activities such as oversight have become venues for political combat (e.g., Ginsberg and Shefter 2002). David R. Mayhew's (1991) empirical challenge to this perspective inspired scholarship refining how political scientists think about the interplay between partisan conflict and institutional politics.<sup>2</sup> Subsequent research examining the consequences of divided government shows congressional investigations correlate with partisan institutional conflict, contingent on factors such as party strength, variations between House and Senate rules, and shifting institutional arrangements (Kriner and Schwartz 2008; Parker and Dull 2009). We extend this research by demonstrating that partisan institutional conflict is not only correlated with investigations

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over time, from one congressional or presidential term to another, but also with particular types of committees. We reveal how partisan “cartel” style committees are especially sensitive to the presence of divided government in the decision to investigate the executive branch for accusations of wrongdoing.

Congressional oversight is also contingent on committee- and member-level dynamics in the context of delegated bureaucratic discretion. Contemporary scholarship on congressional oversight organizes efforts to explain these dynamics around two distinct purposes. The first purpose is publicity. Committee hearings create particularly prominent venues for performance and position-taking, which shapes individual and partisan brands. The second purpose is monitoring. Oversight is an *ex post* instrument of bureaucratic control, an institutional response to asymmetric information between principals and agents (which is a problem inherent in all formal delegations of authority; Miller 2005). These two purposes, by-products of American constitutional design, exist in tension. Although Woodrow Wilson (1885, 303) writes that “the informing function of Congress should be preferred even to its legislative function,” publicity from that monitoring can create a considerable threat to state building. The policies and capacity created by legislating provide oversight opportunities where the goal can be improving the administrative state *or* contesting state expansion and exploration of its retrenchment. In either case, the publicity generated has consequences for party, committee, and individual reputations that may encourage or not aggressive monitoring of agency compliance.

We find that Congress has not abdicated oversight, but its motivations for oversight are not driven by a desire to produce efficient and effective governance alone. Congressional oversight in the form of fire-alarm-style investigations serves a variety of purposes, including the creation of better public policy, the advancement partisan and member agendas, the protection of the legislature’s constitutional prerogatives, and the contestation of the administrative state’s capacity and direction. As the “good government” rationale is but one motivation for initiating and continuing investigations of executive branch malfeasance, we evaluate the broader implications of our findings by considering the recent lament with congressional abdication of oversight responsibilities.

## Congressional Oversight and the Powers of Investigation

Scholars have long bemoaned lack of congressional oversight (Ogul 1976; Scher 1963; but see Aberbach 2002). One theoretical response is the congressional dominance literature, which suggests that Congress prefers *ex ante* controls over agencies to active oversight

(see Bendor 1988). A significant innovation in the congressional dominance literature is the modeling of *ex ante* controls on agency discretion, particularly administrative procedures. McCubbins, Noll, and Weingast (1987, 1989, 1999) argue that Congress and its members face difficulty and expense in asserting *ex post* control through oversight hearings, passing new legislation, or reducing agency appropriations. Instead, enacting coalitions write into initial legislation procedures requiring the agency to seek public comment on proposed rules, consult with specified interests, or report information regarding the development of rules prior to implementation. McCubbins, Noll, and Weingast (1999) argue that Congress uses such procedures to hardwire the preference of the enacting coalition, “stacking the deck” to enhance the influence of favored interests and increasing congressional and judicial influence over policy implementation. Congress conserves scarce oversight resources and, by formulating procedural rules and setting the groundwork for judicial intervention, administrative procedures increase the costs of bureaucratic drift. One common critique of the “deck stacking” thesis is the assumption of a single, unitary principal (Ferejohn and Shipan 1990; J. Q. Wilson 1989).

Suggesting the work of positive theorists over the next decade, Morris Ogul (1976) observed “latent” congressional influence in venues where Congress had been critiqued for its lack of activity. Reformulating Ogul’s “latent” oversight, McCubbins and Schwartz (1984) set out the now-classic distinction between “fire alarm” and “police patrol” oversight. Police patrol oversight takes the form of Congress walking an agency beat, sampling agency procedures and actions “with the aim of detecting and remedying any violations of agency goals and, by its surveillance, discouraging such violations” (McCubbins and Schwartz 1984, 166). By contrast, fire-alarm oversight is intermittent and reactive. “Instead of sniffing for fires,” McCubbins and Schwartz explain, “Congress places fire-alarm boxes on street corners, builds neighborhood fire houses, and sometimes dispatches its own hook-and-ladder in response to an alarm” (1984, 166). They argue that members of Congress prefer fire-alarm oversight because the opportunity costs of police patrol are high, police patrols can miss violations, and fire alarms efficiently place the costs of patrols on others when the time of members is scarce. Congress does not abdicate its *ex post* managerial responsibilities when instituting *ex ante* controls on agencies legislatively; rather, Congress only seems to ignore oversight because it prefers to respond to fire alarms instead of initiating police patrols.

Even if one accepts the argument that Congress prefers fire alarms over police patrols (there is evidence that Congress engages in police patrols—see Aberbach 2002; Balla and Deering 2001), this picture of oversight and investigation based largely on an individual opportunity costs of member or committee incentives is incomplete.

The willingness of Congress to oversee the executive branch is fundamentally a function of the opportunity costs faced by the institution, party majorities, individual committees, and individual members together. These opportunity costs are shaped by more than the Constitution, the competing pressures faced by individual members, and a normative desire to produce efficient and effective government. Ambition need not always counter ambition because investigations yield costs and benefits for the investigators, which are not always clear. They are time-consuming, taking precious moments away from potentially more valuable credit-claiming activities. They can bolster an individual member's or the party's electoral brand, but they may tarnish them. Some committees have an express mandate to launch investigations, while others do not. These complex incentives and opportunity costs suggest that where, why, and when Congress chooses to engage in police patrols or respond to fire alarms is not motivated just by some objective desire for good government or to balance the competing needs of individual members. The contingent oversight theory recognizes that various and sometimes competing opportunity costs affect the willingness and ability to initiate and sustain an investigation of the executive branch. These opportunity costs are a function of institutional-, committee-, and individual-level dynamics, and we make three broad claims serving as the foundation of contingent oversight theory:

*Institutional:* Executives act as agents of Congress, but may exhibit drift from congressional intentions and goals. Congress engages in oversight if the transaction costs to be paid by Congress are lower than the benefits to be obtained by agency compliance (Epstein and O'Halloran 1999).

