

INTELLIGENCE OVERSIGHT:
NATIONAL SECURITY HANGING IN THE BALANCE OF
LEGISLATIVE INCENTIVES AND PUBLIC OPINION

by
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ABSTRACT

Due to the classified nature of U.S. national security programs, Congress' constitutional responsibility to conduct oversight of the Intelligence Community (IC) is of prime importance. In 2013, Edward Snowden leaked thousands of classified documents regarding the National Security Administration's programs to media outlets and governments worldwide. Snowden's actions, coupled with growing concerns regarding citizen's privacy rights and U.S. national security programs, brought oversight of the IC once again to the forefront of the policy debate. However, the questionable success of America's intelligence oversight process is not a new issue.

Key players in the policy debate, including scholars, leaders in the IC, and members of Congress concur that the current intelligence oversight system is dysfunctional and in need of reform. This thesis reviews the historical foundation for the intelligence committees and examines the policy process since 2001 using historical, qualitative and quantitative data to prove congressional oversight increased and shifted in focus. In addition, this work affirms that the relationship between the Intelligence agencies and Capitol Hill remains in disarray due to: overlapping committee jurisdiction, the lack of legislative incentives, and expertise at the committee level. Lastly, this work calls for members the policy debate to focus on achieving a comprehensive solution that will ensure the legitimacy of the IC and ultimately, the preservation of America's national security.

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CHAPTER 1

Introduction

“Quite as important as legislation is vigilant oversight of administration. It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. The informing function of Congress should be preferred even to its legislative function.”¹

-Woodrow Wilson

The American government rests on the foundation of a checks and balances system, which provides each branch within the federal government with separate and equal power. The competition of power among the legislature, executive, and judiciary serves as a mechanism for each branch to monitor the power exercised by its counterparts. The significance of the checks and balances system has increased in America’s modern administrative state, which is run by executive agencies that produce policies that have the force of law, without the direct consent of Congress. As the power within the executive agencies continues to expand, the need for an effective review of presidential power is also on the rise. The U.S. Constitution provides several tools to monitor the President’s authority, one of which is the congressional oversight process. This thesis will examine congressional oversight of the U.S. Intelligence community since 2001 to determine if the current structure is indeed an effective mechanism for controlling presidential power.

Under the current structure, the legislature utilizes its committee system to hold the executive branch accountable through the hearing process and the passage of

¹ Wilson, Woodrow. Congressional Government: a Study In American Politics. 1885.

legislation. The committee division in Congress provides legislators with specific policy area jurisdiction, which allows each committee to take charge of reviewing agencies that fall within its purview. In addition to the thorough oversight provided by the legislature, the general public, advocacy groups, and members of academia also play an active role in the review process for federal agencies. However, oversight of the U.S. Intelligence Community is a unique exception to this practice because its secrecy constraints prohibit the public's access to information about national security programs. In light of necessary secrecy limitations, Congress is the only entity with the authority to make lawfully binding changes that impact the President's control of the Intelligence Community. The September 11, 2001 terrorist attacks further exemplified the pressing need for an effective congressional review process.

The tragic events on September 11, 2001 sparked heavy criticism regarding the government's ability to communicate effectively across agency lines. As a result, the demand for robust congressional oversight of the executive branch came to the forefront of the U.S. national security debate. The 9/11 Commission, a bipartisan group that was formed to investigate the attacks, published a detailed report in 2004 that called for immediate improvements to the congressional oversight process.² To date, Congress has failed to take action regarding many of the 9/11 Commission's recommendations concerning the intelligence policy process.³ Today, legislators, agency leaders and scholars overwhelmingly agree that Congress' review of the U.S. Intelligence

² 9/11 Commission Report: the Official Report of the 9/11 Commission and Related Publications. (Washington, D.C.): U.S. G.P.O., 2004.

³ Grimmett, Richard F. "9/11 Commission Recommendations: Implementation Status: RL33742." *Congressional Research Service: Report* (2006): 1. *International Security & Counter Terrorism Reference Center*. Web. 12 Feb. 2014.

Community is unsatisfactory and in need of immediate reform.⁴ This work will evaluate the intelligence oversight process and demonstrate why Congress must take immediate action to improve the current structure.

This thesis assesses Congress' stewardship of the U.S. Intelligence Community since September 11, 2001. The first chapter will provide a brief historical overview of the congressional intelligence oversight structure and relevant policy developments in recent decades. This section will also include a study of congressional hearing activity, committee staff, and legislation produced by the intelligence committees to affirm that congressional oversight has increased significantly since 2001. Subsequently this data will be used to identify Congress' primary oversight focus before and after the 2001. This analysis will demonstrate that in recent years, Congress budgetary oversight remained stagnant while the legislature's tendency to manage the IC increased.

The second chapter examines the current intelligence oversight structure and analyzes why the system is unsatisfactory. This section will reveal that the current oversight process is dysfunctional because it fails to address: competing committee jurisdictions, the need for legislative incentives, and the lack of subject matter expertise at the committee level. Additionally, this chapter affirms the inadequacies of the current system by comparing House and Senate intelligence committees with other entities in the legislature and providing a quantitative and qualitative analysis. Furthermore, this process will demonstrate that intelligence policy is highly unique when compared to other policy domains.

⁴ Grimmett, Richard F. "9/11 Commission Recommendations: Implementation Status: RL33742." *Congressional Research Service: Report* (2006): 1. *International Security & Counter Terrorism Reference Center*. Web. 12 Feb. 2014.

The impediments outlined in the second chapter will be used in subsequent section to assess the potential effectiveness of a joint intelligence committee. This evaluation will compare data for joint committees in Congress with the House and Senate intelligence committees to demonstrate the pros and cons of a joint committee system. This study will focus on hearing data, committee budgets, and staff retention rates to quantify the ineffectiveness of a joint committee. This portion of the thesis will conclude with a call to action for members of the policy debate to focus on identifying a comprehensive solution that addresses: competing committee jurisdictions, the lack of legislative incentives, and the need for subject matter expertise at the committee level. To date, members of Congress, the U.S. Intelligence Community and academia have failed to devote significant attention to reforming the intelligence oversight process. Now that the obstacles that inhibit intelligence oversight are well known, members of the policy debate must begin to focus on identifying a solution.

Finally, this work will conclude with specific policy recommendations for the 114th Congress to consider. The final chapter will stress the importance of a comprehensive approach and outline specific measures to reduce competing committee jurisdictions, increase legislative incentives, and cultivate expertise at the committee level. This methodology will demonstrate that the issue of legislative incentives is twofold; in order to Congress to have a policy incentive to act proactively in the intelligence oversight process, the general public must first be educated regarding the importance of national security programs and the IC. A thorough public education campaign will restore the legitimacy of the IC's programs in the eyes of the American people, which will have a positive impact on the policymaking process at large. This

process is critical for the long-term success of the IC because congressional and financial support for the agencies depends primarily on the public's confidence in the IC's daily operations. Therefore, these critical improvements should be implemented in a comprehensive reform package to preserve U.S. national security and restore the broken relationship between the legislative branch and the intelligence agencies.

Intelligence Oversight and Presidential Prerogative:

Prior to proceeding with the study of congressional oversight since 9/11, it is necessary to understand the historical background for the current intelligence committee system. Intelligence was a critical component to U.S. national security in the early stages of America's sovereignty. Under the direction of George Washington, the United States gathered intelligence and conducted analysis to defeat the British in the Revolutionary war.⁵ Historian, John Tidd, affirms that in the years immediately following the Revolutionary War, intelligence operations were merely an executive function that was carried out solely by the President of the United States. Tidd argues that the tendency to rely on the Presidential control for intelligence affairs stemmed from the desire to achieve the utmost secrecy in national security matters.⁶

Similarly, the Founding Fathers advocated that secrecy was a critical component of the office of the President. Alexander Hamilton affirms this fact in *Federalist Paper* # 70 when he writes, "Decision, activity, secrecy and dispatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any

⁵ John M. Tidd, "From Revolution to Reform: A Brief History of U.S. Intelligence" *SAIS Review* vol. XXVIII, no. 1 (2008), 5-8.

⁶ Ibid.

greater number.”⁷ In addition to historians, scholars in the field attest to the presidential prerogative of intelligence oversight. Legal theorist, Richard Posner, argues that by nature the President has the prerogative to act on behalf of the nation’s intelligence concerns.⁸ Posner also asserts that the President is the only entity within the U.S. government that can act with sole responsibility and energetic decision-making. Therefore, Posner and others believe the executive branch is the entity that is best equipped to take responsibility for the nation’s intelligence operations.⁹

Other intelligence oversight experts praise the executive prerogative in national security policy. Alfred Cummings, who serves as a researcher with the Congressional Research Service, wrote that although Congress has consistently acted to further their legislative role in intelligence, the President has the ultimate constitutional control over the intelligence agencies.¹⁰ Cummings further explains that the President exercises his supreme authority over the intelligence community as “commander-in-chief” and “head of the executive branch” under the Constitution.¹¹ In addition, Cummings maintains the view that the executive branch gathers and analyzes intelligence, while Congress merely assesses “finished intelligence.”¹² This separation of powers framework provides the foundation for understanding the development of intelligence oversight in Congress.

In the early years of America’s sovereignty, Congress practiced the role of reviewing the President’s authority by utilizing the power of the purse to approve or deny

⁷ Alexander Hamilton, *The Federalist Papers*, #70, 01 November 2013. Web. <http://thomas.loc.gov/home/histdox/fed_70-2.html>.

⁸ Richard A. Posner, *Uncertain Shield: The U.S. intelligence system in the throes of reform* (Lanham, Md.: Rowman & Littlefield Publisher, Inc., 2006), 1-8.

⁹ Ibid.

¹⁰ Alfred Cummings, “Congress as a Consumer of Intelligence Information,” *U.S. Congressional Research Service*. February 17, 2010, 8.

¹¹ Ibid, 4-6.

¹² Ibid, 8-10.

funding for specific programs. However, the overall mission and specific ground operations of U.S. intelligence forces remained strictly under presidential control.¹³ This practice demonstrates that initially, the legislative branch felt that intelligence operations were primarily a prerogative of the executive branch. This division of labor changed drastically in 1970's when the intelligence agencies experienced the first wave of congressional oversight reform. Prior to proceeding with the details regarding the sweeping changes in the 1970's, this chapter will review the growth of America's administrative state and how this aspect of America's history directly impacted the intelligence oversight process.

The Expansion of the Executive Branch:

The establishment of American bureaucracy is a product of the Great Depression. In response to the economic challenges posed by the Great Depression, the Roosevelt Administration established government programs, which are commonly known as the New Deal, to address corporate monopolies, labor issues and social welfare concerns.¹⁴ These programs expanded the executive branch by establishing departments within the federal government with rule making authority over specific policy areas. For example, during this period, the Federal Housing Administration (FHA) was created during this period to increase homeownership in the U.S. Once established, the FHA implemented federal standards for the home construction process, without the direct consent of

¹³ George Pickett, "Congress, the Budget and Intelligence," *Intelligence: Policy and process* ed. Alfred C. Maurer, Marion D. Tunstall and James M. Keagle (Boulder: Westview Press, 1985), 155.

