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PRESENT:

**“CHECKS AND BALANCES: PERSPECTIVES ON
AMERICAN DEMOCRACY AT THE BEGINNING
OF THE 21ST CENTURY”**

LUNCHEON KEYNOTES

INTRODUCTIONS:

**SCOTT LILLY,
SENIOR FELLOW,
CENTER FOR AMERICAN PROGRESS**

KEYNOTE SPEAKERS:

THE HONORABLE MARTIN FROST (TX)

THE HONORABLE MICKEY EDWARDS (OK)

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SCOTT LILLY: – eat as quietly as possible and we will also try to speak as loudly as possible so we can be heard. I've been told by some people in the back there that some of the speakers haven't been coming through as clearly as they might, so we will do the best we can to alleviate that.

One snowy afternoon last January, Jim Thurber and I got together and started talking about how to put this event together, and one of the things that we really focused on (audio break). Hello?

MR. : Yeah, this thing won't turn off. This mike here is on and it won't turn off.

MR. LILLY: Hello? (Laughter.) One of the things that we focused on was the kind of people that we wanted to have do the keynote address. Most of you have been involved with House of Representatives in one way or another and know that while there are 435 members, there are really only about 30 or so that are at the heart of the action most of the time. And we wanted to rather than find somebody that was readily available with the title, come up with some people that had been truly in the middle of things for an extended period of time.

The other – the other thing we wanted was we wanted to find people whose current situation allowed them to speak frankly and openly about the institution and treat it fairly, but talk about its weaknesses as well as its strengths. And I am delighted with the two people that have agreed to be with us today: Martin Frost and Mickey Edwards. Both have been key players inside their own caucus and in the deliberations of the House, and played that role for many years.

Martin Frost served in the House of Representatives for 26 years. Early in his career he became a central figure in leadership activities. He was appointed to the Rules Committee, which is the body that reviews nearly all legislation before it goes to the House floor and determines how the debate will proceed on that legislation, what amendments will be made in order for each bill that comes to the floor. And so he really looked at everything that was going on in the House for an extended period of time, but in addition to that, he served as chairman of the caucus – the Democratic Caucus for two separate congresses. That's the third ranking position in the House leadership – in the House Democratic leadership, and he also served as the chairman of the Democratic Congressional Campaign Committee for two years, so he was involved in leadership deliberations and activities in a wide variety of ways. He will leave for Boston later this week where he is going to be a fellow in the Institute for Politics in the Kennedy School and we are very privileged to have him talk to us this afternoon about the Congress and the problems that he sees in Congress meeting his congressional mandate.

Martin?

MARTIN FROST: Is the mike working okay? Yeah, some of us have no trouble speaking loudly enough, even without a mike. What Scott – Scott was very kind in the introduction and of course he said that he was looking for people who had the time to speak to a group like this, and some of us have more time than others. It has been an interesting opportunity for me to do some things that I never done before following my 26 years in Congress. Scott mentioned one of those that I will be at Harvard for three months, I also for those – if there is anyone in the room, and there may not be, but if there is anyone in the room that watches Fox Cable News, I am one of the designated Democrats on Fox Cable these days and it's been quite an experience and I was telling my friend Dave Broder they even let me write a weekly column for their website. And this is – I won't go so far as to say that they are totally fair and balanced, but I am doing my part to give them some balance. (Laughter.)

Serving in Congress is one of the most interesting jobs that anyone can hold. It is also one of the most important to the effective functioning of a democracy. Unfortunately, in recent years the emphasis has been on the interesting part and not on the nitty-gritty, hard work of oversight of the executive branch, which ensures that the American taxpayer is getting his or her money's worth.

Members of Congress have gotten very good at staying in touch with their constituents, using modern technology and very good, of course, at bringing home the bacon in forms of things like highway projects. Also, increasingly they spend more time back in their districts and less time here in DC. And when they are here, an increasing amount of their time is spent on fundraising because of the rapidly escalating costs of running for office and the importance of amassing a war chest to scare off opposition, either in the general election or from someone in their own party primary.

Campaign finance reform legislation has not – and I underscore “not” – changed the need for money one bit and actually has made the money chase even more time consuming for members. And with the advent of the three 24-hour cable news networks, members have a lot of opportunity for television exposure; more opportunities than in the past, opportunities that up until recently primarily went to members of the elected leadership for the two parties. Now virtually anybody can and is on your local cable channel. That can fun for a lot of members of Congress, but what about the hard work side? Congressional oversight really breaks down in to several major categories. One, serving as the fundamental check against the excessive use of power by the executive branch. Two, ensuring transparency in the decision-making of the executive branch. Three, serving as the national forum for debating the major party issues that concern the American people. And, four, setting a long term policies and priorities for our country.

Let's start with the first two categories: excessive use of power by the executive branch and transparency in the decision-making process by the executive branch. Obviously, there will be some differences when the executive branch and the legislative branch are controlled by different parties than when the same party controls the executive branch and both the houses of Congress. A Republican Congress will not want to go

after a Republican president quite as hard as they would like to go after a Democratic president; that's just human nature, but for the good of the country there shouldn't be quite as bigger difference as has existed in the past ten years, starting with the Republican takeover of the legislative branch.

Congressman Henry Waxman, ranking Democrat on the House Committee on Government Reform, has taken a long, hard look that his committee's oversight during the Democratic Clinton administration and the Republican Bush administration. The differences are stark. According to my friend Henry Waxman, President Clinton, Vice President Gore, and their administration were subject to extensive congressional oversight. The Clinton administration produced well over 1.2 million pages of documents to the House Government Reform Committee alone. He further noted that the General Accounting Office found that during an 18-month period from October, 1996, to March, 1998, the White House staff spent over 55,000 hours responding to over 300 congressional requests, producing hundreds of thousands of pages of documents and hundreds of video and audiotapes to Congress. The Clinton White House spent over \$12 million to reconstruct internal e-mails for committee review.

Citing what he considered to be minor and trivial matters, such as whether the Clinton Administration sold burial plots in Arlington National Cemetery for campaign contributions and whether the White House doctored videotapes of coffees attended by President Clinton, Henry noted that there was no accusation too minor to explore, no demand on the administration too intrusive to make.