*Reputation:* Members of Congress run for reelection based on their individual and partisan reputations (Cox and McCubbins 1993). Congressional majorities will engage in oversight if their partisan reputation can be enhanced; if engaging in oversight may tarnish the party brand, oversight is either ignored or pursued less vigorously.

*Committee:* The type of benefits obtained by individual members from committee assignments affect the propensity to engage in oversight.

To test the effects of these various dynamics on the opportunity cost structure facing Congress and its willingness to engage in oversight of the executive branch, we examine one kind of oversight: McCubbins and Schwartz's fire alarms. These investigations of the executive branch are not as costly to initiate when compared with police patrols, and—because they are often generated by alarms pulled from constituents and interest

groups—they provide the most credit-claiming benefits to individual members of Congress when they respond; hence, they present a conservative test of our theory. “No politician” writes J. Q. Wilson “ever lost votes by denouncing the bureaucracy” (1989, 235). The eagerness with which members may want to respond to and put out fires in an allegedly ill-managed, unresponsive, and abusive bureaucracy works to our advantage. If the opportunity cost structure measured by institutional, reputation, and committee incentives can be seen as dampening or constraining the natural credit-claiming proclivities of members, this is powerful evidence that our claims rest on a strong theoretical foundation.

### Committee-Based Investigations of Fire Alarms

How does one distinguish fire-alarm investigations from police patrols? The objective of both is to make sure the executive branch “is not violating congressional goals” (McCubbins and Schwartz 1984, 166). A key distinction seems to be who makes the initial charge: Congress or the fire alarms established by Congress? According to Balla and Deering (2001), a fire-alarm investigation should be motivated by an external event or charge of wrongdoing. Like Balla and Deering, we use the Congressional Information Service (CIS) Index available through LexisNexis to develop a measure of fire-alarm investigations initiated by House committees between 1947 and 2004.<sup>3</sup> Unlike Balla and Deering, we focus on the substantive charge emanating from the congressional committee, using David R. Mayhew's definition of a congressional “exposure” probe as a guide.

An electronic sweep of the CIS Index resulted in a large list of hearings, which were then coded based on the following decision rule: A hearing is included if the CIS Index record includes reference to violation of law, mismanagement, or abuse of discretion in current or past conduct in one or more federal agency or an organization tasked with carrying out agency functions. Violation of law refers to activities that contradict formal discretion as interpreted by Congress, the judiciary, a specified investigator, or a hearing witness. Mismanagement is included if reference is made to specific added costs, delay, poor planning or analysis, inconsistency, improper influence, or negligence in the administration of agency mandates. This includes inadequacies in agency procurement and contract management or any of the above resulting from deficiencies in intergovernmental coordination. Mismanagement is not included if it is attributed to the structure of formal discretion or if the reference is ambiguous, such as a reference only to “improving efficiency.” Abuse of discretion refers to specific accusations that the agency or organization under scrutiny engaged in improper, covert, or deceitful activities

in defiance the congressional wishes—even if a specific violation of law is not alleged.<sup>4</sup>

Each investigation was then associated with the appropriate committee. This yields 638 committee-based investigations undertaken by the House of Representatives between 1947 and 2004. Any investigations undertaken by select committees (e.g., Aging) or those committees without clear executive oversight responsibilities (e.g., House Administration Committee) are excluded.<sup>5</sup>

How do we know that our investigations capture fire-alarm-style investigations by Congress? First, the patterns in our data match those identified by Balla and Deering. Second, the titles suggest discrete hearings initiated to investigate a specific violation of congressional intent. For example, in 2004, the House Financial Services committee conducted a daylong hearing titled “Allegations of Accounting and Management Failure at Fannie Mae,” whereas Energy and Commerce examined the E-Rate program for “waste, fraud, and abuse” for three days. Out of the seventeen House hearings captured from 2004 in our data, seven contain at least one of the terms *waste*, *fraud*, or *abuse* in its title.<sup>6</sup>

We also develop two measures of investigatory intensity: hearing days and number of pages produced by each committee. *Hearing Days* is simply the number of days each committee spends investigating charges of executive branch malfeasance, whereas *Hearing Pages* is the total page count of published hearings associated with investigations undertaken by each committee. The larger political, partisan, and institutional opportunity structure shapes the costs individual members of Congress face when deciding to investigate or oversee the executive branch (e.g., Ogul 1976; J. Q. Wilson 1989). This alters the propensity to patrol agencies or to even respond to a fire alarm when it goes off. It also shapes the vigor of the response. Police patrols can be lazy or intensely focused affairs. The response to a fire alarm can be immediate at the hint of smoke or it can be ignored while the building burns down. The same factors affecting the propensity to investigate should have a similar effect on investigatory intensity.

### Committee Politics: Reputation, Information, and Exchange

Why does Congress choose to initiate a fire-alarm-style investigation? To help make good public policy, to nip bureaucratic drift in the bud, and to investigate charges of wrongdoing while responding favorably to interest group allies are certainly key motivational factors. But reputations—of parties, of committee chairmen, and of committee members—are also important. Investigative hearings provide committee chairmen and congressional parties with venues to build their reputations by contrasting the failings of the executive branch with their own

commitment to good government. This ability to build reputations is magnified because fire-alarm hearings by definition draw more outside attention. Hearings are also platforms for member position-taking (Mayhew 1974) and “strategic disagreement” (Gilmour 1995). Investigations may yield new information with the potential to disrupt stable policy subsystems (Jones and Baumgartner 2005).