¹⁴ Ronald J. Pestritto. "The Birth of the Administrative State: Where It Came From and What It Means for Limited Government." *First Principles Series Report* 16 (2007): 20 Nov. 2007. Web. <<http://www.heritage.org/research/reports/2007/11/the-birth-of-the-administrative-state-where-it-came-from-and-what-it-means-for-limited-government>>.

Congress.¹⁵ Political scientist Ronald J. Pestritto explains this process in detail when he writes,

“As a practical matter, the agencies comprising the bureaucracy reside within the executive branch of our national government, but their powers transcend the traditional boundaries of executive power to include both legislative and judicial functions, and these powers are often exercised in a manner that is largely independent of presidential control and altogether independent of political control.”¹⁶

This practice marked a strict diversion from the traditional view, which propagated that the legislature was the only entity in the U.S. government with lawmaking authority.

In the years following the New Deal, Congress willingly cooperated with the expansion of executive authority and accepted the President’s primary role in national security policy. However, during the Kennedy Administration, the relationship between the intelligence agencies and Congress changed drastically. In his work, “*Congress, the Budget and Intelligence*,” George Pickett discusses the transition from intelligence policymaking power residing primarily in the executive branch to a dual authority system between the executive and legislative branch. Pickett argues that the Kennedy administration’s failure in the Bay of Pigs and the questionable covert CIA activities in the 1970’s led to a series of CIA investigations that forever shaped Congress’ role in intelligence oversight.¹⁷ In response to the allegations against the CIA, the House and Senate established the Church and Pike Committees to investigate the agency’s ground operations and covert activity.

¹⁵ Betsey Martens, "A Political History Of Affordable Housing." *Journal Of Housing & Community Development* 66.1 (2009): 6. *MasterFILE Premier*. Web. 12 Nov. 2014.

¹⁶ Pestritto.

¹⁷ George Pickett, 157.

The Era of Distrust- The First Wave of Reform:

The moment Congress developed a direct role in intelligence oversight with the establishment Church and Pike Committees; the legislative branch enshrined its power into law with the Intelligence Oversight Act of 1980.¹⁸ This sweeping piece of legislation required the intelligence agencies to keep Congress informed on the nation's intelligence operations. In addition, this law marked a critical development in the intelligence policy process because it gave Congress the ability to obtain any intelligence documents deemed necessary to conduct its legislative business.¹⁹ Historically, scholars refer to this time period as an "Era of Distrust" because the legislature sought to expand its capabilities to review the executive branch and exercise power of the IC. However, this period of thorough and routine oversight of the intelligence agencies was short-lived and nearly came to a halt in the decades leading up to the 9/11 attacks.²⁰

The Decline of Intelligence Oversight

Former congressional staffers Norman Ornstein and Thomas Mann affirm the decline in congressional oversight in their work, *"When Congress Checks Out."* In this piece Ornstein and Mann attribute the problematic and political nature of the legislative branch and the executive branch's failure to share information openly as causes for the demise of intelligence oversight.²¹ Ornstein and Mann expound upon this problem when they explain,

¹⁸ Britt L. Snider, "The Agency and the Hill: CIA's Relationship with Congress," *The Center for the Study of Intelligence*, Central Intelligence Agency, May, 2008, 59-66.

¹⁹ Ibid. 70-83.

²⁰ Amy B. Zegart. "An Empirical Analysis Of Failed Intelligence Reforms Before September 11." *Political Science Quarterly* 121.1 (2006): 53. *Academic Search Complete*. Web. 12 Feb. 2014.

²¹ Norman J. Ornstein and Thomas E. Mann. "When Congress Checks Out." *Foreign Affairs* 85.6 (2006): 67-82. *Business Source Complete*. Web. 9 Feb. 2014.

“Examining reports of the House Government Reform Committee, the journalist Susan Milligan found just 37 hearings described as "oversight" in 2003–4, during the 108th Congress, down from 135 in 1993-94, during the last Congress dominated by Democrats... the Republican Congress took 140 hours of testimony on whether President Clinton had used his Christmas mailing list to find potential campaign donors; in 2004-5, House Republicans took 12 hours of testimony on Abu Ghraib.”²²

This data reveals that in the years proceeding 9/11, Congress failed to pursue diligent oversight of the nation’s intelligence activities. The comparison between the legislature’s monitoring of President Clinton’s holiday cards with the Abu Ghraib scandal is a striking example of politicized policymaking and the drastic decline in the quality of the national security policymaking process. After the 2001 terrorists attacks and the public outcry over the lack of communication among the intelligence agencies, Congress broke the silence by instituting major reforms within the Intelligence Community.

Breaking the Silence- The Second Wave of Reform:

This second wave of change occurred in 2004 with when Congress passed the Intelligence Reform and Terrorism Prevention Act (IRTPA). This legislation was designed to respond to the 9/11 Commission’s report, which was released in July 2004. The Commission’s report highlighted the lack of communication prior to the attacks between the agencies regarding the 9/11 hijackers.²³ In light of the various cross-agency communication failures, IRTPA was introduced by Senator Susan Collins and enacted on December 17, 2004. Although members of Congress tout IRTPA as a victory for the legislature, many scholars cite its passage as a highly politicized process that was a direct result of the public fear in the wake of 9/11. In her piece, “*The Limits of Intelligence Reform*,” Helen Fessenden argues that Congress experienced growing pressure from the

²² Ibid.

²³ 9/11 Commission Report.

American public and members of the White House, to act quickly to approve the 9/11 Commissions recommendations and pass legislation with limited debate.²⁴ Fessenden argues that this highly politicized and hastily process led to an ineffective reform and the practice of the status quo in the U.S. intelligence community.²⁵

Politicized Policy and how it Impacts U.S. National Security:

This historical overview of intelligence oversight demonstrates that typically, tragic events or political scandals precede congressional action. As a result of attempting to fix problems in “the heat of the moment”, members of the policy debate are less satisfied with the purpose and quality of Congress’ oversight of the IC. According to Pickett, the initial role of the Church and Pike committees consisted of budgetary oversight; not policy prescriptions regarding the operations of the U.S. intelligence community.²⁶ However, Pickett insists that Congress has drifted from its original constitutional role of budgetary oversight. As a result of this shift in focus, the legislature practices micromanagement of the U.S. intelligence community.²⁷ In addition, Pickett is one of the many scholars who believe that the current oversight structure fails to define responsibility between the executive and the legislature. This view postulates that the public’s ability to assign political blame or praise for the government’s national security activities is muddled by the oversight process. Although members of the policy debate critique Congress’ stewardship of the Intelligence Community, others continue to advocate for an increase in congressional intelligence oversight.

²⁴ Helen Fessenden, “The Limits of Intelligence Reform,” *Foreign Affairs*, Nov. - Dec. (2005), 106-113.

²⁵ Ibid. 115-120.

²⁶ George Pickett, 158-160.

²⁷ Ibid.

Scholar David M. Barrett argues in favor of Congress's growing role in intelligence oversight. Barrett explains that during the Kennedy administration, Cuba became increasingly more threatening to the United States. Thus it was Congress's duty, as the eyes and ears of the American people, to prompt covert action in the region.²⁸ In addition, Barrett also cites the Cold War as yet another example of necessary congressional involvement in the intelligence process during a time of war. Although Barrett makes a strong argument in favor of robust congressional oversight, it is important to note that like Pickett, he also acknowledges that the current structure allows congressmen to silently avoid blame for intelligence policy failures.²⁹ Furthermore, Barrett affirms this practice, which is used by congressmen as a means to generate Election Day support, often leads to the politicization of intelligence policy.

Similarly, Loch K. Johnson, an intelligence oversight scholar, warns of the unintended consequences polarization in Congress. In his piece, "*Intelligence Oversight in the United States*," Johnson argues that Congress has ineffectively reformed the intelligence community by politicizing intelligence information and acting solely in time of scandal or fear.³⁰ Johnson supports this argument with the assertion that congressmen are by nature politically charged and motivated by the prospects of the next election. Ultimately, this narrow focus decreases their motivation for routine intelligence oversight. As a result of this fact, many politicians lack a natural impulse for conducting intelligence oversight, which is why the members opt to respond to crises as they arise.

²⁸ David M. Barrett, *The CIA and Congress: The untold story from Truman to Kennedy* (Lawrence, Kan.: University Press of Kansas, 2005), 25-33.

²⁹ Ibid, 141-177.

³⁰ Loch K. Johnson, "Intelligence Oversight in the United States," in *Intelligence and Human Rights in the Age of Global Terrorism*, ed. Steve Tsang (Westport, Conn.: Praeger Security International, 2007), 55-66.

Like Pickett and Barrett, Johnson also argues that politicians use intelligence scandals to gain electoral stability among their constituents.³¹ This pattern is a troubling theme in the literature on this subject because it affirms the politicization of intelligence policy, which ultimately jeopardizes U.S. national security.

This historical overview of the intelligence committees and the growth of the executive branch affirms Congress' responsibility to effectively monitor presidential power. In addition, the survey of the scholarly opinions regarding the current congressional review process demonstrates the growing disdain regarding the current oversight structure. Lastly, the views examined in this chapter demonstrate the political nature of the legislative branch, which often has an adverse effect on the national security policy process. Although Congress feels convicted to monitor the executive branch's intelligence policy as the eyes and ears of the American people, this practice if not carried out properly, comes with serious consequences for U.S. national security. A timely example the negative implications of poor congressional oversight is the National Security Administration (NSA) and Edward Snowden.

In 2013 Edward Snowden, a former NSA employee that was irate with U.S. intelligence practices, leaked thousands of U.S. intelligence documents to media outlets and other governments around the world. Snowden later admitted that he went through the media and other nations to release the information because he lost faith in the U.S. government's ability to provide oversight for the IC. The Snowden leaks prompted fierce debate regarding U.S. citizen's civil liberties and permanently damaged the IC's reputation at home and abroad. More importantly, Snowden's actions demonstrate the grave consequences of ineffective intelligence oversight and the need for immediate

³¹ Ibid, 61-66.

reform. Congress must recognize the inefficiencies of the current system and seek reform methods to improve its ability to monitor the President's power. Only then, will the legislature be in a position to provide an adequate check on the executive's authority and restore the integrity of U.S. intelligence community at home and abroad.