When President Clinton was in office, Congress exercised its oversight powers with no sense of proportionality, but oversight of the Bush administration has been even worse. With few exceptions, Congress has abdicated oversight responsibility altogether. Waxman found all this to be ironic: excessive oversight distracts and diminishes the executive branch, but absence of oversight invites corruption and mistakes. Lack of accountability has contributed to a series of phenomenal misjudgments that have damaged Bush, imperiled our international standing, and saddled our nation with mounting debts.

Now what are the glaring – some of the most glaring examples of a lack of oversight by Congress during the Bush administration often cited by my Democratic colleagues? First and foremost is the role of the White House in promoting misleading intelligence about Iraq's weapons of mass destruction and ties to al Qaeda prior to the vote by Congress authorizing the commitment of American troops against Saddam Hussein.

Second, the role of the White House in withholding the Medicare cost estimates from Congress at the time of the passage of the new prescription drug bill, originally estimated to be \$400 billion, but now pegged at \$500 billion to \$600 billion. You do remember that vote. That vote went on for three hours in the middle of the night from 3 a.m. to 6 a.m. and Republican members of Congress – conservative Republican members of Congress had their arms twisted by their own leadership and were told that the cost

was \$400 billion, even though the administration already knew that the cost was significantly in excess of that and withheld that information from the Congress.

Third, the role of White House officials in leaking the identity of CIA agent Valerie Plame. Fourth, the role, if any, of the vice president's office in awarding no-bid contracts to his former employer, Halliburton. Finally, the lack of planning by the Bush Defense Department about how to occupy Iraq after the initial phase of combat and the absence even today of a long range strategy for disengagement from Iraq: all valid subjects for congressional oversight; all subjects that congressional oversight has not addressed.

There have been some examples of significant oversight by the House Armed Services Committee during this time, but even those were undertaken only after the press raised the issues. Specifically – and this is true in both the House and the Senate Armed Services Committees – that they have examined issues relating to sufficient body armor, inadequate armor for military vehicles such as Humvees.

However, it is questionable that the committees would have pursued these matters as vigorously absent dramatic stories in the press about military deaths caused by inadequate equipment. Sorely lacking by the Armed Services Committees has been a real examination into our long range strategic plans for the military, particularly on the question of how we deal effectively with future challenges to our country with the amount of troops committed right now to both Iraq and Afghanistan. And since I prepared these remarks, we might also add to that the role of the National Guard and the availability of the National Guard to – in times of domestic emergency such as we have seen with hurricane Katrina.

The last chairman of the House Armed Services Committee to take a long-range view was Les Aspin, who later became Secretary of Defense under President Clinton. Unfortunately, when the Republicans took over Congress, they eliminated the Investigations Subcommittee of Armed Services, which had engaged in significant oversight. Additionally, the House Appropriations Committee has engaged in scant oversight in recent years, even though they have played an even more significant role in recent times due to earmarking of projects.

Somehow there needs to be a balance returned to the oversight process. It should not go to the extremes used by Republicans against Bill Clinton, but it should also not be as passive as the Republican approach to the Bush administration. There are legitimate questions for Congress to raise no matter which party occupies the White House. Should Democrats recapture the White House and one or both houses of Congress in 2008 – not an unreasonable proposition – Democrats should return Congress to its legitimate role of oversight of the executive branch. A Democratic president should not get the kind of pass from the Democratic Congress that Bush has received from a Republican Congress. And I have a feeling, by the way, that have my friend John Dingell is chairman of the committee again in a Democratic Congress that even a Democratic president will not go unnoticed.

The role of Congress in making sure that the government really functions is too important to relegate solely to a partisan approach. It's not generally as much fun as some of the other things that Congress does, but no one should forget that Harry Truman rose to national prominence in World War II by doing effective oversight of the war effort. As chairman of the Senate War Investigating Committee, he checked into waste and corruption and save perhaps as much as \$15 billion. Without that forum, he perhaps never would have become vice president or president. History could repeat itself. Even it doesn't, Congress should do its job for the good of the country.

So what are the types of long term oversight that Congress should be doing to establish priorities for the country? I am going to list just a few based upon my years in Congress, and I am sure Mickey would have some others to put on the list. One, how about solutions for the mushrooming cost of healthcare and the steadily increasing numbers of Americans who are uninsured. We now have a situation where the bonds of major U.S. car companies are classified as junk with the cost of healthcare for current employees and retirees being a major reason. The Clinton administration made a run at this and failed, as we all know. Isn't it about time for Congress to get in to the act in a meaningful way? Second, how about some real solutions for energy conservation to help reduce our reliance on imported oil; something made even more important due to the reason crisis brought about by hurricane Katrina.

The recently passed energy bill provided generous subsidies for our energy producers, but did little to promote real conservation. Congress should carefully examine the role of auto efficiency standards – fuel efficiency standards. We currently have an unholy alliance between management and labor at the major U.S. car companies to keep Congress from passing tough fuel efficiency standards because of the short-term effect on the bottom line. And I will tell you than on my years in Congress, not only did management lobby me against fuel efficiency standards, the members of the UAW lobbied me against tougher fuel efficiency standards and I had a General Motors assembly plant in my district in Arlington, Texas, so they did have something to say to me.

How about a real examination of the future of pension plans in this country and the ways this people can provide for there retirement in addition to Social Security? And what should really be done to keep Social Security solvent over the long term? And what about the future of nursing home care in this country as the public ages dramatically and what can be done to encourage more people to purchase nursing home insurance? I held a hearing on this subject 20 years ago when I was chairman of the health task force of the Budget Committee and virtually no one paid attention.

And what about the future of filling the manpower needs of our military as we struggle to meet quotas for an all-volunteer force? Do we need to consider a return to the draft or some form of national service commitment on the part of all our youth? It's time for Congress to spend more time doing the heavy lifting to set real long-term priorities

for our nation and to make the executive branch responsive to significant, legitimate questions from the legislative branch to make us all a better country.

Thank you very much.

(Applause.)