Representative John Dingell (D-MI) offers a quintessential example of using a committee as a platform for reputation building. As chair of a powerful committee, Dingell is described by David King (1997, 49) as a “classic policy entrepreneur” who used committee hearings to exert and expand his political and policy influence—sometimes to the great discomfort of testifying agency administrators. If the committee’s agenda-setting prerogatives rest largely with the chair, the willingness to initiate and prolong an investigation depends on the chair’s ideological proximity to the presidential administration and thus to the agency’s political leadership.<sup>7</sup> The greater the distance, the more likely the chair will vigorously investigate the executive branch.

*Hypothesis 1:* Ideological conflict between the committee chair and the president will generate more and longer investigations alleging executive branch waste and malfeasance.

Ideological conflict between the committee chair and the president is operationalized with the variable *Chair–President Ideological Distance*, which is the absolute distance between the committee chair’s and the president’s DW-NOMINATE score in that Congress.

There is good reason to presume that the autonomy of committee chairmen in launching investigations is not as great as might be supposed, Congressman Dingell notwithstanding. Over the last two decades, a robust literature on the role of legislative committees has developed around competing theories of congressional organization as a solution to the collective dilemma rooted in the individual choices of goal-oriented members of Congress. How committees serve the individual and collective interests of members depends on the particular framework. Each of the three predominant theories—gains from exchange (Shepsle and Weingast 1987), informational (Gilligan and Krehbiel 1994; Krehbiel 1991), and parties as cartels (Cox and McCubbins 1993)—has been generally applied to understand the generation of legislation and the final disposition of bills. The theories also point to different propensities for initiating investigations.

Gains from exchange theories emphasize that members of Congress pursue a diverse range of ambitions and interests, many derived from their constituencies. Legislative influence is allocated according to the preference of individual legislators (Gilligan and Krehbiel 1994). The

rationale for committees, in sum, is to serve the individual needs of members. Committees are preference outliers relative to the chamber median, and are relatively homogeneous in their preferences; therefore, the ideological variance among such committees is low relative to the chamber as a whole (Krehbiel 1990). Committees also retain special influence in their particular policy area. In other words, the committee system operates as a logrolling arrangement (Fiorina 1987).

The informational perspective holds that committees overcome informational uncertainty in policy production. Gilligan and Krehbiel (1990) note that legislators lack certain information about the prospective outcome of selecting a particular policy and that legislators are risk averse, preferring policies that have a high degree of outcome certainty (Krehbiel 1991). Because committees consisting of preference outliers provide few net informational benefits, a legislature organized around reducing informational uncertainty should generate few committees with preference outliers. “The novel insight of the informational approach,” observe Shepsle and Weingast (1995, 15), is that “institutional arrangements may reflect the need to acquire and disseminate information in addition to (or instead of) the need to solve distributional issues.” Committees distribute expertise, encouraging the specialization of members. In return, committees receive deference from the chamber in their jurisdictions (Gilligan and Krehbiel 1990).

Cartel theories claim that committees are used by parties to protect and enhance the party’s reputation and brand. Powerful gatekeeping committees critical to advancing the party’s agenda, such as Ways and Means and Budget, are stocked with party loyalists reflecting the party’s chamber median. In the legislative arena, party control in committees and on the floor enables the passage of bills that define partisan priorities, build a reputation for effective governance, and draw distinctions with partisan opponents (Cox and McCubbins 1993, 269). This structure protects the party’s agenda and prevents members of the majority party from “cheat[ing] on the deals that have been struck” by the majority party’s leadership (Cox and McCubbins 1993, 2).

Individual member preferences, the informational needs of the chamber, and the advancement of the party brand—which are central considerations in the production of legislation—are all key to the decision to launch and sustain an investigation. The process of investigation can variously disrupt the flow of distributive policies, provide information to guide the chamber in making better public policy, or hurt/help the majority party craft a reputation for good governance by the exposure of waste, fraud, and abuse in the executive branch. Critical to the decision to investigate, then, is the fundamental purpose of each congressional committee. Does the committee

seek to provide distributional goods, information, or protect party reputations?

To evaluate the effect of committee incentives on the decision to investigate, committees must be classified properly. First, a key consideration is committee membership. Is the committee designed to represent individual member, chamber, or party interests? In rational choice parlance, the committee is an agent of *which* principal? Second, committees produce benefits and policies that have “external effects” for the membership. Some policies have only a narrow effect on a few congressional districts: think agricultural subsidies. Other policies affect the members broadly and have consequences for the party reputation: think tax and fiscal policy. Cox and McCubbins (1993) define committees by the externalities they produce. Uniform committees produce externalities that “authorize ‘projects’ on a national scale,” which affect nearly every member and congressional district (Cox and McCubbins 1993, 192). Examples include Veterans Affairs, Appropriations, and Rules. Targeted committees produce a narrow subset of policies and programs affecting only a select subset of congressional districts and members. Agriculture is the most obvious example, but the House Interior and District of Columbia committees also fall into this category. Finally, committees that produce a blend of policies, which have both particularistic and universal effects, are termed as *mixed committees*. Armed Services, Judiciary, and Foreign Affairs are all examples of this type of committee.

To determine whether a committee represents chamber, party, or member preferences, we ask first what type of externality a committee produces—targeted, mixed, or uniform. Second, we use Poole and Rosenthal’s (1997) DW-NOMINATE scores to calculate chamber, party, and committee medians in each Congress. Wilcoxon’s difference of median tests determine whether a party or chamber median is significantly different from the committee median (see Cox and McCubbins 1993). This method yields the following committee variables:

*Cartel Committee* takes a value of 1 if they produce uniform externalities with no significant difference between the committee’s majority party median and the chamber’s majority party median.<sup>8</sup>

*Distributive Committee* takes a value of 1 if they produce targeted externalities with the committee’s median significantly different from the chamber’s median.

*Informational Committee* takes a value of 1 if they produce mixed externalities with the committee median mirroring the chamber’s median.

*Miscellaneous Committee* met none of the criteria outlined for informational, distributive, or cartel committees.