CHAPTER 2

The Increase in Intelligence Committee activity and the Shift in the Legislature's Oversight Focus

The American form of government is a unique system of checks and balances, of which Congressional oversight is one of the most critical. An important area of congressional oversight that has gained increasing national attention in recent years is the IC. It is widely believed that since the tragic events on September 11, 2001, oversight of America's intelligence programs has significantly increased. In addition, many scholars and leaders in the IC speculate that the focus of congressional oversight has shifted from budgetary analysis to management of the IC. This chapter will verify these commonly held theories by quantifying the growth in legislative oversight and demonstrating the shift from budgetary review of the IC to micromanagement of the agencies.

This chapter will begin with the historical context, which led to the House and Senate intelligence committees. Subsequently, this section will build on the history presented to quantify the upswing in intelligence oversight activity since 9/11. The increase in congressional intelligence policy activity will be affirmed by a study of committee hearings, reports, and staff sizes for the House and Senate intelligence committees. Finally, this same committee data will be used to validate that the purpose of congressional oversight morphed dramatically during this period. As a result of this change in Congress' oversight priorities, the main focus of the intelligence committees now involves the structure and ground operations of the IC.

Terms, Definitions and Methodology:

The U.S. IC is composed of 17 different entities within the executive branch. These agencies include: Air Force Intelligence, Army Intelligence, Central Intelligence Agency, Coast Guard Intelligence, Defense Intelligence Agency, Department of Energy, Department of Homeland Security, Department of State, Department of the Treasury, Drug Enforcement Administration, Federal Bureau of Investigation, Marine Corps Intelligence, National Geospatial-Intelligence Agency, National Reconnaissance Office, National Security Agency, Navy Intelligence and the Office of the Director of National Intelligence.³² The IC is the government apparatus responsible for collecting and reviewing all information pertaining to U.S. national security.³³

Congressional oversight includes regulatory supervision of all aspects of the U.S. government. Methods of oversight can include: budget approval, the passage of legislation, committee hearings and subject matter briefings. These mechanisms serve as a legislative check on the President's authority and the IC at large. This critical process ensures the proper use of taxpayer resources and the integrity of U.S. intelligence practices by holding each agency accountable for its operations. If an abuse of power is uncovered through the oversight process, Congress can take the necessary precautions through committee hearings or with the passage of legislation to prevent future abuse. In addition to identifying the methodology used in the oversight process, it is important to understand which entities in Congress exercise jurisdiction over the IC.

In Congress, the House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI) are charged with the primary

³²About the Intelligence Community." *Intelligence.Gov*, < <http://www.intelligence.gov/about-the-intelligence-community/>>.

³³ Ibid.

responsibility of IC oversight. The HPSCI is composed of 22 members, which includes one member from each of the following: House Appropriations, Armed Services, Judiciary and Foreign Affairs. However, the SSCI has only 15 members, with bipartisan senators from the following committees: Appropriations, Armed Services, Foreign Relations and Judiciary.³⁴ Membership on the intelligence committees is distinct because party leadership in the House and Senate are responsible for assigning members to serve in this unique capacity.

The Historical Foundation for the HPSCI and the SSCI:

The historical foundation for House and Senate intelligence committees began in the late 1970's as the "Era of Trust" between the agencies and Capitol Hill came to a sharp close. Prior to 1975, expenditures for U.S. intelligence activities were reviewed by a select few in Congress. Johnson and many other scholars in this field refer to this period in history as an "Era of Trust" due to the miniscule level of oversight of the executive branch at this time.³⁵ Johnson demonstrates the changing dynamics in the early workings of the intelligence community in Table 1 from his piece, "*A Season of Inquiry*."³⁶ The data in Table 1 confirms that between 1947 and 1976 the amount of congressional oversight rose steadily during the "Era of Skepticism" and the "Era of Uneasy Partnership." In addition, Congress increased the number of agencies that reported directly to members during this period. For example in the Era of Skepticism, Congress

³⁴ Eric Rosenbach and Aki J. Peritz. "Congressional Oversight of the Intelligence Community." *Harvard - Belfer Center for Science and International Affairs*. June 2009. <http://belfercenter.ksg.harvard.edu/publication/19146/congressional_oversight_of_the_intelligence_community.html>.

³⁵ Johnson, "A Season of Inquiry," (University Press of Kentucky, 1985), 257.

³⁶ Ibid.

received information from only the President and the CIA in a timely fashion. This low level of oversight stands in contrast to the Era of Uneasy Partnership, when Congress received information from all agencies and required prior notification of intelligence operations.

Table 1
Intelligence Oversight on Capitol Hill:
Who Gets What Information from Whom, and When

| | Era of Trust (1947-1974) | Era of Skepticism 1974-1976) | Era of Uneasy Partnership (1976-) |
|------------------|---|---|---|
| Who | Often only one legislator | Up to 63 members and staff | About 37 members and staff |
| What | Haphazard | Important covert action | All important operations; illegalities, improprieties, and (since 1980) intelligence failures |
| From whom | CIA (infrequently) | President/CIA (a) | All agencies |
| When | Discretion of CIA | In a timely fashion (b) | Prior notification |

(a) For covert actions only.

(b) Except in time of emergency, when only eight legislative leaders are notified in advance.

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The Era of Trust came to a halt when news of CIA covert activity to assassinate Fidel Castro under the Kennedy administration and a slew of other abuses, surfaced in the news media. The questionable actions in the Kennedy Administration led to a series of congressional investigations and a drastic change in the legislature's oversight of the IC.

³⁷ Johnson, "A Season of Inquiry."

As a result, the Church Committee, chaired by Senator Frank Church (D-ID) and the Pike Committee directed by Otis Pike (D-NY) was established. The two bodies worked together to investigate possible domestic and international intelligence abuses surrounding the Bay of Pigs invasion. In his work, “Congress, the Budget and Intelligence,” George Pickett argues that the Kennedy administration’s failure in the Bay of Pig and the questionable covert CIA activities in the 1970’s led to a series of CIA investigations that forever shaped the congressional role in intelligence oversight.³⁸ These early investigations laid the ground for the modern House and Senate Intelligence Committees that practice IC oversight today.

After conducting a thorough investigation, the Church and Pike committees concluded that visible accountability for the agencies would be necessary to prevent future abuses of executive power. As a result of the growing distrust between Congress and the IC during the Era of Skepticism, in 1978 the Senate passed S.Res. 400, which established the Senate Select Committee on Intelligence (SSCI).³⁹ In addition, this legislation instilled a requirement for Congress to authorize all IC funding. The House of Representatives followed suit a year and a half later with the passage of H.Res. 658, which established the HPSCI and the House’s budgetary authority over the IC. Subsequently, the first authorization bill for intelligence activities was passed by both houses and signed by the president in FY1979. This early action by SSCI and HPSCI demonstrates that the initial focus of the intelligence committees focused strictly on financial review of the IC.

³⁸ George Pickett, 157.

³⁹ Johnson, “A Season of Inquiry,”

The minimal level of monetary oversight in the 1970's and 1980's is distinct from today's intelligence policy process. Since the tragic events on 9/11, intelligence oversight on Capitol Hill increased drastically to meet the demands of new national security challenges. The heightened concern from the American public regarding national security issues prompted members of the House and Senate to take a more active role in intelligence oversight. Defense Specialist, Richard Best Jr., attests to the upswing in congressional oversight in his work, "Proposals for Intelligence Reorganization, 1949-2004." Best argues that, "The general trend has been towards more thorough oversight both by the executive branch and by congressional committees."⁴⁰ The following section in this chapter will affirm that root of the increase in intelligence oversight can be traced to the 32 members of the HPSCI and the SSCI.

Quantifying Congressional Oversight:

Committee Activity

One way to measure the increase in congressional oversight is to study the number of hearings held each session of Congress. Table 2 demonstrates the growth in the number of hearings held by the SSCI from the 107th-111th Congress. The data in the table confirms the number of hearings held by the SSCI has more than doubled since the 107th Congress. This is significant because congressional hearings are used to give committees the necessary knowledge for the policy making process. The more hearings SSCI holds, the greater the scope of the committee's oversight on various IC issues. In

⁴⁰ Richard Best, JR, "Proposals for Intelligence Reorganization, 1949-2004," CRS Report for Congress, http://callisto10.ggimg.com/doc/BERK/RangeFetch=contentSet=BERK=startPage=00643=prefix=bpgt_0001_0002_0_=suffix=-p=npages=21.pdf (Accessed 10/7/10).

addition, it is important to note that committee hearings require oral testimony from agency heads or subject matter experts. Therefore this upswing in congressional hearings has a direct impact on the IC leaders who prepare material in advance of delivering testimony at a hearing on Capitol Hill. Furthermore, this growth in activity demonstrates that in recent years, Congress has amplified its authority over the IC.

Table 2
SSCI Hearings 107th- 111th Congress

| Session of Congress | Number of Hearings Held by the SSCI |
|----------------------------|--|
| 111th (2009-2011) | 94 |
| 110th (2007-2009) | 80 |
| 109th (2005-2007) | 42 |
| 108th (2003-2007) | 39 |
| 107th (2001- 2003) | 38 |

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The expansion of congressional oversight is also evident in the number of committee reports produced by the SSCI. Committee reports cover various issues within proposed legislation or other policy issues under investigation by the committee. As the SSCI escalated the level of congressional oversight, it produced more reports to address the growing committee interest in intelligence issues. Table 3 demonstrates the rise in the number of published committee reports from the 107th Congress through the 111th. For example, in the 111th Congress, the SSCI published nearly double the amount of reports than the committee produced in the 108th Congress.

⁴¹ Data From: U.S. Senate, Senate Select Committee on Intelligence, Hearings: <http://intelligence.senate.gov/hearings.cfm> (Accessed 10/03/10). 2011-2013 data was retrieved from <http://beta.congress.gov/congressional-report/107th-congress/senate-report/51/1> (Accessed 04/20/14).

Table 3
SSCI Reports 107th- 111th Congress

| Session of Congress | Number of Reports for the SSCI |
|-------------------------------|---------------------------------------|
| 111 th (2009-2011) | 11 |
| 110 th (2007-2009) | 11 |
| 109 th (2005-2007) | 6 |
| 108 th (2003-2005) | 6 |
| 107 th (2001-2003) | 7 |

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Similarly, the HPSCI affirms the increased level of congressional oversight in the number of briefings held per calendar year. Table 4 tracks the growth in congressional briefings from 2007 to 2010. For example from 2007 to 2009, the number of briefings held by the HPSCI more than doubled. In 2010 however, the number of hearings leveled out slightly. It is important to note that this lull in committee activity occurred during an election year, which is when many members were focused on campaigning for the upcoming election cycle. It is a widely known fact that during election years, members of Congress spend significantly more time in their respective districts campaigning than they do on the Hill conducting legislative business. This trend is also evident in 2008 and 2012, which supports the idea that the election cycle has an impact on the IC oversight process. Using this data, one can predict that in other major election years, the HPSCI may conduct less oversight than in non-election years.