MR. LILLY: Mickey Edwards served in the House of Representative for 16 years. During that time, he was a member of the Appropriations Committee. He was the ranking Republican on the Foreign Operations Subcommittee and also, I think, on the Military Construction Subcommittee. He served as a chairman of the House Republican Policy Committee, which is the fourth ranking leadership position in the Republican Party, and he was the national chairman of the American Conservative Union and he was a founding trustee of the Heritage Foundation. He has been every bit as much of an insider as Mr. Frost and we are very happy to having him here today. He is currently the director of the Aspen Institute Rodel Fellowship program, and he is a lecturer at Princeton's Woodrow Wilson School.

Thank you.

(Applause.)

MICKEY EDWARDS: Fox, huh? Marty, I didn't know you had joined my old student, Bill O'Reilly. I mean –

MR. FROST: He hasn't had me on his show yet. (Laughs.)

MR. EDWARDS: I have been in a lot of situations in my life that I found intimidating, now I am being asked to talk about Congress in front of the audience that includes David Broder, Nelson Polsby, Norm Einstein, and Jim Thurber, and Walter Olezak, you know, and so – you know, that's intimidating. But I will tell you the most intimidating part is when I was in the Republican leadership: none of us knew what to do until we asked Billy Pitts, and Billy Pitts is sitting here, so, you know, that's kind of scary, too. (Laughter.)

Well, I guess one of the points that is coming out of the discussion today, including the first panel, is that Bill Clinton was right when he said that the White House is not irrelevant. It may not be quite the way that he intended it, but I think it's turning out to be the case.

A very basic question that we are considering today has been whether or not we have entered a new era of presidential dominance. Well, in my view the real question is not whether executive dominance today is greater than it has been at any particular time in the past, but whether, (a), the executive does in fact dominate the political process, (b), if so whether executive preeminence is inconsistent with the separation of powers as prescribed in the constitution, and (c), if so whether that's a bad thing. So that there is no

confusion at all as to my own starting point, let me begin by stating that the constitution does not, quote, envision either a separation of powers or a constrained presidency. It mandates a separation and it mandates constraints and it does so deliberately for very clear and specific reasons. And that unless the constitution is amended not by custom or acquiescence, but by the following very specific and detailed procedures, those constraints on the presidency and that mandated separation of authority are not merely suggestions for good governance like traffic laws in Massachusetts are suggestions – (laughter) – but are in fact the law.

And I think it's important to make that perspective clear from the outset because it is my firm belief that if the Congress has failed to adequately perform the functions that are assigned to it in Article I of the constitution, the Congress has not merely surrendered its rights, as that reticence is generally described, but is in fact guilty of failing to perform its constitutional duties. If this is what's happening, and I will look in a minute to see whether that is what's happening, but if this is what's happening in my opinion the fault is not, as is so often alleged, with the president because it is in the nature of people with power to seek more power, whether it is the first president Bush alleging repeatedly that he did not need the approval of the Congress to go to war in the Persian Gulf, or Thomas Jefferson deciding to purchase Louisiana, or Harry Truman attempting to nationalize the steel industry. That's the way presidents and all people with power act. To decry presidential attempts at executive aggrandizement is to decry human nature.

The guilty party here, if there is presidential preeminence, is not the president but the Congress, which is guilty not of failing to defend its rights, but of non-performance of its duties. Now then, is that what is in fact happening? Well, it is my view – and I hate to say it because it is a Republican Congress – it is my view that it is what's happening; that the Congress is failing to act as a Congress.

So let's look at the current state of play in Washington. The United States is at war. It is an unpopular war, but that is totally beside the point because sometimes the nation's leaders believe that they require to do things in the national interest that may not be popular. And it is true that there was in fact a debate and votes cast in the Congress, sometimes people voted on both sides simultaneously – I won't refer to anybody in particular. And there were votes cast as to whether not to go to war in Iraq, but the debates were cursory. The information relied on was on the testimony offered by and the evidence provided by the executive.

Jim Thurber and I were talking last night about the fact that after the debate about whether to go into the First Gulf War, which was one of the proudest moments I ever had when I served in Congress – it was such a superb debate that the public approval of the Congress rose significantly. I doubt if there was any great rise in public approval of the Congress as a result of the debate that took place over whether or not to go into Iraq.

There has been much discussion of Peter Irons new book, *War Powers: How the Imperial Presidency Hijacked the Constitution*, in which Professor Irons lists a long history of American military engagement undertaken without the specific authorization of

the Congress. I might say parenthetically that the fact that it has happened a lot and that there had been previous Congresses that have acquiesced to the president does not make it a fulfillment of constitutional obligations.

So without getting back into the question of whether the president hijacked the constitution or the Congress ignored it and its obligations under the constitution, the fact is that there is no more serious undertaking of the government than the decision as to whether or not American men and women should be sent to face death in the country's name and for the country's purposes. This is a power which historically rested with the monarch and which our constitution deliberately took from the president and put in the hands of the people themselves through their representatives. To pass the buck on decisions about going to war is to abdicate the most solemn obligation of a public official. But that is not the extent of the ways in which the Congress today has become not a coequal branch of government, but a subsidiary branch.

Consider the issues on the political agenda or enacted into legislation: an energy bill little changed from the one presented to it by the White House despite the indications – obvious indications, I think, of a need for a more comprehensive and urgent approach both to energy production and conservation; a proposed overhaul of Social Security financing which was something that was only marginally on the agenda before it was proposed by the White House; new rules for the treatment of prisoners and detainees in time of war; a so-called Patriot Act which plays at the margins with American liberties at the request of the White House; and a presidency that is unwilling to divulge information and a majority in Congress unwilling to insist on information whether about John Roberts or John Bolton or almost anything else.

What has happened is not, in fact, a tale about presidential-congressional relations, but about the partisan polarization of American politics as members of Congress tend to see themselves less as members of a separate and equal institution with its own oath of office and obligations and more as either a part of the president's team or a part of the opposition to the president. Professor Tobias asked during the questions about whether what we needed was a return to divided government. The answer is not divided government, it doesn't make any difference whether its divided government or unitary government; its whether or not it is divided powers, divided branches.

Marty referred to Harry Truman, I was going to refer to Harry Truman and I will add one thing that Marty didn't point out, and that is that when Harry Truman undertook his in-depth investigation of the War Department, it was as a Democratic senator sitting in a Democratically controlled Congress with a Democratic president investigating a War Department controlled by and appointed by a Democratic president. Can you imagine Bill Frist demanding an investigation of the Defense Department under Donald Rumsfeld? I'm sorry, not Senator Frist; it's Dr. Frist. (Laughter.)