Government Operations, Budget, Energy and Commerce, Ways and Means, and Appropriations are defined as cartel committees at least 75 percent of the time according to these criteria. Banking, Education and Labor, Foreign Affairs, Judiciary, and Intelligence are most often coded as informational committees. Few committees fit the distributive definition: Agriculture is defined as distributive 10 percent of the time, whereas Post Office and District of Columbia are coded as such 4 percent of the time. Most of the committees scholars viewed as distributive are coded as miscellaneous, including Agriculture (86%), Interior (100%), Merchant Marines (100%), and District of Columbia (96%). Miscellaneous committees, generally speaking, produce targeted externalities but do not have committee medians significantly different from the chamber's median. We considered various operationalizations of the committees but regardless of how we defined cartel, distributional, information, or miscellaneous committees, our findings do not change.<sup>9</sup>

Whether a committee investigates depends on whether the benefits of investigations outweigh the costs. This opportunity cost analysis depends on the type of externalities the committee produces and whether the committee pursues member, chamber, or party goals. Gatekeeping committees play a prominent role in shaping the party brand, so the investigations pursued should reflect key party goals and interests. Committee investigations also expose wrongdoing and allocate blame, offering few opportunities to advance the production of goods for distribution back home. Members serving on distributive committees may actively avoid exposing possible instances of corruption for fear of disrupting benefits flowing to the district. Although the allocation of resources may generate more opportunities for malfeasance, the incentive structure decreases the likelihood of distributive committees generating investigative hearings. We therefore offer the following hypotheses:

*Hypothesis 2:* Cartel committees will produce more and longer investigations alleging the executive branch malfeasance when compared with distributive or informational committees.

*Hypothesis 3:* Distributive committees generate fewer and shorter investigations alleging executive branch malfeasance when compared with cartel or informational committees.

Congressional investigations are bounded by the Constitution (Landis 1926; Taylor 1955), particularly when it comes to investigating the White House. Yet because the presidency manages the executive branch, periods of divided government amplify partisan and individual incentives for committees to expose incompetence and corruption in the executive branch (Moe 1999). We

expect that the tendency of cartel committees to engage in aggressive oversight will be amplified during periods of divided party control.

*Hypothesis 4:* Cartel committees will produce the more and longer investigations alleging the executive branch waste and malfeasance under divided government.

The effect of divided government on the relationship between cartel committees and investigations is examined here by dividing the sample into divided and unified party control and estimating the model for each subsample.<sup>10</sup>

Informational committees exist somewhere between cartel and distributional committees in terms of the opportunity costs of investigations. Public hearings broaden general knowledge and, consequently, may weaken a committee's informational advantage. Nevertheless, investigative hearings represent an important instrument of committee oversight—and serve to make a public case for contentious formal measures such as subpoenas and even charges of contempt (Fisher 2003). Committees that push the use of their powers too far away from the chamber majority risk losing autonomy (Gilligan and Krehbiel 1994), but informational committees should be more likely to pursue aggressively oversight during periods of divided government (Epstein and O'Halloran 1999).

*Hypothesis 5:* Informational committees will undertake more and longer investigation alleging executive branch waste and malfeasance under divided government.

Epstein and O'Halloran (1999) develop a model of delegation to and oversight of agencies that builds on and extends the partisan, informational, and gains from exchange traditions. Driving their analysis is a key insight—congressional organization takes shape in the shadow of the executive branch—leading them to propose a two-stage model of statutory delegation. The House chamber delegates to a committee of policy specialists. The committee then delegates to an agency that further specializes and implements policy. Both arrangements are wrought with informational asymmetries. The agency has the most accurate estimate of policy impacts, the committee has a slightly less accurate estimate, and both use this advantage to influence the discretion granted by the floor voter. Floor voters therefore face two problems when they decide whether to delegate. They do not know the real-world factors that will shape a policy's final impact; and both the committee and the agency know more about these real-world factors and will use informational advantages to steer policy toward their own rather than the floor's priorities. Epstein and O'Halloran (1999, 48) conceptualize these trade-offs as

agency losses associated with delegation or “political transaction costs.” Policy by legislation avoids agency bias, but forces the floor to rely in part on information from the committee. Policy by delegation offers greater expertise but leaves more room for opportunistic agencies or committees to influence policy.

When it is politically efficient—when workloads are too great or policies are informationally intense—Congress will delegate. More importantly, the model treats formal agency discretion and the exercise of congressional oversight as related instruments of delegation. Oversight occurs in the shadow of statutory delegation to the agencies. Oversight hearings take place in the context of delegated authority, operating as a constraint on agency discretion. In this context, Epstein and O’Halloran (1999) contend that committees operate as “contrary outliers,” accentuating conflict between the agency and committee relative to the House as a whole. Their analysis shows that where committee jurisdictions delegate broad policy decision making to agencies, committees engage in more aggressive monitoring of agency activities, including oversight hearings (Epstein and O’Halloran 1999, 213). Consistent with this, we expect that areas characterized by broadly delegated authority will be subject to greater committee oversight, particularly when these issues are subject to conflict between the executive and legislative branches.

*Hypothesis 6:* Committees that have granted agencies broad statutory discretion will undertake more and longer investigations during divided government.

*Delegated Discretion* is a trichotomous high–medium–low variable derived from Epstein and O’Halloran’s (1999, 200–203) analysis of delegation in significant legislation between 1946 and 1995. *Delegated Discretion* should be positive during periods of divided government.

The committee-level dynamics specified so far operate through changing institutional arrangements, a handful of which are shown by prior research to influence committee investigations. We include here five variables measuring a few factors shaping committee oversight. First, we include a dichotomous variable *Post-1974*, which takes a value of 1 for all congressional committees after the 93rd Congress (1973–1974). Partisan polarization in Congress (McCarty, Poole, and Rosenthal 2006) and the reform of House rules in the wake of Watergate shifted power to the party leadership in the House (Aldrich and Rohde 1997). Set amid broad political and institutional changes during the second half of the twentieth century, Zelizer (2004, 178) describes the changing nature of committee investigations in the post-reform era, noting that during the 1970s scandals were, “no longer part of a vibrant movement to reconstruct politics,”

becoming instead instruments of “political combat.” Parker and Dull (2009) demonstrate that the relationship between partisan conflict and congressional oversight shifted between the periods before and after 1975.