⁴² Data From: U.S. Senate, Senate Select Committee on Intelligence, Publications: <http://intelligence.senate.gov/pubcurrent.html> (Accessed 10/3/10). 2011-2013 data was retrieved from <http://beta.congress.gov/congressional-report/107th-congress/senate-report/51/1> (Accessed 04/20/14).

Table 4
HPSCI Briefings 2007-2012

| Year | Number of Briefings held by HPSCI |
|------|-----------------------------------|
| 2012 | 26 |
| 2011 | 35 |
| 2010 | 26 |
| 2009 | 40 |
| 2008 | 25 |
| 2007 | 19 |

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Congressional briefings are an important aspect in the policy process because they bring subject matter experts to Capitol Hill to educate individual or small groups of policymakers on a particular topic. Members and committee staff use this knowledge to draft legislation or make policy changes that impact the IC at large. Briefings, which are less formal in nature, differ from a congressional hearing, which typically involves written testimony from agency heads and intelligence community leaders. In order for Congress to increase its oversight of the IC, the legislature must first improve its knowledge of agency operations and procedures. Furthermore, briefings increase the face-to-face contact between policymakers and those in the intelligence field. This chapter affirms that although increased face-to-face interaction between IC officials and legislators has a positive impact on knowledge sharing in the policy process, this practice creates significantly more work for both members of Congress and the agencies. This

⁴³ Data From: U.S. House of Representatives, Permanent Select Committee on Intelligence, Legislation and Committee Reports, <<http://beta.congress.gov/committee/house-intelligence-permanent/hlig00?q=%7B%22source%22%3A%22comreports%22%7D>>. (Accessed 02/11/14).

growth in committee activity in the HPSCI and the SSCI correlates to an upswing in the workload levels for intelligence committee staffers.

Intelligence Committee Staff

This increase committee activity and scope of congressional oversight requires a substantial expansion in staff resources. Committee staffers assist members with understanding valuable information about IC operations, drafting press releases, committee reports, and providing material for committee hearings. Therefore, any inflation in the number of briefings or hearings held by the committee will simultaneously create a need to more staff to cover the increased policy responsibilities. Table 5 demonstrates the swell in HPSCI staff between 2001 and 2010. The number of HPSCI staff has fluctuated over the years. However, in 2010 the HPSCI paid 10 more staffers than in 2001. In addition, the amount spent on staff salaries grew during this period. In 2003, the HPSCI spent \$3,321,728 on staff salaries. In 2009 the amount spent on staff wages jumped by 24 percent to \$4,124,625.⁴⁴ Ultimately, this steady growth in manpower and resources spent on the HPSCI further exemplifies the increase in congressional oversight. This escalation of committee staff is also evident in its Senate counterpart, the SSCI.

⁴⁴ Legistorm, House Permanent Select Committee on Intelligence- Staff Salaries, http://www.legistorm.com/office/House_Permanent_Select_Committee_on_Intelligence/1538.html (Accessed 10/5/10).

Table 5
Number of HPSCI Staffers 2001-2010

| Year | Number of Staffers for the HPSCI |
|-------------|---|
| 2007 | 41 |
| 2006 | 43 |
| 2005 | 32 |
| 2004 | 35 |
| 2003 | 34 |
| 2002 | 29 |
| 2001 | 27 |
| 2008 | 40 |
| 2009 | 39 |
| 2010 | 37 |

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Similarly, the SSCI experienced a boost in the number of committee staff in the years after 9/11. Table 6 reveals the perpetual increase in the number of paid staffers from 2000 through 2010.⁴⁶ In 2000, the SSCI paid a total of 29 individuals. After 9/11, a constant increase in committee staff is evident through 2010. For example, in 2010 the SSCI paid a total of 46 staffers, which amounts to an increase of 17 additional staff members over a ten-year period. The staff levels in the House and Senate presented in this chapter paint a vivid picture of the expanded oversight on Capitol Hill in light of the heightened interest in national security and the demand for a more effective intelligence community.

⁴⁵ Ibid.

⁴⁶ Legistorm, The Senate Select Committee on Intelligence- Staff Salaries, http://www.legistorm.com/office/Senate_Intelligence_Committee/687.html (Accessed 10/8/10).

Table 6
Number of SSCI Staffers 2000-2010

| Year | Number of Staffers on SSCI |
|-------------|-----------------------------------|
| 2010 | 46 |
| 2009 | 44 |
| 2008 | 43 |
| 2007 | 42 |
| 2006 | 43 |
| 2005 | 46 |
| 2004 | 35 |
| 2003 | 40 |
| 2002 | 43 |
| 2001 | 36 |
| 2000 | 29 |

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HPSCI and SSCI Legislative Responsibility

The necessity for a larger committee staff is also reflected in the number of bills referred to the HPSCI. As the interest in national security issues spiked, the number of bills produced by members of congress concerning intelligence issues significantly increased. This trend is evident in Table 7, which demonstrates the upswing in intelligence legislation from the 101st - the 111th Congress. In the 101st session of Congress, 17 bills were referred to the HPSCI for further consideration. This number is miniscule when compared to the 42 bills referred the HPSCI during the 111th Congress, which exceeds a 200 percent increase. Furthermore, the data in Table 7 reveals that the number of bills referred to the HPSCI steadily increased beginning in the 101st session of Congress, with a steep level of growth in the 103rd Congress. The large increase in bills referred to the committee in the 103rd Congress is a direct result of the 9/11 attacks,

⁴⁷ Senate Intelligence Committee- Staff Salaries, Legistorm,
http://www.legistorm.com/office/Senate_Intelligence_Committee/687.html (Accessed 11/1/10).

which occurred during that legislative session. This spike in committee workload is significant because each bill must be reviewed and undergo a strict mark-up process before the legislation is ready to receive action on the House floor. Therefore it is logical that committee staff sizes were adjusted accordingly to ensure each piece of legislation was analyzed by the HPSCI and the SSCI in a timely fashion.

Table 7
Number of Bills Referred to the HPSCI 101st-111th Congress

| Session of Congress | Number of Bills Referred to HPSCI |
|----------------------------|--|
| 111 th | 42 |
| 110 th | 44 |
| 109 th | 44 |
| 108 th | 34 |
| 107 th | 21 |
| 106 th | 11 |
| 105 th | 16 |
| 104 th | 12 |
| 103 rd | 42 |
| 102 nd | 21 |
| 101 st | 17 |

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The legislation passed by Congress since 9/11 also reveals the escalating scope of legislative oversight. As Congress flexed its oversight muscle, the size of intelligence legislation also grew significantly in length. For example, the Intelligence Oversight Act of 1980 was a mere 19 pages. The most recent piece of intelligence legislation, the Intelligence Reform and Terrorism Prevention Act (IRTPA), which was passed and signed into law in 2004, was 235 pages long. Certain members in the policy debate argue that the large increase in 2004 was due to a restructuring of the U.S. intelligence

⁴⁸Data From: Conress.gov, <http://www.congress.gov/billsumm/vwList.php?&lid=1> (Accessed 10/11/10).

community. However, the Intelligence Reorganization Act of 1994 also established a different form of organization for the intelligence community and included appropriation funding in a mere 20 pages. Therefore, IRTPA is almost 17 times longer in length than the Intelligence Reorganization Act of 1994, which accomplished similar overarching objectives.

Table 8 further exemplifies this trend in intelligence legislation from 1980-2010. For example, the intelligence authorization from 2000 was 31 pages and the 2010 intelligence authorization was 97 pages in length. The increase in volume of intelligence authorization bills confirms once again that Congress is taking a more active role in IC oversight by prescribing specific measures for funding agency programs.

Table 8
Intelligence Legislation 1980-2010

| Number of Pages | Title of Legislation |
|------------------------|---|
| 19 pages | Intelligence Oversight Act of 1980 |
| 20 pages | Intelligence Reorganization Act of 1994, included in the Intelligence Authorization Act FY 1992 |
| 31 pages | Intelligence Authorization Act FY 2000 |
| 38 pages | Intelligence Authorization Act FY 2004 |
| 542 pages | 9/11 Recommendation Act of 2004, included in the Intelligence Reform and Terrorism Prevention Act of 2004 |
| 235 pages | Intelligence Reform and Terrorism Prevention Act of 2004 |
| 43 pages | FISA Amendments Act 2008 |
| 97 pages | Intelligence Authorization Act FY 2010 |

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*Note: The authorizations above merely give permission for the IC to receive funding. The actual funding levels, which appear in the FY budget, are determined by the appropriations process, which is not conducted by the intelligence committees.

⁴⁹ Data From: Congress.gov, <http://www.congress.gov/> (Accessed 10/20/10).

Shift in Oversight Focus:

In addition to increased legislative activity since 9/11, the focus of congressional oversight changed dramatically. In recent years, Congress shifted its focus from serving as a budget watchdog to managing the IC and its operations. As discussed earlier in this work, initially intelligence oversight concerned agency spending and prior notification of covert activity. This practice was a result of the legislative branch's power of the purse and the presumed executive prerogative in national security policy. Authors, Serge Grossman and Michael Simon affirm the legislature's influence over the IC when they state, "Funding is Congress' strongest "leverage point" in overseeing the intelligence community. Unlike other oversight tools, the withholding or redirection of money, the lifeblood of every government agency, instantly gets the attention of the executive branch."⁵⁰ Despite the significant of its budgetary influence, Congress transitioned its oversight focus to agency management in the 2000's. This change was a direct result of the heightened public interest in national security after 9/11. The public became consumed with the communication failures that led up to the attacks and sought to reform the intelligence community structure. This was the first time in decades that members of the public took a vested interest in intelligence policy. As a result of the public's dissatisfaction with the IC, members of Congress and the intelligence committees felt compelled to respond with legislative measures to improve the inner workings of the agencies.

During this time, the 9/11 Commission examined the various communication failures that occurred in the moments leading up to the disaster and concluded an

⁵⁰ Serge Grossman and Michael Simon. "And Congress Shall Know the Truth: The Pressing Need for Restructuring Congressional Oversight of Intelligence." *Harvard Law & Policy Review* V. 2 No. 2 (Summer 2008) P. 435-47, 2.2 (2008): 435-447.

overhaul of the U.S. intelligence community would be necessary to ensure national security. In order to best demonstrate the transition of the legislature's oversight focus, this chapter will analyze legislative data from the House and Senate intelligence committees to prove congressional overseers are now consumed by managing the IC. In addition, this chapter will compare the legislative components of the Intelligence Oversight Act of 1980 and the Intelligence Reform and Terrorism Prevention Act of 2004 to further expound upon the recent transformation in the House and Senate intelligence committees.