Now, consider for a moment the nomination of Judge John Roberts for a seat on the Supreme Court and the nominations of other presidential selections for other federal courts. From the outset, the majority leader of the United States Senate, the man whose

obligation it is to oversee the scrutiny the men and women nominated to serve in the most powerful courts in America, announced that it was his intention to see to it that the president's nominees were confirmed. He hadn't even investigated any of them yet. It was his intention to see that they were confirmed. And if my memory is right, helped a little bit by a discussion I had yesterday with a friend, something like 40 Republican members of United States Senate announced their support for John Roberts on or very near the day he was nominated before most of them had a chance to know anything about him other than the fact that he was the man that the president of their party wanted.

Whether one believes John Roberts should be confirmed or not, no senator – Republican or Democrat, supporter or opponent – should acquiesce in the refusal of the president to provide the information requested about a man nominated for the highest court in the United States. This is not about Republicans or Democrats; it's about the importance of the position and the constitutional obligations of every member of the Senate. Boyden Gray was right when he pointed out earlier in the first panel that there is a long tradition of executives withholding information about how they are advised by people on their staffs, but senators then have a right to know and to wonder whether they know all they need to know before they vote to put a person on the Supreme Court. Maybe the right answer is if the president is determined to keep secret the information or the opinions they are given by members of their staff, they should never appoint members of their staffs of the Supreme Court because senators have a right know about the people they are being asked to pass judgment on.

I might – again, as another aside, yesterday I was having a conversation with an old friend of mine who was, like me, one of the prime movers in the founding of the modern conservative political movement in this country and he said to me, “When did we become the people who were in favor of centralized authority, government secrecy? You know, when was that the conservative point of view?” And that idea of what it is that people on my side stand for got lost as we became more concerned with keeping our party in power.

So I will close with this: I said in the beginning that the question is not only whether there is presidential preeminence, but if so whether that's a bad thing. And I will state without hesitation that it is in fact a terrible thing regardless of who the president is because it is the single most important defining quality of a representative or mediated democracy that the people through their representatives indirectly, but powerfully determine the laws they live under, the wars they fight, and the very shape of the society they live in.

With all due respect to the president, and as a Republican I frankly more often agree with the president than I do with his opponents, the centralization of power in the White House is antithetical to the very nature of the system and government we live under and the failure of the Congress to insist up on and to enforce by any means necessary its authority is a serious threat to the continued functioning of the very system that has kept America free for more than two centuries. So referring back to the fact that

the majority leader of the Senate is a surgeon, what is needed is serious surgery: the Congress needs a backbone. Thank you.

(Applause.)

MR. LILLY: We have some time for the questions. We have a microphone.

Q: This question is for Martin Frost. I'm also from Texas and I happened to work with the DCCC on your campaign and Edwards' campaign, and along with checks and balances we often forget the judiciary and their failure to act on the obvious political reasons for the Texas redistricting that resulted in five Democrats losing their congressional seats and I was just wondering what your thoughts are on the failures of the judiciary branch to reform or to overturn the obvious political maneuvers?

MR. FROST: Well, that requires a long answer and I will try and give a short one. I am personally involved in this, of course, so let me try and separate myself with the best I can. There is a case pending right now out of Texas that will – the Supreme Court will make a judgment on, at least an initial judgment, in October or November; that is, whether to take the case or not. This involves the entire question of political gerrymandering and whether that is something that the courts really want to get into. Up until this time, courts have been reluctant to be involved in the issue of the way political lines are drawn other than on the issue of whether they are drawn for racial reasons – racial gerrymandering – or whether they are drawn to discriminate against racial minorities or language minorities. They have not been involved in the issue of political gerrymandering.

There was a Supreme Court – there was a case out of Pennsylvania in the last term of the court in which the court divided 4-4-1, with Justice Kennedy being the swing vote. Four supreme court judges did not want to have anything to do with political gerrymandering, four said they would like to address the issue of political gerrymandering, and Justice Kennedy said I am not sure and he decided with the four who did not want to be involved in the political gerrymandering in the Pennsylvania case, and it did not give any relief to the people – the Democrats suing in Pennsylvania.

However, there has been a case, which is an extreme example of political gerrymandering out of my home state. The Supreme Court – there had been an earlier lower court decision in that case in which the lower court had refused to invalidate the political gerrymandering. The Supreme Court sent that case back to the lower court for further review in light of its opinion in the Pennsylvania case, which was not particularly helpful because it was all over the ballpark. The lower court then reiterated its view that it didn't want to get involved in the issue of political gerrymandering. That is back before the Supreme Court right now. The Supreme Court will decide sometime in October, perhaps November, on whether to grant cert and to take the Texas case and to finally speak with some clarity on the issue of political gerrymandering.

I don't know what they are going to do. I clerked for a federal judge many, many years ago before I was in Congress. I don't want to try and second guess the federal judiciary. I think the federal court's entering into the issue of the political reasons for drawing boundaries is a very difficult area for them and my personal feelings – although I'd certainly like to see them do that in the case of Texas, but I don't know that they will and you can make a very strong case for federal courts not being involved in the issue of political gerrymandering. There were some other issues in that case I wish they had addressed because I think there actually were violations of the Voting Rights Act in the Texas case, but what ever reason they've chosen not to address those.

So I will be surprised if the federal courts wade knee – hip deep into political gerrymandering, but it is – it could happen and will know in couple of months. And again, I have some personal involvements in that, so it's a little bit hard for me to separate myself out from the theory on this case.

MR. LILLY: Back here, go ahead.

Q: (Off mike) with the Congressional Research Service (off mike). I don't have a question. I just want to make a comment on something Mr. Edwards said in confirmation of something that Boyden Gray said at the panel, which is that there is a long tradition of withholding documents from the Congress in a nomination process. The long tradition, however, is a one of claims of privilege and not an actual success in all – at all times. When Associate Justice Rehnquist was nominated for the Supreme Court along with Scalia in 1986, the president claimed privilege with regard to documents in Mr. Rehnquist's past as an OLC head, and claimed executive privilege and then had to withdraw it in order to ensure that the nomination of both Scalia and Rehnquist went through. When Judge Bork was nominated for the Supreme Court, there was also a claim of privilege by him and then a revelation of documents during his tenure.