Among the most significant of the changes occurring during the 1970s in relation between Congress and the agencies was the dramatic growth of congressional institutional capacity. Committee staff and hearing days more than doubled between 1969 and 1977, before leveling off in the 1980s and 1990s (Aberbach 2002). Committee staff plays a central role in the conduct of oversight (West 1995, 131) and staff capacity defines the scope and the relative trade-offs associated with expanding committee resources on investigative hearings. We include *Committee Capacity*, a count of staff assigned to the committee (see Ornstein, Mann, and Malbin 2008). Deering and Smith (1990, 154) observe that broad and diverse jurisdictions are associated with large numbers of staff.

Finally, three variables relate to the political environment. *Margin of Control*, the number of seats controlled by the majority party minus seats held by the minority party in the House, measures the strength of the party majority. Contemporary research on Congress emphasizes the conditional nature of partisan institutional politics (McCarty, Poole, and Rosenthal 2006; Rohde 1991). A majority rooted in a strong, cohesive legislative coalition should dedicate greater committee resources to policymaking through legislation. For a slim partisan majority, however, investigations may be particularly useful devices for influencing policy and defining reputations. Thus, as *Margin of Control* decreases, we expect committees will generate more investigations.

*Gridlock* is the absolute ideological distance between the filibuster pivot and the furthest veto pivot—Senate or House—in each Congress, calculated using Poole and Rosenthal’s Common Space scores. This variable controls for the structural impediments in the political system that can frustrate the production of legislation and may contribute to a willingness to use congressional investigations, particularly when the *Gridlock Interval* is wider (see Krehbiel 1998).

*Presidential Approval* represents the public’s approval of the president’s job and is derived from monthly Gallup polls averaged over the first three months of each year. Because of their public nature, the incentives for congressional committees to initiate and sustain investigative hearings are shaped by changing perceptions of the presidential administration as a whole. Allegations of corruption and inefficiency leveled against a popular administration may fail to produce electoral benefit for individual members or the congressional parties, or even prove costly. When the president is popular, congressional committees will initiate fewer and shorter investigations alleging executive branch malfeasance.

**Table 1.** House Committee Investigations of the Executive Branch, 1947 to 2004

Independent variables	Dependent variables		
	<i>Investigations</i>	<i>Pages</i>	<i>Days</i>
<i>Gridlock Interval</i>	-0.4310 (0.6204)	-0.8804 (0.8244)	-1.1566 (0.8144)
<i>Margin of Control</i>	-0.0028 (0.0022)	-0.0026 (0.0027)	-0.0014 (0.0027)
<i>Chair–President Ideological Distance</i>	0.6261** (0.2155)	0.5177 (0.2902)	0.4670 (0.2806)
<i>Informational Committee</i>	0.4433** (0.1731)	1.0935*** (0.2714)	0.7558** (0.2505)
<i>Distributive Committee</i>	-0.8696 (6.5736)	-1.1908 (7.6086)	-1.3200 (6.2865)
<i>Cartel Committee</i>	0.7527*** (0.1992)	1.1726*** (0.2780)	1.0640*** (0.2646)
<i>Delegated Discretion</i>	0.2399* (0.0994)	0.2606 (0.1380)	0.3838* (0.3023)
<i>Presidential Approval</i>	-0.0041 (0.0053)	-0.0086 (0.0078)	-0.0060 (0.0080)
<i>Post-1974</i>	0.2921 (0.2290)	-0.0020 (0.3349)	-0.5372 (0.3142)
<i>Committee Capacity</i>	0.0060* (0.0027)	0.0115** (0.0041)	0.0041 (0.0039)
Constant	-1.8052*** (0.4441)	4.0302*** (0.6986)	0.1297 (0.6825)
<i>n</i>	923	923	923
Wald $\chi^2$	94.43***	87.61***	43.50***

Unit of analysis is the committee session/year. Cell entries are negative binomial coefficients. Bootstrapped standard errors (1,000 repetitions) are reported in parentheses.

\* $p \leq .05$ . \*\* $p \leq .01$ . \*\*\* $p \leq .001$ .

## Method of Estimation and Results

We model three dependent variables—*Investigations*, *Days*, and *Pages*—observed for House committees annually. A goodness-of-fit test indicates overdispersion, so we specify regression models using the negative binomial distribution.<sup>11</sup> Table 1 reports estimates for models predicting total committee *Investigations*, *Days* of committee investigative hearings, and *Pages* of investigation-related committee reports.<sup>12</sup> Table 2 reports model estimates separating the sample into periods of unified and divided government. Taking each hypothesis in turn, first, Hypothesis 1 is only weakly supported. Table 1 indicates that while ideological conflict between chairmen and presidents is seemingly associated with more committee-based investigations, the relationship disappears in Table 2 once the effects of divided government are considered. Oversight may provide opportunities for chairmen to build their individual reputations, but the initiation of investigations seems predicated less on the chairman's reputational needs than other factors.

The committee-type variables—*Cartel*, *Informational*, and *Distributive*—generally yield the expected results. Consistent with Hypothesis 2, *Cartel* committees produce more and longer investigations, generating positive and significant coefficients in all three models in Table 1. Consistent with Hypothesis 4, when all three models—*Investigations*, *Pages*, and *Days*—are estimated for periods of divided party control (see Table 2), *Cartel* is significant and positive. Under unified government, *Cartel* is significant and positive for the *Days* variable only.