Stagnant Budgetary Oversight

One way to understand the primary focus of the intelligence committees is to study the type of legislation considered by each committee during session. Table 9 tracks the number of bills referred to the HPSCI that concerned budgetary oversight. The data reveals that the number of budget bills referred the HPSCI remained constant over the years, while the number of non-budgetary pieces of legislation continued to climb. For example in the 104th Congress, four of the 12 bills considered by the committee dealt with monetary oversight. This stands in stark contrast to the 111th Congress, which had four bills that were related to the intelligence community's budget out of the 42 pieces of legislation considered by the committee in that legislative session. The number of bills considered by the committee during this period more than doubled but the number of budget related bills did not increase. Therefore, if only a small fraction of the bills referred to HPSCI concern budgetary matters, it is clear that another area of oversight is dominating the HPSCI's resources.

Table 9
HPSCI Legislation 104th-110th Congress

| Session of Congress | Number of Budget Bills Referred to HPSCI | Total Number of Bills Referred to HPSCI |
|----------------------------|---|--|
| 111 th | 4 | 42 |
| 110 th | 5 | 44 |
| 109 th | 4 | 44 |
| 108 th | 2 | 34 |
| 107 th | 4 | 21 |
| 106 th | 5 | 11 |
| 105 th | 3 | 17 |
| 104 th | 4 | 12 |

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Similarly, the SSCI demonstrates a significant change in its oversight practices. Table 10 reflects the number of bills referred to the SSCI that involved budget measures in comparison to the number of bills reviewed by the committee annually. Although the SSCI's oversight shift is not as drastic as the HPSCI, the percentage of bills concerning the IC's budget decreased steadily since 2001 in each session. For example, during the 104th Congress five of the nine bills, or 62 percent, referred to SSCI concerned financial matters for intelligence operations. In the 111th Congress however, only three of the ten bills, or 30 percent, involved oversight of IC funding.

⁵¹ Data From: Congress.gov, <http://www.congress.gov/> (Accessed 10/20/10).

Table 10
SSCI Legislation 104th-111th Congress

| Session of Congress | Number of Budget Bills Referred to SSCI | Total Number of Bills Referred to SSCI |
|----------------------------|--|---|
| 111 th | 3 | 10 |
| 110 th | 7 | 16 |
| 109 th | 4 | 11 |
| 108 th | 3 | 19 |
| 107 th | 4 | 9 |
| 106 th | 3 | 5 |
| 105 th | 4 | 7 |
| 104 th | 5 | 9 |

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From Budgetary Oversight to Management of the Intelligence Community

The question at hand is what is driving the rise in congressional oversight when the amount of budgetary review remains stagnant? The answer to this important question is evident in the legislative initiatives at the committee level, which increasingly concern the specifics of IC operations. This new style of oversight includes hearings on interrogation tactics, proper organization structure of the intelligence community and intelligence personnel management. For example, hearings titles in the HPSCI after 9/11 have included: CIA Contract Policy, Management Issues in the Intelligence Community and the Size of the Director of National Intelligence.⁵³ In addition to congressional hearings, this shift in focus is present in the number of intelligence community (IC) management bills referred to the HPSCI and the SSCI. Table 11 outlines the number of

⁵² Data From: Congress.gov, <http://www.congress.gov/> (Accessed 10/20/10).

⁵³ House Intelligence Hearing Schedule, House Intelligence Committee, <http://intelligence.house.gov/HearingSchedule.aspx> (Accessed 10/21/10).

legislative initiatives involving agency management; intelligence program budgets and the total number of bills referred to the HPSCI and SSCI each Congress.

In the 111th Congress, 10 bills related to intelligence community management were referred to the HPSCI, which accounts for nearly a quarter of the bills considered by the body in the 111th Congress. During this same period, only four legislative measures involving the IC budget were referred to the HPSCI. It is important to note, the other 28 bills referred to the HPSCI in the 111th session were congressional resolutions, which are not legally binding, and minor initiatives related to covert and domestic intelligence activities. During 111th Congress, nearly a quarter of the HPSCI oversight was devoted to IC management. This data stands in opposition to the 106th Congress, which occurred before the 9/11 attacks, when five of the 11 bills referred to the HPSCI focused on the IC's budget.

Table 11

HPSCI and SSCI Legislation 105th-111th Congress

| | Number of IC management related bills referred to HPSCI | Number of budget related bills referred to HPSCI | Total number of bills |
|----------------------------|--|---|------------------------------|
| 111 th | 10 | 4 | 42 |
| 110 th | 9 | 5 | 44 |
| 106 th | 0 | 5 | 11 |
| 105 th | 0 | 3 | 17 |
| Session of Congress | Number of IC management related bills referred to SSCI | Number of budget related bills referred to SSCI | Total number of bills |
| 111 th | 4 | 3 | 10 |
| 110 th | 4 | 7 | 16 |
| 106 th | 0 | 3 | 5 |
| 105 th | 0 | 4 | 7 |

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⁵⁴ Data From Congress.gov, <http://www.congress.gov/> (Accessed 10/20/10).

The Senate also demonstrates a similar upward swing in IC management activity. For example in the 111th Congress, 40 percent bills referred to the SSCI concerned management of the agencies and 30 percent focused on the IC's budget. The 106th session displays a drastically different trend. During the 106th Congress, the SSCI considered a total of five bills and 60 percent were budget related. Since the growth in the number of bills referred each session corresponds to the rise in intelligence community management legislation, it supports the assertion that the increase in bills referred to the HPSCI and the SSCI is linked to the new legislative trend of managing the IC's operations. In addition to studying the legislation considered by the SSCI and the HPSCI, the transition to IC management is also evident when comparing the Intelligence Oversight Act of 1980 and the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).

Legislative Evidence

The Intelligence Oversight Act of 1980 represents the traditional form of congressional oversight, which centered on budgetary oversight. The 1980 reform packages amended the Hughes-Ryan Act and minimized the number of congressional committees informed of covert activity. This legislation was a mere 19 pages in length and was passed as part of the FY1981 Intelligence Authorization Act. This measure arose from a series of congressional investigations regarding the Bay of Pigs and the Watergate allegations. Richard Best affirms the "Era of Distrust" in his CRS report titled "Proposals for Intelligence Reorganization, 1949- 2004," when he argues, "Some forcefully questioned the viability of secret intelligence agencies within a democratic society. These investigations resulted in a much closer congressional oversight and a more exacting

legal framework for intelligence activities.”⁵⁵ Therefore, at this point in history congressional oversight ensured the constitutionality of IC operations and left the structuring of the IC to the President.

As the public and actors on the world stage began to question the role of classified operations in the free world, the executive branch felt it was necessary to respond with executive orders to implement some of the reforms being discussed by members of Congress. Richard Best attests to this fact when he writes, “Presidents Gerald Ford, Jimmy Carter, and Ronald Reagan each issued detailed Executive Orders (E.O.) setting guidelines for the organization and management of the U.S. Intelligence Community.”⁵⁶ This trend demonstrates that although pressure was growing among members of the public and on Capitol Hill, only the President put policy ideas into practice at this point in history. Congress’ hands-off approach during the 1980’s stands in opposition to the tone of IRTPA in 2004, which sought to manage the agencies without the input of the executive branch.

IRTPA consisted of 235 pages that reorganized the IC and established the Director of National Intelligence (DNI) to serve as the figurehead for the intelligence agencies at large. In addition, the 2004 reform also created the National Counterterrorism Center (NCTC) to work as a multiagency intelligence analysis center and foster better communication among the agencies.⁵⁷ This was a substantial change because it established a new chain of command for the agencies and created a new entity within the

⁵⁵ Best, Richard, Jr. "Proposals for Intelligence Reorganization, 1949-2004." *Patterns of Global Terrorism*, (2005): pg. 615.

⁵⁶ Ibid, 628.

⁵⁷ "Intelligence Reform and Terrorism Prevention Act of 2004." *Intelligence Reform and Terrorism Prevention Act of 2004*. U.S. General Services Administration, 4 Dec. 2004. Web. 26 Feb. 2014.< <http://www.gsa.gov/portal/content/178103>>.

IC. It is evident that this policy reform, which focused strictly on the organization and functionality of the IC, is drastically different than the budgetary oversight practiced by the legislature in the 1980's.

Conclusion:

During the years preceding 9/11, the executive branch took responsibility for the stewardship of the IC. Congress' practice of strict budgetary review arose from a series of investigations regarding unauthorized covert activity during the 1970's. This historical period included prior congressional notification of covert activity and the practice of broad intelligence spending authorizations to fund U.S. intelligence activities at large. This system focused on the legislative branch's power of the purse and required less congressional hearings, briefings, and intelligence committee staff. History affirms that prior to the 2001 attacks, Congress focused primarily on budgetary oversight to ensure proper use of taxpayer resources.

This chapter presents data not previously compiled by scholars in this field that verifies the commonly held belief that since 9/11, Congress' oversight of the IC increased significantly in the form of hearings, briefings and committee staffers on the respective House and Senate committees. In addition to the spike in committee activity, this chapter confirms that Congress' oversight transformed from monetary review of the nation's intelligence programs to management of the IC. This transition is evident in the growing number of legislative measures involving IC management and the drastic contrast between the Intelligence Reform Act of 1980 and IRTPA.

In light of the public's dissatisfaction with the IC, Congress sought to unify the intelligence community and create a system that would improve communication between the intelligence agencies. This lofty goal required legislators to shift their policy focus away from budgetary matters to meet the demands for establishing a new intelligence community structure. The management of the U.S intelligence apparatus requires members of Congress and their committee staff to have expertise in the various facets of intelligence policy. In turn, this practice creates a need for more congressional briefings and hearings to educate committee members and their staff, which puts an undue burden on the IC.

Legislative oversight is a critical aspect of the American checks and balances system and it must be practiced effectively to ensure the success of both the legislative branch and the IC at large. As Congress continues to move forward with its oversight responsibilities, it is critical that members recognize the significant increase in committee activity and the transition to IC management. Policymakers must determine if this new system is contributing to or hindering the IC's ability to preserve U.S. national security. The following chapter will explore this important question in detail and affirm the pressing need to reform the current structure.

Chapter 3

Exploring the Dysfunctional Relationship between Congress and the Intelligence Community

Introduction:

Members of Congress and agency officials agree that current congressional oversight of the U.S. intelligence is dysfunctional and is failing to enhance U.S. national security. The broken intelligence oversight system is heavily debated in an effort to determine who is at fault: the executive branch, the agencies, or Congress. This chapter will affirm the problematic relationship exists and that the solution lies primarily within Congress, which is the only entity in the American government with the constitutional power change the current structure. In addition, the data presented in this section will demonstrate that the current structure is unsatisfactory because it lacks: centralized committee jurisdiction, legislative incentives, and subject matter expertise at the committee level.

This chapter will begin by highlighting two case studies that showcase the consequences of failing intelligence oversight followed by an explanation of key terms. Subsequently, the author will explore the historical background, specifically policy changes instituted after 9/11, to demonstrate how these measures failed to provide an adequate solution. Lastly, this analysis will examine the current oversight structure in detail to affirm that the problems with intelligence oversight lie within the legislative branch. The methodology for this investigation will include: reviewing committee jurisdictions, committee staff workloads, congressional committees membership and voting records, and lobbying activity in the defense industry.