So what the tradition is is a claim and not success, and one of the most interesting things that is not known is that one of the foundation documents for this claim is an opinion by Attorney General Robert Jackson in 1941, which made a broad claim which is recited again and again by the Justice Department with respect to access to Justice Department documents. What isn't cited is the last paragraph of his opinion which says that on the other hand in the nomination process we have an obligation to turn over documents to Senate confirmation committees that we have. And, indeed, that last paragraph also links that obligation to the similar obligation under the impeachment clause and the power of the House to get information with regard to the president even in the face of claims of privilege.

MR. EDWARDS: Can I make one observation on all this? You know, I have read with interest, the various *Washington Post* and *New York Times* stories and other stories quoting from all the documents that Judge Roberts authored as a young man while working at the White House, and if there is one moral in this story for future political aspirants who may work in the White House or some other government agency is give

more oral advice and put less in writing. (Laughter.) He seemed to go out of his way to write memos, even when they weren't required.

MR. LILLY: Over here.

Q: Yeah, I am Roger Davidson, a congressional scholar, and I am going also back to C. Boyden Gray's remarks. He said he wasn't particularly worried about alleged excesses of war powers because that's a cyclical matter that will presumably take care of itself if the war is ever over or if public support for it evaporates and so on. I wonder what you think about this. Is the war powers excesses – alleged – are they a cyclical matter that will be taken care of sometime in the future or not?

MR. EDWARDS: Well, Boyden also, as was just discussed in talking about withholding of information, talked about the accumulated precedent and – is the mike not working? Okay. Boyden Gray also talked about the traditions of accumulated precedents of withholding of information. In fact, precedent does tend to accumulate. It tends to have an effect. And if the abusive power is unchallenged and unchecked, some future president will then cite it to justify a later case.

Now, I think you can't just say a little bit of abuse to the constitution is okay because the time will pass. It is the obligation of the Congress, I think, each time it sees abuse to step in and correct it before it gets out of hand. I will say in reference to the work powers act, by the way, I agree with some of the comments that were made earlier. A terrible, terrible piece of legislation that did restrict the rights and powers of the president, but even more restricted the rights and powers of the Congress and repealing the War Powers Act might be a very healthy thing to do.

MR. FROST: Well, I didn't hear the earlier presentation, but I will disagree with Mickey on this. Having live through a number of these votes, and Mickey wasn't speaking about me, of course, because I have voted both to give President Bush 41 the authority to use troops and to give President Bush 43 the authority to use troops, but I think the existence to the War Powers Act, though of questionable constitutionality, is of real value to the country because of 26 years I was in Congress, you had a gentleman's agreement by the executive branch and the legislative branch that except in an emergency situation where everyone clearly agreed you had to immediately commit troops, that the executive would seek the consent to the legislative branch at the same time saying that, well, we are not bound by this; you know, we have the power to commit troops, but still acquiescing and having a vote in the Congress. And I believe having that vote in Congress before we committed troops is very, very important to the country.

Now, I am disappointed that we have got incomplete and inaccurate information presented to the Congress before this last vote and I would hope if I were still in the Congress and if we had another vote anytime soon, I would be – would hold the administration to a much higher standard in terms – and ask much tougher questions than my colleagues did prior to the vote, but I think having a vote by the representatives of the people before we commit troops to battle is a healthy thing for the United States and I

don't think any president – I would be surprised – let me put it that way, I would be surprised if any future president decides to go to federal court and have the War Powers Act struck down rather than agreeing that there should be a vote in the Congress when there is enough lead time for the Congress to express itself on committing troops.

Q: Thank you, gentlemen. Brian Gibb from the Washington Campus. My question is, if the president's poll number continue to erode between now and the midterm elections, do you think we will see some examples of congressional oversight in Iraq or in energy policy or do you think that the party discipline will hold?

MR. FROST: I think you are going to see congressional flight. I don't think you are going to see congressional oversight. I think that Republicans – and I never accuse the Republicans of being dumb. I always assume that my opposition is smart and I think that there will be many, many Republicans distancing themselves from this president. I don't think there is going to be a mad dash for oversight. I think there will be a lot of independent views being expressed by Republican candidates for the House and the Senate, perhaps even for governor, perhaps even for county commissioner if this thing is bad enough – if the numbers stay where they are.

I do think that – and you didn't ask this question, but I will go and answer a question that wasn't asked – I do think that my party is going to pick up seats, perhaps a significant number of seats in '06 in both House and the Senate unless we screw it up, which we are capable of doing. (Laughter.) But absent screwing it up, we ought to pick up seats in this environment and – but Republicans are very effective in the way they campaign. They are very smart. They have very good advisors and you are going to see a lot of very independent Republicans running for office, I believe, in '06.

MR. EDWARDS: Let me just – I wonder where a modern John F. Kennedy would find the examples if he wanted to write a new version of *Profiles in Courage*. I think Marty is right that there will be people fleeing from support of the war. I do want to say I don't think it's adequate, in addressing the issue we are looking at here today, to have positions determined solely by poll numbers or what one thinks is going to be the effect in the election. There is an obligation to do what the constitution mandates.

One thing – you know, what Marty said about the war powers: if something is of questionable constitutionality that alone is reason to not be supportive of it and it seems to me that I would hope that oversight would be taken or independent views expressed not because of what it looks like in the upcoming election, but because that's Congress' mandated responsibility under the constitution.

MR. FROST: Well, Mickey, I hope you are right but I wouldn't – I wouldn't count on that in this situation.

MR. LILLY: Over here.

Q: I had a question about the role of media in sort of contributing to the dominance of the executive branch because it seems like at least one major newspaper was – well, had reports in it, sort of fueling the whole rationale for going to war in Iraq and that led to – and then those stories were recanted later on. So do you think because the media's credibility has sort of come under question because of its support for the run-up to the war in Iraq, do you think that has also contributed to the dominance of the executive branch?