The results in Table 1 seem not to support Hypothesis 3; the *Distributive* coefficient is not significant. However, as the base committee category is *Miscellaneous*, this only means that *Distributive* committees are not significantly different in their behavior from *Miscellaneous* committees. To illustrate the effects of committee type on investigatory activity, we calculated the probability of investigatory activity exceeding the mean across our three dependent variables while holding other independent variables constant.<sup>13</sup> *Cartel* committees consistently yield the highest probability of exceeding mean levels of investigation production across all three dependent variables, whereas *Miscellaneous* committees consistently exhibit the lowest probability of exceeding mean investigatory activity. *Cartel* committees exceed the mean number of *Investigations*, *Pages*, and *Days* 34, 14, and 26 percent of the time, respectively. *Informational* committees are less active, exceeding mean *Investigations*, *Pages*, and *Days* 29, 13, and 23 percent of time, respectively. Finally, *Miscellaneous* committees—the bulk of which are committees producing targeted externalities that are not significantly different from the chamber mean ideologically—are the least active, exceeding the mean levels of investigatory activity 21 percent of the time for *Investigations*, 9 percent of the time for *Pages*, and 16 percent of the time for *Days*.

Consistent with Hypotheses 5 and 6, both *Informational* committees and those committees with jurisdictions characterized by broad delegated discretion produce more and longer investigations under divided government, whereas under unified government they produce coefficients that

**Table 2.** House Committee Investigations under Divided and Unified Government, 1947 to 2004

Independent variables	Divided government			Unified government		
	Investigations	Pages	Days	Investigations	Pages	Days
<i>Gridlock Interval</i>	-0.8598 (0.8668)	-1.4457 (1.5514)	-0.8734 (1.2289)	0.2936 (0.8660)	-0.8034 (1.5362)	-2.0173 (1.1957)
<i>Margin of Control</i>	-0.0010 (0.0032)	0.0022 (0.0038)	0.0040 (0.0036)	-0.0073* (0.0032)	-0.0128** (0.0050)	-0.0114** (0.0040)
<i>Chair–President Ideological Distance</i>	0.6447 (0.4556)	0.0674 (0.6320)	-0.0061 (0.6157)	-0.4484 (0.8266)	-0.7683 (1.3374)	-0.1795 (1.1656)
<i>Delegated Discretion</i>	0.3171** (0.1107)	0.3111 (0.1762)	0.3930* (0.1628)	0.0883 (0.1634)	0.2906 (0.3051)	0.2828 (0.2858)
<i>Informational Committee</i>	0.6035** (0.2209)	1.0622** (0.3352)	0.6925* (0.3099)	0.0266 (0.2890)	0.9656 (0.5731)	0.7529 (0.4555)
<i>Distributive Committee</i>	-16.8411*** (2.3470)	-23.5324*** (1.4579)	-18.7373*** (1.9887)	-0.2215 (6.1512)	-1.0862 (7.2212)	-0.9925 (6.0881)
<i>Cartel Committee</i>	0.8660*** (0.2322)	1.2973*** (0.3387)	0.9348** (0.3389)	0.4471 (0.2883)	1.3393 (0.7451)	1.2906* (0.5253)
<i>Presidential Approval</i>	-0.0083 (0.0074)	-0.0098 (0.0128)	-0.0042 (0.0122)	0.0099 (0.0089)	0.0070 (0.0164)	0.0037 (0.0139)
<i>Post-1974</i>	0.2893 (0.2767)	0.2012 (0.4540)	-0.3678 (0.4102)	0.2959 (0.4080)	-0.1859 (0.8921)	-0.4313 (0.7018)
<i>Committee Capacity</i>	0.0052 (0.0034)	0.0127* (0.0053)	0.0054 (0.0044)	0.0099* (0.0051)	0.0196 (0.0120)	0.0081 (0.0097)
Constant	-1.7124* (0.7103)	4.1624*** (1.1620)	-0.3227 (1.1383)	-1.9439** (0.6914)	3.7106*** (1.1413)	0.3795 (1.0858)
<i>n</i>	575	575	575	348	348	348
Wald $\chi^2$	114.50***	378.32***	121.41***	38.61***	27.08**	27.36**

Unit of analysis is the committee session/year. Cell entries are negative binomial coefficients. Bootstrapped standard errors (1,000 repetitions) are reported in parentheses. \* $p \leq .05$ . \*\* $p \leq .01$ . \*\*\* $p \leq .001$ .

are mixed and short of significance. When presidents and chairmen belong to opposing parties, *Informational* committees and those with jurisdictions characterized by broad statutory discretion are more likely to investigate agency wrongdoing. Once divided government is taken into account, however, the ideological distance between the president and the committee chair is no longer a significant predictor of a committee's investigatory behavior.

Distributive committees produce the fewest number of hearings in divided government—the coefficient is negative and significant. In fact, distributive committees have zero probability of producing any hearing of any length under divided government, which empirically is indeed the case. It is difficult, however, to put much stock in these findings or the insignificant distributive coefficient reported in Table 1. Only fourteen committees fit the definition of distributive, and only six operate under the condition of divided government. In fact, more than three-quarters of the miscellaneous committees produce targeted externalities, but do not have medians significantly different from the chamber median. It is not at all clear that these two categories are distinctive empirically. Combining the miscellaneous and distributive categories into a single variable generates results in line with the expectations outlined in Hypothesis 3: The distributive–miscellaneous category yields the fewest and shortest committee hearings in divided and unified government.<sup>14</sup>

Presidential popularity is not associated with investigatory activity in the House. Consistent with prior findings (e.g., Parker and Dull 2009) *Margin of Control* is significant and negative only in the unified government models in Table 2, suggesting that large, partisan majorities act to suppress further the investigatory impulses of House committees when the White House is occupied by a partisan ally. Finally, the institutional changes in Congress dating to the mid-1970s do not generate additional investigations or pages at the level of the committee; however, investigations are shorter in *Days* after 1974. This null finding is likely the result of controlling for *Committee Capacity*, which changed dramatically between these two periods and varies greatly between committees. Committees averaged 26 staff members in the pre-1974 era, whereas in the post-reform era, committees averaged more than 80. Even after 1994, when Republicans reduced committee staff by a third, great disparities existed between committees: Appropriations averages 149 staff members, whereas Veteran's Affairs averages only 28. On average, committees still employed 75 staff members. *Committee Capacity*, as anticipated, is positive and significant. More staff assigned to a committee increases the likelihood it will initiate and prolong investigations.