The Consequences of Inadequate Intelligence Oversight:

Prior to proceeding with historical examples of the impact of ineffective oversight, it is important to understand that the intelligence policy process involves both the legislature and the executive branch. While the study presented here acknowledges a joint sense of responsibility between Congress and the President, this work is concerned with the legislature's specific role in the policy making process and the implications of dysfunctional oversight system. Two recent examples of Congress' haphazard review of the intelligence community include the 9/11 attacks and the 2003 WMD intelligence failure. As early as 1995, policy makers in the executive branch and legislators were informed that terrorists could utilize aircraft for an attack on US soil.⁵⁸ Congress failed to respond to these terrorist threats during the Clinton or Bush presidencies with committee activity regarding the plausibility of an aircraft attack and what the IC could do to prevent one in the future. In his 2006 article on this topic, Johnson begs an important question when he writes,

“What if SSCI (Senate Select Committee on Intelligence) and HPSCI (House Permanent Select Committee on Intelligence) had held extensive, executive session hearings on the CTC (Combating Terrorism Center) warning, then followed through to see if commercial pilots, the FBI, and airport security understood the danger and were taking steps to protect the public?”⁵⁹

In this case, it is evident that Congress failed to engage in regular patrolling of the intelligence community and its findings during the years leading up to 9/11. This is a prime example of how poorly conducted oversight can have a painful impact on national security at large. While it is futile to speculate if probing by the House and Senate intelligence committees would have prevented the 9/11 attacks, it is noteworthy that

⁵⁸ Loch K. Johnson. “Secret Spy Agencies and a Shock Theory of Accountability,” Occasional Papers 1 (December 2006), School of Public and International Affairs, University of Georgia, Pg. 9.

⁵⁹ Ibid

Congress failed to give the intelligence community any direction on this important issue, despite multiple warnings from the IC.

In addition to the 2001 attacks, the 2003 WMD intelligence debate represents yet another example of poor congressional oversight of the executive branch. In 2002, A National Intelligence Estimate (NIE) produced by the US National Intelligence Council, argued that WMDs were probable in Iraq. In light of this report, the Bush administration began to push for invading the region to preserve US national security.⁶⁰ The Bush administration cited the NIE report as proof that Saddam Hussein was ramping up efforts for a nuclear weapons program based on the existence of high-strength aluminum tubes.⁶¹ In the weeks that followed, the intelligence committees failed to conduct a thorough review of NIE analysis. Congress remained passive in the policy debate despite the fact that the Department of Energy (DOE) disputed the Bush administration's claim.⁶² In addition to the DOE's hesitations, field experts informed Secretary of State Condoleezza Rice that the tubes cited in the report were likely not used for nuclear weapons.⁶³ As a result of Congress' passive oversight, little debate occurred on Capitol Hill prior to the passage of H.J.Res.114 by a 296-133 vote on October 10th, 2002. This resolution sanctioned the use of US forces for the Iraq invasion and certified congressional support.

Once the general public became aware of the faulty intelligence behind the NIE report, members of Congress sang a different tune and did not hesitate to cast the blame

⁶⁰ Johnson, Pg.10-11.

⁶¹ Barstow, David, William J. Broad, and Jeff Gerth. "How the White House Embraced Disputed Arms Intelligence." The New York Times. The New York Times Company, 3 Oct. 2004. <http://www.nytimes.com/2004/10/03/international/middleeast/03tube.html?pagewanted=all&_r=1>.

⁶² Ibid.

⁶³ Ibid.

on the executive branch for pushing for an invasion based on inaccurate intelligence.⁶⁴ However, only the legislative branch possesses the primary responsibility of overseeing the executive branch's activity. In this case, Congress failed to utilize its constitutional authority to conduct thorough oversight of the executive branch findings prior to achieving congressional support for the Iraq war with H.J.Res.114. By passing this resolution, the legislative branch endorsed the invasion and ultimately, the intelligence used to support it.

Why is Intelligence Oversight Unique? :

Although the House and Senate intelligence committees utilize similar oversight methods as other bodies in Congress, the national security policy process is fundamentally unique when compared to other subject areas. Due to the need for unparalleled secrecy, IC oversight must be appropriately tailored to meet the challenges at hand. Scholars Serge Grossman and Michael Simon assert the limitations of oversight methods widely practiced in other policy domains when they explain, "Congress's wide array of oversight tools, which rely on the distribution of information to the media, interest groups, and the general public, are severely limited."⁶⁵ This quotation confirms that in other policy domains, the media, interest groups, and the general public play an important role by providing constant feedback regarding current issues that subsequently prompt congressional and agency response. On the contrary, the secret nature of intelligence policy impedes interest groups from being actively involved in the policy debate on most occasions. As a result, it is easier for Congress to avoid its responsibility

⁶⁴ Barstow

⁶⁵ Serge Grossman and Michael Simon, 438.

of practicing persistent oversight of the intelligence agencies because the interest groups and general public lack the ability to engage in the day-to-day operations of the IC.

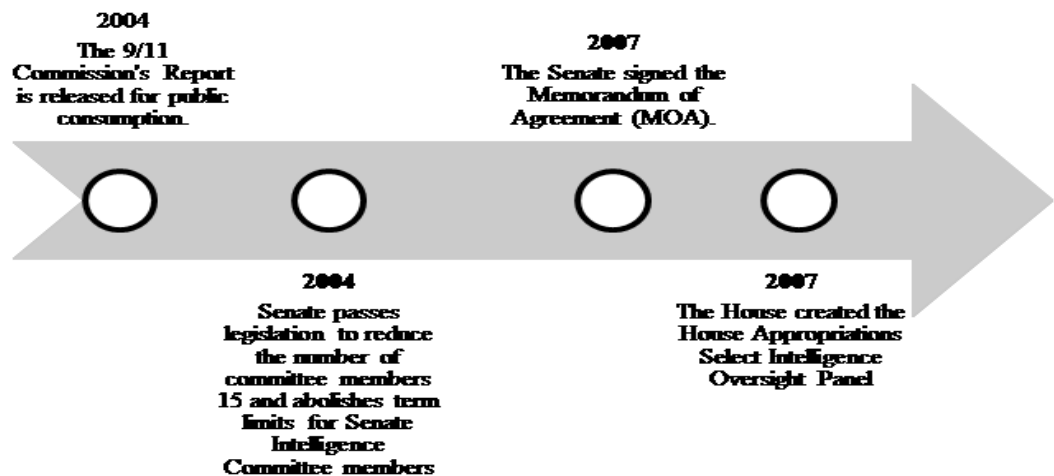
In addition to acknowledging intelligence policy's unique characteristics, it is necessary to define the difference between effective and ineffective oversight. For the purpose of this essay, successful oversight of the IC will be defined as that which keeps the legislative branch fully and regularly informed regarding agency intelligence activity without hampering or diminishing the IC's ability conduct daily operations. This definition ensures a mutually beneficial relationship that preserves US national security interests at large. As such, the IC willingly provides the information requested by Congress because it seeks necessary financial resources to perform its daily operations and the confidence of the American people, which is only achieved through a functional oversight process.

Oversight Changes Since 9/11:

This following section examines the post-9/11 changes to the House and Senate IC oversight structure. The 9/11 Commission released its final report in July 2004, which sparked limited changes to the oversight system in the House and Senate from 2004-2007. Figure 1 outlines the congressional action regarding intelligence reform from 2004-2007. In 2004, the Senate passed S.Res.445, which reduced the number of members serving on the Senate Intelligence Committee from 17 to 15. Also in 2004, the Senate responded to the Commission's concern for the negative implications of intelligence

committee member term limits and abolished them for the select committee.⁶⁶ Lastly, the Senate attempted to address the convoluted appropriations procedure in 2007 by signing the Memorandum of Agreement (MOA), which was designed to increase coordination and transparency between the Intelligence Committee and the Appropriations Committee. Senators have since expressed that the MOA failed to accomplish its original objectives.⁶⁷

Figure 1: Timeline for Congressional Action 2004-2007



The concern for consolidating appropriation activity continued in the 110th Congress when the Senate introduced S.Res.655, which if passed, would have established an intelligence appropriations subcommittee. The House also introduced similar

⁶⁶ Britt L. Snider. "The Relationship: 1976-2004." In *The Agency and the Hill: CIA's Relationship with Congress, 1946-2004*, 78. Washington, DC: Center for the Study of Intelligence, Central Intelligence Agency, 2008, Pg. 78.

⁶⁷ Elaine L. Halchin and Frederick M. Kaiser. "Congressional Oversight of Intelligence: Current Structure and Alternatives." *Federation of American Scientists*. May 14, 2012. <<http://www.fas.org/sgp/crs/intel/RL32525.pdf>>. Pg.18.

legislation, H.R.334, which if passed, would have required each chamber to create an Appropriations Subcommittee on Intelligence with full jurisdiction over intelligence activities.⁶⁸ Lastly, in 2007, the House acted on one of the 9/11 Commission's recommendations to consolidate the intelligence budget process by creating the House Appropriations Select Intelligence Oversight Panel to review the authorization and appropriation of funding for intelligence measures.

Despite these limited post-9/11 changes to the oversight structure, the system continues to remain in disarray. Britt Snider affirms the overall dismay of the House and Senate committees in the post-9/11 oversight when he explains,

“Whatever the reasons, the oversight process suffered as a result. Neither intelligence committee was able to get as much done. Other committees stepped into the void. The Agency itself increasingly turned to the appropriators, where it found a more sympathetic ear and a more reliable partner. The purpose of oversight also became skewed. Rather than a constructive collaboration to tackle genuine, long-term problems, oversight became a means of shifting political blame, as the circumstances required, either to the incumbent administration or away from it.”⁶⁹

It is clear that the current system is problematic and creates a toxic relationship between the legislative and executive branch where both parties blame one another for failures in the field. However, Congress is the only entity within the US government with the authority to remedy the dysfunctional policy review process.

Failing Intelligence Oversight: Who is to blame?

Immense debate among scholars, members of Congress and journalists has ensued regarding who is to blame for the dysfunctional oversight relationship. This section seeks to survey the literature on this important subject to confirm that Congress is the only

⁶⁸ Halchin and. Kaiser, Pg.18.