MR. FROST: Let me start, if I may, on this. I started it off many years ago as a reporter before I got involved in politics. I have a journalism degree from the University of Missouri, one of the finest journalism schools in the country. I worked as a newspaper and magazine reporter and briefly as a television reporter before I got involved in politics. When you talk about the media today, and I say this with great respect for my friend Dave Broder and other print reporters in the room, the media today is television. That's where people get their news by and large. I read newspapers. I read the *Washington Post*, the *New York Times* and other papers every day, but the vast majority of the people in this country get their news exclusively or heavily from television.

Television is an executive branch media. Congress doesn't photograph very well. I mean, it's interesting to have us on C-SPAN and to watch us in session, but it's pretty dull, pretty boring most of the time. The executive branch has the ability to create photo ops in a way that by and large Congress does not. There are a few people in the Congress who are pretty good at that. The executive branch, no matter if it's Clinton or whether it's Bush or whoever it is, has a distinct advantage in communicating in this country because of television.

Now, that wasn't really your question. Your question was has the media suffered – has the media's credibility suffered because of what went on? I sat down at a dinner meeting with Bob Woodward about a year ago with a group of members of Congress, in which he said in his view, and he included himself in this, that both the media and Congress were responsible for the country acting without enough information prior to committing our troops in Iraq; that the media was not aggressive enough and the members of Congress were not aggressive enough, and there is plenty of blame to go around and that he was urging those of us in the Congress to be much more aggressive on these type issues, but as the subtext that the media should not be quiet as – should not just take what the administration gives them without questioning more.

There is a role of still for an aggressive media in this country. We're fortunate that we basically have a free media, which is critical to the functioning of the democracy. But as much as I love newspapers, the game is television and television has got to accept that responsibility of doing a more critical job. Whether they will or not, I don't know because they are – they are in it to make a lot of money and they do make a lot of money and whether they will be as critical as some newspapers are from time to time is very problematical and maybe newspapers can drive television to do a better job. I don't know the answer to that.

MR. EDWARDS: Interestingly enough my degree is also in journalism and I'm a former reporter so one of the things that I would add to that is that it is very, very difficult for even the best reporters to adequately cover the Congress: how the Congress operates, which takes place over a drawn out period, you know, legislation moving through the subcommittee and committee process in both houses and it's very difficult. And there are so many people, 535 members in the two houses, and I don't fault the media so much, although I agree with Marty that the problem is far more with television and radio than it is with the print media.

But that's a real difficulty we have. It is – in the modern age with all of the advantages of mass media, television, and so – the accrued advantage to the White House, to the president in being able to get a message out to the public is very, very hard for the Congress to compete with and one very – I mentioned Dave Broder when I started as one of the people intimidating; one of the things that has made Dave Broder such a well known name and so highly respected is that he better than almost any other reporter does a good job of covering the Congress as well, and what's happening in the Congress and the significance of that, and that's something that's largely missing from the media today.

MR. FROST: And I want to add one thing because Norman Einstein is sitting right in front of me and we will hear from him later. Norm probably does a better job of understanding and writing about what Congress does than almost any reporter in this country and yet not a lot of people see your stuff, Norm. I mean, I read everything – I try and read everything that you put out, but you don't have the – your reach is not anywhere near – and people like you, your reach is not anywhere near what someone has who is on television every day.

MR. EDWARDS: That's right.

MR. LILLY: Back here.

Q: As much of the analysis that – at least what I heard today is kind of centered on a little bit of inside-the-beltway analysis, and I have heard that the Congress is not doing its job, media is not doing its job, and we got it and an ascendant presidency. And what I haven't heard is what external forces are there at play that may be transforming the alignment of power that dictates how our government functions. Some might say it's globalization, which takes away some of our control; some might say it's the demise of the labor unions, that they are still focused on wages, hours, working conditions when really the battlefield is international, it's global. Maybe the campaign finance system, which allows for a narrowing of the agenda, the interest that are represented by our government; namely, the growing influence of corporate America's agenda compared to say the agenda of the '60s. So the bottom line is, are there external forces that play that may be driving the transformation?

MR. EDWARDS: Well, can I name one? The quality of public education. The fact that most of our young people are able to finish high school or the universities

without having any real understanding of how our system works and who believe that the president is the leader of the country as opposed to the head of one of the three separate and equal branches, that's been a major problem.

In fact, if I can use a personal note, before I move to Princeton, I taught for 11 years at Harvard at the Kennedy School, which I love. I think it is a terrific university, and, Marty, you are going to love it there. It's first rate, but the focus – if you look at the curriculum and you look at the faculty, the focus is almost exclusively on the executive branch. You know, I had to actually fight while I was on the faculty there to try to get any courses or any kind of attention paid to the legislative branch of government. So whether it's starting with the civics classes in junior high school or continuing onward, there is in the academy an undue attention to the executive branch of government and insufficient attention to the role of the legislative branch.

MR. FROST: I have a little different take on this. I'm not going to contradict anything that Mickey said, but I think one of the major contributors was that absolutely terrible piece of legislation that we passed called "campaign finance reform" – McCain-Feingold – which neutered the political parties in this country and emphasized the role of 527s and now they are – but some of the 527s and the independent groups are the dominant players in political dialogue in this country largely because of that horrible piece of legislation that Congress passed because we didn't want to be seen as anti-reform.

MR. EDWARDS: I agree with that totally. McCain-Feingold was a disaster.

MR. LILLY: Over here.

Q: Al Millikan, Washington Independent Writers. With the multiple media opportunities congresspeople do have, including C-SPAN, cable TV, and talk radio as opposed to past generations of Congress, what effect – positive and/or negative – do you think this is having on Congress in meeting its constitutional obligations?

MR. FROST: Well, C-SPAN when on the air on January 3rd, 1979. That was the day that I was sworn into office, so my entire service occurred when C-SPAN was operational and members had the opportunity to be seen on television. I covered Congress for *Congressional Quarterly* prior – in the '60s when there was no C-SPAN and when there were no cable television networks, so I've seen it both ways.

I don't blame C-SPAN or the existence of cable television for the role of Congress and for the diminution of Congress' role. Politicians are pretty smart, politicians of both parties, and we will play the hand that is dealt to us and if the hand is we're on television more now, we'll figure out how to take advantage of that.