Summarizing the results of the analysis, *Cartel* and *Informational* committees are strongly associated with more and longer investigative hearings. *Miscellaneous*

committees generate the fewest and shortest investigations—except under divided government, where *Distributive* committees are predicted to produce no hearings of any length. Committees with jurisdictions defined by significant delegated discretion are associated with a higher frequency and duration of investigative hearings, particularly under divided government. The capacity to investigate as measured by committee staff is also associated with more and longer investigations of the executive branch. Finally, divided government affects the opportunity costs for investigations undertaken by cartel and informational committees—in both instances, leading to more and longer investigations of the executive branch.

The calculation of predicted probabilities explains how investigation activity is affected by each independent variable. Table 3 reports the predicted probability that each of the three dependent variables will exceed the mean level of investigatory activity at different values of a handful of key explanatory variables. Scenario 1 posits a pre-1974, low-conflict committee categorized as *Miscellaneous* with chair–president conflict set at one standard deviation below the mean. This scenario yields relatively low levels of activity: Under these conditions, miscellaneous committees will generate more than one investigation only 18 percent of the time. Likewise, the mean number of pages (205) and days (2) is exceeded only 8 and 14 percent of the time, respectively.

Altering the base category to a *Cartel* committee and increasing chair–president conflict to one standard deviation above the mean, Scenario 2 shows a substantial increase in the probability of an investigation emerging and becoming more intense. A *Cartel* committee is likely to exceed the mean number of investigations by 21 additional percentage points when compared with *Miscellaneous* committees. More days and pages are also more likely to be produced, with the probability of exceeding the mean number of days by 13 percentage points and the mean number of pages by approximately 7 percentage points. Scenario 3 moves committee discretion from low to high, and this increases the probability of exceeding the mean number of investigations, days, and pages by another 5, 3, and 1 percentage points, respectively.

Finally, Table 4 illustrates the effects of divided government and delegated discretion on investigatory activity. All variables are constrained to the levels as outlined in Scenario 2 above. First, note the low levels of investigatory activity in unified government regardless of the amount of delegated discretion: There is no apparent relationship between committee's propensity to investigate and the amount of delegated discretion granted to agencies. Congressional committees are unlikely to initiate an investigation and, if they do, are likely to keep it short during unified government even when the institutional and political environment favors lengthy investigations.

**Table 3.** Predicting the Probability that the Number and Intensity of House Committee Investigations of the Executive Branch Exceeds the Mean, 1947 to 2004

	Probability of exceeding the mean (%)	Confidence interval	
		Lower bound (%)	Upper bound (%)
Scenario 1: A miscellaneous committee			
Number of investigations	18	13	24
Hearing days	14	7	21
Hearing pages	8	2	14
Scenario 2: A cartel committee			
Number of investigations	39	32	48
Hearing days	27	20	34
Hearing pages	15	9	21
Scenario 3: A cartel committee with high discretion			
Number of investigations	44	35	53
Hearing days	30	22	37
Hearing pages	16	10	22

Independent variables other than post-1974, committee type, discretion, and chair-president conflict held to their mean values. Point estimates and confidence intervals are calculated with *Clarify*.

**Table 4.** The Probability House Committee Investigatory Activity Exceeds Mean Levels in Divided versus Unified Government, 1947 to 2004

	Divided government			Unified government		
	Probability of exceeding the mean (%)	Confidence interval		Probability of exceeding the mean (%)	Confidence interval	
		Lower bound (%)	Upper bound (%)		Lower bound (%)	Upper bound (%)
Low discretion						
Investigations	34	24	45	21	7	45
Hearing days	22	12	33	18	-1	37
Hearing pages	14	8	25	8	-5	22
High discretion						
Investigations	46	35	57	24	8	49
Hearing days	30	21	39	22	4	40
Hearing pages	17	8	25	18	-2	22

Independent variables other than post-1974, committee type, discretion, and chair-president conflict held to their mean values. Point estimates and confidence intervals are calculated with *Clarify*.

Alternatively, the condition of divided government and high levels of delegated discretion amplifies investigatory activity by House committees. Looking across the table, the increased probability of investigations or investigatory activity exceeding mean levels between unified and divided government runs between an additional 4 and 13 percentage points when delegated discretion is low. To see how discretion increases this effect in divided government, examine the bottom half of the table. The probability of the number and days of investigations exceeding the mean is dramatically affected by high discretion in divided government: an additional 22 and 8 percentage points, respectively. The effect on page production is

similar: High levels of delegated discretion under divided government yield an additional 7 percentage point likelihood of exceeding mean levels of page production by the committee. In sum, the chance that a committee will exceed the mean number of investigations is more than 45 percent in divided government when delegated discretion is high and the committee is responsible for protecting the party brand.

## Conclusion

We generate three findings improving our understanding of congressional investigations. First, divided government

matters. The presumption is that Congress investigates to guard jealously its constitutional prerogatives. Ambition should counter ambition. Our findings demonstrate that while a system of separated powers certainly produces institutional incentives to oversee and investigate the executive, partisan considerations alternatively temper and encourage legislative pursuit of executive branch wrongdoing. “When you have one party that controls Congress and the other controls the presidency oversight is pretty harsh, it’s all about . . . discrediting the administration. It’s about exposing all their warts and flaws,” former Government Reform Committee Chairman Tom Davis (2009; R-VA) observes, noting that by contrast, “When the president’s of the same party, you tend to under-investigate.” To amend Madison’s famous phrase, ambition counters ambition especially when the president’s party and the majority party in the House are different.

Second, the decision to investigate is a function of much more than the committee chair’s own authority or the individual opportunity costs faced by committee members. By restricting our analysis to fire-alarm-style investigations—those oversight moments rife with reputational benefits for credit claiming and position-taking—we maximize the possibility of uncovering the effects of individual and chairman incentives on the decision to investigate. Yet, we find that the external political context and committee structures are most important in determining whether an investigation is launched and the intensity with which it is pursued. Future research might consider the effects of a second-term presidency, public opinion about government efficiency and the general economic mood, and the special role of the House Committee on Oversight and Government Reform on the decision to launch and sustain investigations of the executive branch. In any case, our research demonstrates that congressional investigations are the product of more than the opportunity costs borne by individual members directly.