⁶⁹Snider, Pg. 90.

entity within the U.S. Government with the constitutional authority to change the oversight process. By political nature, members of Congress are quick to cast the blame for failing oversight on the executive branch. Former Chairman of the Senate Select Committee on Intelligence, John D. Rockefeller IV, expressed his disdain for the executive branch's failure to provide information to Congress during a committee hearing in 2007 when he stated,

“Effective oversight is never going to be fully realized as long as the administration views the Congress as little more than a speed bump when it wants to carry out intelligence activities unfettered by what Congress might have to say about some of those programs.”⁷⁰

Representative Sue Myrick also expressed similar sentiments regarding Congress' access to intelligence information in a 2009 hearing when she explained, “I'm new to the committee, but a lot of what we are told, simply I've read about in the press before I'm told here on the committee. And it's very aggravating.”⁷¹ The statements above from Senator Rockefeller and Representative Myrick infer that the underlying problem with congressional intelligence oversight is the committees' access to information. However, on the other side of the policy debate, a majority of scholars and intelligence officials express disdain for Congress' inability to take action to improve the current system.

The bi-partisan 9/11 Commission concluded in its 2004 report that congressional oversight of the IC was “dysfunctional” and beckoned the legislative branch to take necessary action to improve the intelligence policy process.⁷² After the 9/11 attacks and the release of the 9/11 Commission's report in 2004, Congress failed to take action to

⁷⁰ United States. Cong. Senate. Select Committee on Intelligence. *S.HRG. 110-794*. 110 Cong., 1st sess. S. Doc. US Government Printing Office, 13 Nov. 2007. <<http://www.intelligence.senate.gov/pdfs/110794.pdf>>. Pg. 6

⁷¹ "Legal Perspectives on Congressional Notification." *Government Printing Office*, 22 Oct. 2009. <<http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg53774/html/CHRG-111hhrg53774.htm>>.

⁷² Amy B. Zegart, "Eyes on Spies | Hoover Institution." *Hoover Institution*. October 12, 2011. <<http://www.hoover.org/publications/hoover-digest/article/95531>>.

correct the poor relationship with the intelligence agencies. As a result, the Bipartisan Policy Center National Security Preparedness Group recently stated, “When we issued our 2004 report, we believed that congressional oversight of the homeland security and intelligence functions was dysfunctional. It still is.”⁷³ It is important to note, Congress is the only entity with the constitutional authority to change the current structure and it must recognize its responsibility to improve IC oversight. Article I, Section 8 of the U.S. Constitution affirms this responsibility when it states, “The Congress shall have Power to... provide for the common Defense and general Welfare of the United States.”⁷⁴ It is clear that scholars, members of the IC and Congress share the same dismal sentiments regarding intelligence oversight, even if they disagree about the source of the problem. In light of legislative branch’s constitutional obligation, the subsequent sections in this essay will investigate the various roadblocks that inhibit effective oversight.

Identifying the Source of Dysfunction:

The following sections identify the obstacles that prevent the IC and the Hill from having a mutually beneficial relationship. The critical areas of concern in this chapter include: the lack of centralization in congressional committee authority, legislative incentives for members of Congress, and subject matter expertise at the committee level.

⁷³ Halchin and Kaiser, Pg. 16.

⁷⁴ "Transcript of the Constitution of the United States - Official Text." *Transcript of the Constitution of the United States - Official Text*.
<http://www.archives.gov/exhibits/charters/constitution_transcript.html>.

The Complex Web of IC Oversight

Competing Committee Jurisdiction

The complex nature of intelligence policy, which involves several domestic and foreign moving parts as well as the U.S. military, results in countless congressional committees seeking jurisdiction in the policy debate. The IC is composed of 17 entities within the federal government, which cross jurisdiction lines within the congressional committee framework. The push and pull from various committees on the Hill creates a complex system that hinders congressional oversight and hampers the IC. Slade Gorton, a former 9/11 Commission member, affirms this fact when he states, “The numbers we had at the time the 9/11 Commission met was that there were 88 congressional committees and subcommittees that had something to do with intelligence oversight.”⁷⁵ This exceedingly high number of committees with jurisdiction over the IC stands in stark contrast to the Veterans Affairs Department that was held accountable by two committees in 2007 and 2008.⁷⁶

It is evident that the current number of congressional committees exercising jurisdiction over the IC is unsustainable and must be reduced to streamline the oversight process and improve communication between the agencies and the Hill. Figure 2 affirms that at a minimum, six committees review the IC. In addition to this list of routine overseers, several other committees in the House and Senate claim jurisdiction of the IC and question the agencies periodically. The lengthy list of congressional reviewers poses

⁷⁵ "Intelligence Oversight: Is Congress the Problem? *PBS NewsHour*. Aug. 3, 2010. Public Broadcasting Service. Last modified August 3, 2010. Accessed November 1, 2012. <http://www.pbs.org/newshour/bb/government_programs/july-dec10/intelligence_08-03.html>.

⁷⁶ Sarah Laskow.. "The Cutting Edge News." *The Cutting Edge News* - Page One. Last modified July 20, 2009. Accessed December 12, 2012. <<http://www.thecuttingedgenews.com/index.php?article=11467&pageid=37&pagename=Page+One>>.

a significant challenge for the IC when preparing for hearings, answering member questions and providing timely policy briefings. Having a multitude of committees to respond to forces IC agencies to take time away from their main mission of collecting intelligence and performing analysis to respond to congressional inquiries.

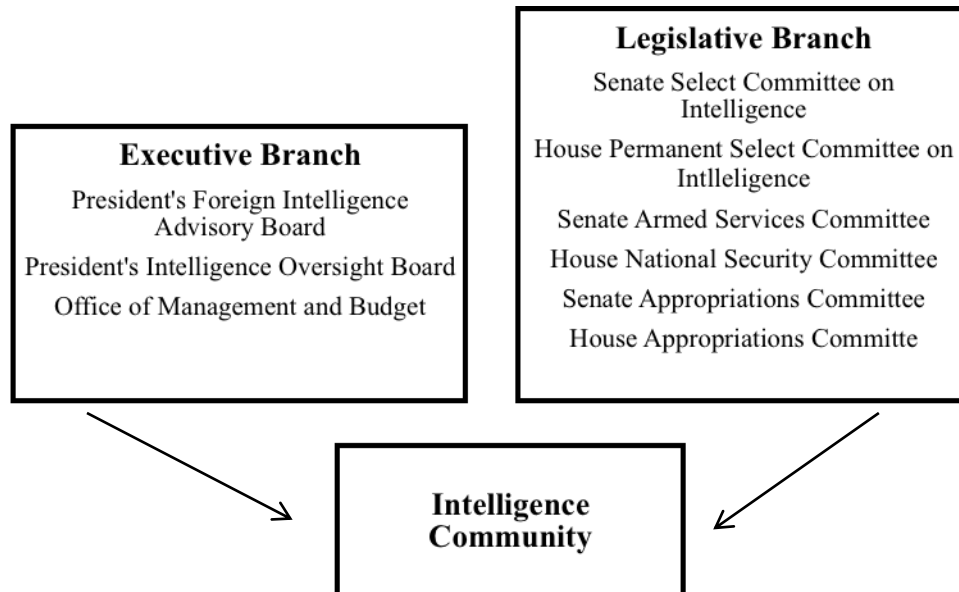
One way to quantify the exorbitant amount of work this system creates is by examining the Department of Homeland Security (DHS). Amy Zegart highlights DHS' workload in response to congressional inquiries when she writes,

“In 2009, for example, the Department of Homeland Security spent 66 work-years responding to congressional questions, giving 2,058 briefings and sending 232 witnesses to 166 hearings. “It’s disgraceful,” said Representative Peter King, who chairs the House Homeland Security Committee. “There’s no good reason.”⁷⁷

Congress must consider examples like this and the negative implications a broken oversight structure has on the IC's ability to perform its most important function, the collection and analysis of intelligence information. It is unreasonable to presume that the IC can perform its essential function of keeping America safe to its highest capacity when it is negatively impacted by the complex committee jurisdiction in Congress.

⁷⁷ Zegart, Amy. "Congress: A Pre-9/11 State of Mind | Hoover Institution." *Hoover Press*, 28 July 2011. <<http://www.hoover.org/publications/defining-ideas/article/87216>>.

Figure 2: Intelligence Community Oversight:



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The Problematic Budget Process

The legislative branch's disjointed oversight is also evident in the intelligence budget process. The budget process is further convoluted by the competing committee jurisdictions within Congress. The intelligence budget is comprised of two parts: the Military Intelligence Program and the National Intelligence Program. This separation in program funding results in several committees claiming authority over IC spending. For example, the HPSCI has oversight of NIP and the MIP. However, in the Senate the SSCI exercises power solely over the agencies funded by the NIP portion of the intelligence budget.⁷⁹ To put the complicated nature of the IC budget in perspective, the following section of this chapter will outline the various steps in the process as the funds are

⁷⁸ "Preparing for the 21st Century: An Appraisal of U.S. Intelligence, Appendix B." *U.S. Government Printing Office Home Page* March 1, 1996. <<http://www.gpo.gov/fdsys/pkg/GPO-INTELLIGENCE/pdf/GPO-INTELLIGENCE-22-2.pdf>>.

⁷⁹ Rosenbach and Peritz, Pg. 19.

authorized and finally appropriated before being put into action by the members of the IC.

The power of the purse is Congress' most authoritative measure for reviewing the executive branch. The House and Senate intelligence committees exercise this check on the President by conducting policy hearings and drafting authorizations for IC expenditures. However, the appropriations committee exercises the ultimate budgetary authority in the IC budget process. It is critical to note, this practice goes against the 9/11 Commission's recommendation, which suggested that members of the intelligence committees be "dual hatted" on the appropriations committees to make the budget process more efficient.⁸⁰ In a 2007 op-ed, Tim Roemer describes the appropriations debacle when he writes, "The intelligence-authorizing committees...have, ironically, the least say over how intelligence dollars are spent. Instead, the defense appropriations subcommittees have final say over intelligence funding levels."⁸¹ This practice is problematic and frustrating for members of the IC and Congress because the appropriations authority often supersedes other oversight powers due to the need for funding to continue ongoing intelligence operations. To date, the House and Senate have not addressed this ongoing issue despite recommendations from the 9/11 Commission, members of the IC and policy experts.

After careful discussion with high-ranking officials in the IC, the President's budget recommendations are presented to Congress by February. The House and Senate intelligence committees begin by drafting and voting on the authorization bill before it is

⁸⁰ Ibid.

⁸¹ Tim Romer. "How to Fix Intelligence Oversight." Washington Post: Breaking News, World, US, DC News & Analysis. December 20, 2007. <<http://www.washingtonpost.com/wp-dyn/content/article/2007/12/19/AR2007121901853.html>>.

presented to the respective chambers for a vote. Prior to coming to the floor for a vote, the authorization is carefully examined by committee members and staff for potential changes. Britt Snider describes Congress' attention detail in the authorization process when he explains,

"Elaborate program and justification books, covering each specific program to be authorized, are prepared annually by the Intelligence Community and submitted to the committees for review... The committees' involvement in the intelligence program and budget has, over the years, become extraordinarily detailed."⁸²

Once each chamber passes an authorization, the differences between the House and Senate versions are reconciled through the conference process. After the conclusion of the conference process, each chamber is given an opportunity to vote on the same version of the authorization for final passage.