It's really a – it goes much deeper than that. It is the unwillingness to devote the time, as I indicated in my remarks and Mickey has talked about too, the unwillingness to make this into a strong branch, and while you can try and blame it on the existence of television, I don't believe that that's justified. I do think, as I said earlier, that television

is an executive branch-friendly medium, but we're smart; we can figure out how to make it work for us. We haven't done a very good job of that and we haven't done the fundamental work of Congress to exert our prerogatives.

MR. LILLY: Back here.

Q: I was wondering what you thought about the '94 rule change that allowed committee chairmanships and membership of the rules committee to be selected by the leadership of the party in that Congress and how that has had an effect in sort of stifling dissent within the majority party.

MR. FROST: That didn't change that's the way it was when I came in the Congress in 1979. Leadership selected the members of the rules committee, certainly on the Democratic side and I assume on the Republican side, too. But the speaker appointed – when I was named to the Rules Committee in 1979, I was appointed by Tip O'Neill. I was not chosen by the Democratic Caucus.

The changes were made in '94 were somewhat different than that, and Mickey can talk about those from the Republican side. The practice – and I don't know that the Republicans actually put these under their rules because I don't remember, but the practice that Gingrich followed of passing over the most senior member and reaching deep down into a committee to name someone as a chairman was a good idea, quite frankly.

But we have a modified version of that on the Democratic side in that we changed our rules in '74 when the Watergate class came in saying that the most senior member was no longer automatically the chair, but there was a yes/no secret ballot on whether that person would be chair and if the person was voted down on the yes/no ballot then the caucus could consider other people for chairmanships. The Republicans under Gingrich took that much further and said seniority doesn't matter at all in terms of who's selected chairman if the speaker wants to have someone who is not senior. But they did some other changes – I don't want to have a discussion of rules changes – they did some other things that I didn't particularly care for, but the fact that that the leadership is not required to make the most senior person the chairman or that the most senior person is not even presumptively the chair is not a bad idea, quite frankly.

MR. EDWARDS: I think there is an advantage to members feeling that they can buck the leadership and represent their constituencies and their own deepest beliefs without fear of losing a committee position. I think that would be beneficial, but I also agree with Marty that sometimes you have people who by virtue of seniority, having been elected over and over again, arrive at the topmost senior position on a committee and are really not best suited to manage the affairs of that committee. That's happened in both parties. And the tradition of reaching down past the senior member has existed in both parties. Les Aspen, who was referred to earlier, became the chairman of –

MR. FROST: But there was a yes/no secret ballot on Mel Price, and he had – the presumptive senior member had to lose – the senior member had to lose a yes/no ballot before we went to Les.

MR. EDWARDS: But we also had in 1978 on the Energy Subcommittee of the Interior Committee in the House – the ranking member, senior member was Phil Ruppe from Michigan and Bob Bauman from Maryland challenged him and beat him, so these things have happened over a period of time and sometimes you do have in your most senior positions people who for a variety of reasons – their personalities or whatever – are not best suited to be chair of a committee or ranking member. But you pay something to get the more dynamic or more capable person into the top position: you lose something because that person then becoming beholden to the leadership and a little more fearful of bucking the leadership for fear of losing that – that committee chairmanship, so it's a trade-off.

MR. FROST: Yeah, but again I would like to answer a question that wasn't asked, if I may. Scott, if you will permit me.

MR. LILLY: Sure.

MR. FROST: I believe in a strong speakership and I think a strong speakership is the – it serves the Congress in terms of combating a strong executive. I disagree with the way Gingrich approached the strong speakership because what he did was to turn us into a parliamentary system rather than the traditional congressional system in which the majority gets all of its votes for whatever it wants on it's own side and never tries to take into account the minority, never tries to put together a coalition the way Lyndon Johnson put together the coalition to pass the civil rights legislation in the mid '60s.

Gingrich's view was that – which has been now carried forward by DeLay in the name of Hastert, is that you get all of your votes on your own side of the aisle; you never do business with the minority. And the difficulty with that is that if you have a small working majority, as the Republicans currently do, it requires enormous arm twisting and enormous difficulty to get all the votes on your own side or virtually all the votes on your own side, as we saw with the Medicare prescription drug bill, as we've seen with other pieces of legislation.

So I believe – I think that giving the speaker the power to be to be a strong speaker, including the ability to name committee chairs and subcommittee chairs, subject to a vote of ratification of the entire caucus, is not a bad idea. But I think if the speaker takes that to the extreme of saying, "We will never do business with the minority and we will pass everything," as Hastert has said, we have to have a majority of the majority to pass anything and then enforce it. Once they have the majority, the majority is to impose discipline of the other members of the majority to come into line. This came up when we had the 9/11 report late in 2004 in which a – they had trouble getting a majority of the majority on their own side to pass the recommendations of the 9/11 Commission, so they put it off for a couple of months; just to bring it up for a vote, whereas if they had taken it

to the floor there clearly were enough Democrats to join with a number of Republicans to have passed the 9/11 Commission recommendations prior to the election, but they chose not to do that because of the way they approached governing the House.

Again, it was a question you didn't ask, but it is a question – but I think it is fundamental to the operation of the House.

MR. EDWARDS: I wonder if I could just suggest, it's helpful to focus on principles rather than party because the description you just gave of Newt sounded an awful lot like Jim Wright to me.

MR. FROST: Jim Wright was a strong speaker.

MR. EDWARDS: And you know, so – and the examples of the redistricting in Texas reminded me a lot of Phil Burton in California, and so it really hasn't been a matter of party or party, you know – I mean, these are things that both parties need to work on correcting, I think. There had been abuses of power for as long as I can remember by the leaders of both the parties and that's something to be addressed.

MR. FROST: But there is a place for – on issues of major national importance for bipartisanship and the current leaders in the House have not wanted to develop any bipartisanship and you can argue that other – that Democrats have done similar things, but I don't know how many of you have read the recent book by my friend, Nick Kotz on the civil rights – on passage of civil rights legislation. It's the study of the relationship between Lyndon Johnson and Martin Luther King, Jr. It's a wonderful book and it talks about how Johnson knew from the very beginning that he had to have Dirksen; that he had to have Dirksen in the Senate to break the filibuster and how he developed a bipartisan approach to pass monumental civil rights legislation. You don't have anyone like that either in the executive branch or in the congressional – in the legislative branch taking in those terms these days.