Third, institutional structures matter for the conduct of congressional investigations of executive branch malfeasance. We show that a robust literature developed to explain the legislative role of committees provides important insights into the nonlegislative operations as well. Informational committees, designed to help the chamber develop sound policy, incentivize investigatory activity by design. Furthermore, the apportionment of committee assignments further cements the investigatory roles of these committees. Members choosing to pursue narrow, particularistic benefits for their district often get placed on distributive committees like Agriculture. Investigations, by definition, do not further that goal and are unlikely to be initiated or—if they are—will be short, cursory affairs. Informational committees and cartel committees by design require more oversight, and these activities have consequences reaching beyond the committee membership.

Members on these committees, therefore, are chosen carefully to protect either the chamber or the majority party’s reputation when pursuing (or not) congressional investigations. The House Committee on Oversight and Government Reform is a clear example: “Our primary responsibility . . . is oversight of virtually everything government does.”<sup>15</sup> This committee, because of its broad jurisdiction and oversight mandate, is by far the most active committee in terms of investigations. In its various iterations, Oversight and Government Reform has produced 198 investigations totaling 645 days and more than 91,000 pages of testimony and documents between 1947 and 2004. The consequences of finding wrongdoing by this powerful cartel committee can be widespread and devastating, which is why the investigatory activities of this committee are particularly sensitive to the presence of divided government and its membership carefully reflects party medians. We affirm the notion that oversight is a collective responsibility involving more than individual member decisions.

Recent evidence suggests that Congress has abdicated its oversight role, and this has been a cause for concern (Mann and Ornstein 2008). Our findings explain the oversight retreat: Partisan majorities in unified government do not investigate a president from their own party because paying the transaction costs is inefficient. It damages the party brand, and agencies with wide ranging discretion are unlikely to develop policies far from the party majority’s preferences. The arrival of divided government during the final years of the Bush administration, however, brought a dramatic increase in investigatory activity (Binder et al. 2009). Our findings, however, suggest caution: A “mended” Congress performing vigorous oversight does not necessarily serve the public interest. Cartel committees in divided government pursue investigations aggressively and intensely, yes, but such activity may only serve to increase partisan rancor in Washington, DC, given such investigations are potentially driven by partisan purposes. More investigations need not imply better government. Indeed, given the consternation expressed by some politicians and the public at large about pork barrel spending, our findings on investigations should give pause. Yes, Congress may be more willing to investigate the executive branch under divided government; however, it will not disturb the logrolling arrangements so important to the reelection prospects of individual members. Agricultural subsidies and transportation dollars will flow unimpeded back home, but the possibility of graft, corruption, and executive malfeasance in these programs being uncovered is low given the unwillingness of these committees to engage in vigorous oversight. In short, committees may be more willing to investigate intensively in divided government, but whether the result is better governance is an open question.

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## Notes

1. Data used in this article will be deposited at Harvard University's Institute for Quantitative Social Science [IQSS] Dataverse Network on publication. Kaiser, Oleszek, and Teltman (2011) discuss the codification of legislative oversight. White (1951, 99-101) traces congressional oversight to British Parliamentary tradition, and identifies congressional committee investigations alleging misuse of public funds and the misconduct of government officials in the wake of the War of 1812.
2. Parker and Dull (2009) and Kriner and Schwartz (2008) review the divided government literature.
3. As of this writing, as many as a third of the committee hearings from the 109th and 110th Congresses (2005-2008) were not yet published.
4. See Parker and Dull (2009). The syntax we use can be found in the online appendix.
5. Although select committees are often formed for the specific purpose of conducting oversight and investigations, they can also investigate legislative matters and engage in little oversight. Standing committees are more apt to be pulled in competing directions by multiple goals—investigating the executive branch or proposing new legislation. This tension may not be found in select committees. Including select committees in the analysis does not alter our results; indeed, select committees tend to engage in more investigations during divided government. This suggests that standing committees are not starved of investigatory oxygen by the creation of select committees. Excluding select committees from the analysis provides a conservative test of our theory.
6. As another validity check, we only miss four of Mayhew's original investigations using our method. Two of those

investigations occurred under divided and two under unified government. See the online appendix for an expanded discussion.

7. We admit the problematic assumption that the preferences of the agency are defined by those of the president. A long tradition in the study of bureaucracy contends that this approach understates the degree of control exercised by political principals (Ferejohn and Shipan 1990; Woolley 1993).
8. Data on committee membership for the 80th through the 102nd Congresses were obtained from Garrison Nelson (2009), and the 103rd through the 110th from Charles Stewart and Jonathan Woon.
9. See the online appendix for a discussion of alternative operationalizations of committee types.
10. Divided government is correlated with ideological conflict with a Spearman's correlation of .667, significant at  $p < .001$ . The average DW-NOMINATE distance between committee chairs and the president in unified government is .283, in divided it is .800. A Likelihood Ratio test indicated that including divided government and interacting it with the other variables provided a significant improvement in the model's predictive performance for days and investigations ( $p < .08$  and .09).
11. A majority of all House committees in a given session did not hold a hearing satisfying our selection criteria. We estimated the models using a zero-inflated negative binomial regression (data not shown) and the results were substantively similar.
12. To address the possibility of autocorrelation, we performed the Fisher test for panel unit root using an augmented Dickey–Fuller test. We ran the test on all of our dependent variables with 1 lag. We rejected the null that a unit root exists each time in favor of the alternative hypothesis that at least one panel in the series is stationary.
13. Confidence intervals and probabilities are calculated with *Clarify* (Tomz, Wittenberg, and King 2001).
14. Results available from the authors on request.
15. <http://oversight.house.gov/about-the-watchdogs/>

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