Q: Christine DeGregorio, American University. I find it very interesting in your use of the example of Congress passing the provisions or suggestions of the 9/11 Commission. It was very popular. There was a public expectation that Congress would pass all of the provisions as a whole and my reaction was, well, why should they? Why isn't there oversight of the each of things? Why isn't there committee referral and very in-depth further analysis by Congress? And I wonder what each of you think about that; whether you thought it was appropriate for Congress just to adopt all of those provisions as a whole.

MR. EDWARDS: I think there were things about the 9/11 Commission Report that required a little greater scrutiny. One of the things you want is for a president to have access to a variety of different views and interpretations and centralizing what the president gets. It could be potentially dangerous depending on how it's done. The problem is – and here I will say the media contributes to the problem as well as the public, sometimes it's more on television than in print. You know, but it's sort of the

attitude of not understanding the deliberative process of making laws that affect everybody in the country for a long time and there – you know, so there tends to be, you know, “Well, the Commission has its report and it’s been three days and we still haven’t solved it,” you know, I mean, so it is a problem.

I think the Congress on every major issue should not be stampeded into acting before that has been adequate time for a thorough investigation; complete hearings, which means from people both for and against – as many expertise you can get. You know, the United States has been around for close to 300 years. We’re going to around. We don’t need to pass anything by noon tomorrow that’s going to have a really serious, detrimental effect on the country if we made a mistake. And there is not enough appreciation of the fact that the legislative process requires, time, thoughtfulness, reflection, deliberation, and – yeah, so sometimes I think, like with the Commission Report and other things, sometimes there is too much pressure. You know, we don’t care what you do. It’s like the League of Women Voters used to say, “We don’t care how you vote, just vote.” Well, it matters who you vote for, so it’s not – it shouldn’t be a matter of we don’t care why you do, just do something. That’s a serious mistake.

MR. FROST: The 9/11 Commission recommendations was just one example of a number of things that were presented to the Congress with very little study. That has been somewhat the approach in recent years particularly, again, and I don’t want to be overly bipartisan because I would be absolutely as critical if Democrats had functioned in this way, but what you’ve had in recent years is the authorizing committees have basically been cut out of the loop and that often legislation is created in the speaker’s office and is brought to the Rules Committee that I served on and is taken to the floor without any hearings or any deliberation in the authorizing committees.

The 9/11 Commission was slightly different in that it had been aired quite a bit by that time. By the point we were going to vote, there had been quite a bit of discussion of what was in the 9/11 Commission Report and what you had was you had one committee chair, Duncan Hunter, the chairman of the Armed Services Committee, who was adamantly opposed to one section in the 9/11 Commission Report and he was able to prevail on the Republican leadership not to bring that up for a vote because of his opposition to that section – to one section.

I think by the time that particular – we were at that juncture, there had been ample discussion on what was in the 9/11 Commission Report, but they chose, because they were not willing to seek votes on the Democratic side, to offset Duncan Hunter’s opposition to one section of the bill. They were not willing to bring it the floor where they clearly had the votes on the Democratic side added to a major – I believe what was even a majority of Republicans. I don’t think Duncan Hunter would have carried a majority in his own caucus against the 9/11 Report, but they refused to seek a bipartisan solution to that particular problem.

But there have been a number of pieces of legislation in recent years that have been – that have circumvented the normal committee process and have come straight to

the Rules Committee and then straight to the floor and that's a mistake for the country because you do need a good bit of deliberation, even if it's ultimately going to pass. Even if you have a Republican Congress and a Republican president and they are going to pass the legislation, there ought to be the opportunity for the original committees to work their will and perhaps make some changes.

MR. LILLY: Back here.

Q: I'm Melanie Beller with the Russ Reid Company. I was interested – I used to be a staff director on an oversight subcommittee and I remember I used to have to justify my existence to my boss by making sure that at least once month we held hearing on certain agencies. And I was interested in your – the panel's opinion: do you think that part of sort of the lack of the other side anymore, even within the parties, is because now at least in the House a lot of the members who are in the leadership kind of got there and with the 1994 elections being critical of Congress and, you know, sort of a lack of respect for the institution and that maybe that is part of the problem; that you don't have sort of the old committee chairmen who strongly believe in the legislative branch.

MR. FROST: Well, let me start on that, and I mentioned briefly in our remarks that when the Republicans took control in 1994 that one of the things they did was to reduce the number of subcommittees on full committees. The effect of that at the Armed Services Committee was to eliminate the Investigations Subcommittee that did oversight. That was a very unfortunate decision and my wife is a career military officer. My wife was a major general in the United States Army. She is retired now. And she was on Colin Powell's staff when he was the chairman of the Joint Chiefs and she tells me that when that Investigations Subcommittee of Armed Services was in existence they used to have to send stuff up to the Hill all of the time and they had a lot of questions they had to answer. I wish that were still the case.

MR. EDWARDS: Well, I've already said I think the oversight function is extremely important. The problem is that it's not glamorous for most part. Now, if you want to cover something really seriously wrong, you can get TV, you can get coverage, but most of the work of the oversight process is not very glamorous the members like to – you know, in the House and in the Senate, more so in the Senate, members are spread out very thin. They are on several committees in most instances and it's hard to get them to focus on the oversight function, but I think it's extremely important. I am glad that – I assume that you justified your role on the payroll by having those hearings, and I wish more of them were being done.

MR. FROST: And I was serious in what I have said in the beginning: I would hope that in addition to several weeks of photo ops about providing disaster relief for the people of Louisiana and Mississippi and Alabama, which are all important and Congress is going to spend a great deal of time when it comes back into session rushing to pass disaster relief for those areas, and no one should minimize what happened down there. I would hope that Congress would at least take a few minutes to ask some very serious questions about the future of the National Guard and the fact that so many of our National

Guard are currently deployed in Iraq and were not available to provide disaster relief – assistance in perhaps the greatest natural disaster this country has ever faced.

MR. LILLY: I want to thank our panel. We have to start the next panel at promptly 1:20 and so that gives everybody a chance for a short break and to clear the tables, but I think they did a terrific job and I want to –

(Applause.)

(END)