After the authorization process is complete, the IC budget is finalized through the appropriations process, which is controlled by the House and Senate Defense Subcommittees. The subcommittee in each chamber prepares a version of the budget, which passes at the committee level before going before the full chamber for a vote. The House and Senate versions must then be reconciled before the budget will finally be presented to the President for final approval.⁸³ It is easy to see how this disjointed system often results in varying results from the authorization process and the appropriations process, which subsequently limits the IC's ability to plan for financial support. In addition to the fragmented budget process, the immense workload for intelligence appropriations staff members poses a dilemma.

⁸² Snider, Britt L. "Congressional Oversight of Intelligence: Some Reflections on the Last 25 Years." The Center on Law, Ethics & National Security. 2003. 13.
<<http://web.law.duke.edu/lens/downloads/snider.pdf>>.

⁸³Rosenbach and Peritz, 26.

Appropriations staffers play a pivotal role in ensuring the IC receives the funding necessary to sustain ongoing operations and national security programs. IC operations are dynamic and appropriators are tasked with the lofty responsibility of meticulously assessing the needs of each agency. Intelligence oversight scholar, Amy Zegart, researched the workload discrepancy between intelligence appropriations staff and those on other committees. Table 12 reveals that the Senate Defense Appropriations Subcommittee had seven professional staffers in FY 2010 who were each responsible for reviewing 636.3 billion in intelligence funding. This amounts to each staffer overseeing approximately \$90.9 billion. This number far exceeds the Senate Transportation appropriations subcommittee staffer that reviewed 33.9 billion and the Senate Veterans Affairs staffer who was responsible for 25.6 billion.

Table 12
Senate Appropriations Subcommittee Budget Workload, FY 2010

| Senate Appropriations Subcommittee | # of Professional Staff | FY 2010 Discretionary Budget (\$ billions) | Budget Billions per Staff |
|---|--------------------------------|---|----------------------------------|
| Defense | 7 | 636.3 | 90.9 |
| Labor, Health and Human Services and Edu. | 2 | 163.1 | 81.6 |
| Veterans Affairs | 3 | 76.7 | 25.6 |
| Transportation | 2 | 67.7 | 33.9 |

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⁸⁴ Amy B. Zegart, 2011. "The Domestic Politics of Irrational Intelligence Oversight." *Political Science Quarterly* 126, no. 1: 1-25. Pg. 21.

Other scholars and former committee staff attest to the problem posed by the intelligence budget staff's overwhelming responsibilities. Scholar Jennifer Kibbe expresses similar concerns regarding this dilemma when she explains,

"In August 2009, SSCI had 45 staffers to work on the intelligence budget... In comparison, the Senate Appropriations Defense Subcommittee had just five staffers who handled intelligence issues, and that was in addition to their responsibilities for some other parts of the defense budget as well."⁸⁵

Mary Sturtevant, a member of the Senate intelligence committee staff, affirms this problem from a staffer's perspective when she writes,

"In total, we are perhaps one dozen or so full-time budget staff supporting the Intelligence Authorization and Appropriations Committees of both the House and the Senate reviewing activities conducted by tens of thousands of civilian and military personnel and programs valued in the multiple billions of dollars."⁸⁶

This workload imbalance is problematic because it fails to provide adequate staff resources to tackle the various facets of the IC budget. Intelligence oversight is a critical part of the legislative branch's responsibility to review executive level activities and as such, Congress must work to provide a more balanced workload for the budget staff to ensure proper stewardship of taxpayer funds.

It is without question that the congressional budget process was designed to allow for sufficient deliberation on various aspects of taxpayer-funded programs. However, by separating the authorizing and appropriation functions, Congress further complicates the intelligence policy process. Under the current budget structure, effective IC oversight is plagued by competing committee jurisdictions and an unsustainable workload for intelligence appropriators who quite arguably, have one of the most difficult jobs in

⁸⁵ Jennifer Kibbe. "Congressional oversight of [US] intelligence: is the solution part of the problem?" *Intelligence And National Security* 25, no. 1: 24-49. International Political Science Abstracts, Pg. 30.

⁸⁶ Mary K. Sturtevant. "Congressional Oversight of Intelligence: One Perspective." *Congressional Oversight of Intelligence: One Perspective*. American Intelligence Journal, 1992. <<http://www.fas.org/irp/eprint/sturtevant.html>>.

Congress. In addition the negative impacts of the current IC budget process, Congress must examine the significance of legislative incentives as a means to improve its oversight capability.

The Absence of Legislative Incentives

America's Founding Fathers took great care when designing the federal government to create a checks and balances system to counter each politician's ambitions and ensure the best interest of the American people. James Madison elaborates on the importance of maintaining the partition of power in *Federalist #51*, when he writes,

"Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature?"⁸⁷

This quotation reveals that in light of human nature, legislative incentives are necessary to ensure politicians act in accordance with the public's best interest. Similarly, Johnson affirms the significance of incentives in today's post 9/11 environment when he explains, "Nothing is more important to effective accountability than the will of the individual lawmakers and executive overseers to engage in meaningful examination of intelligence programs."⁸⁸ These motivations come in various forms, but the electoral incentive is by far the most crucial since it determines every politician's fate. Logically, congressmen are inclined to vote in accordance with their constituency's views and heed the demands of interest groups. If congressmen fail to do so, they may face a tough re-election campaign or be voted out of office in the next election cycle.

⁸⁷ James Madison. "The Federalist #51." Constitution.org. February 6, 1788.
<<http://www.constitution.org/fed/federa51.htm>>.

⁸⁸ Loch K. Johnson, "The Contemporary Presidency": Presidents, Lawmakers, and Spies: Intelligence Accountability in the United States, *Presidential Studies Quarterly*, Vol. 34, No. 4 (Dec., 2004). Pg. 833.

For better or worse, electoral incentives are the driving force on Capitol Hill and rest as the cornerstone for all legislative operations. As such, members of Congress fight to gain seats on the committees that mirror the interests in their district. This practice urges congressmen from rural districts try to find a seat on the Agriculture committee, while those from districts with a vested interest in the aviation industry attempt to serve on Transportation. Since intelligence activities are wrapped in secrecy and often discussed out of public view, this policy domain is typically disregarded by voters. As a result of this fact, congressmen lack the motivation to serve on the Intelligence committees.⁸⁹ The public's lack of interest in national security issues was evident in the 2012 Election.

During the 2012 Election, Rasmussen conducted a poll to examine the issues that influence a voter's decision at the polls. According to the study, 80 percent of voters indicated the economy was very important to how they will vote in the election. On the other hand, only 52 percent indicated National Security was very important to how they would vote in the elections.⁹⁰ This data confirms that national security ranks as a significantly lower priority for the average voter, which has a negative impact on a Congressman's drive to participate in the IC oversight process. Another way to further the lack of congressional motivation in intelligence policy is to study intelligence committee membership.

⁸⁹ Amy B. Zegart. "Eyes on Spies." *Hoover Institution*. October 12, 2011. <<http://www.hoover.org/publications/hoover-digest/article/95531>>.

⁹⁰ "Economy, Health Care Still Top Voters' List of Important Issues - Rasmussen Reports™." *Economy, Health Care Still Top Voters' List of Important Issues - Rasmussen Reports*. Feb. 13, 2011. <http://www.rasmussenreports.com/public_content/archive/mood_of_america_archive/importance_of_issues/economy_health_care_still_top_voters_list_of_important_issues>.

In her recent book, "Eyes on Spies," Amy Zegart supports this claim when she argues that the absence of electoral motivations in national security policy results in a decreased number of "movers and shakers", on the HPSCI and the SSCI.⁹¹ She defines "movers and shakers" as members of Congress who hold leadership positions within the legislative branch (See note). Table 13 displays Zegart's data, which tracks the number of movers and shakers on the congressional intelligence committees from 1977-2007.

Despite the fact that the Senate intelligence committee had 20 members in 2007, only five members, or 25 percent of the committee, were deemed movers and shakers in Zegart's study. In 2007, the house intelligence committee fared slightly better with 33 percent of the members on the committee who were labeled as movers and shakers. This data reveals a sharp deviation from 1997, when 44 percent of HPSCI and 47 percent SSCI members held leadership positions. Using this data, one can conclude that influential members in both the House and Senate avoid serving on the intelligence committees. This fact is problematic because the intelligence committees are critical entities in the legislative branch that require superior leadership. The influence of electoral incentives is also evident in the HPSCI and the SSCI's legislative activity.

⁹¹ Amy B. Zegart. "The Roots of Weak Congressional Intelligence Oversight." *Hoover Institution*. 2011. Accessed <http://media.hoover.org/sites/default/files/documents/FutureChallenges_Zegart.pdf>.Pg.10.

Note: Amy Zegart defines "movers and shakers" as: "In the House are defined as: The Majority Leader, Assistant Majority Leader (Whip), Minority Leader, Assistant Minority Leader (Whip), Chairmen and Ranking Members of all committees and all members of the Appropriations, Rules and Ways and Means Committees. We did not include the Speaker of the House because she does not ordinarily serve on other committees. Senate 'movers and shakers' include the President Pro Tempore, Majority Leader, Assistant Majority Leader (Whip), Minority Leader, Assistant

Table 13
Decline in Movers and Shakers on Intelligence Committees, 1997-2007

| Committee | Year | Number of movers and shakers | Committee size | Movers and shakers, % of committee total |
|---------------------|-------------|-------------------------------------|-----------------------|---|
| Senate intelligence | 1977 | 6 | 17 | 35 |
| | 1987 | 11 | 15 | 73 |
| | 1997 | 9 | 19 | 47 |
| | 2007 | 5 | 15 | 33 |
| House intelligence | 1978* | 6 | 13 | 46 |
| | 1987 | 8 | 17 | 47 |
| | 1997 | 7 | | 44 |
| | 2007 | 5 | 20 | 25 |

Note: Data not available for the House in 1977.

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Despite the vast responsibility possessed by the intelligence committees and the dynamic nature of national security issues, the HPSCI and the SSCI are consistently less active legislatively than other committees in Congress. For example, each fiscal year congressional committees are charged with the task of drafting authorization bills to express support or opposition to funding various federal initiatives. However, from FY 2006-FY 2009 the House and Senate intelligence committees failed to pass authorization legislation.⁹³ This demonstrates the lack of congressional motivation to respond to intelligence issues in a timely manner, which should be a grave concern for the American public who entrusts Congress with the responsibility of diligently reviewing executive branch activities.

⁹² Amy Zegart. "The Roots of Weak Congressional Intelligence Oversight."

⁹³ Jennifer Kibbe, 25.

Table 14 from Amy Zegart and Julie Quinn’s article, “*Congressional Intelligence Oversight: The Electoral Disconnection*,” further exemplifies this fact by comparing resolution success rates for the Senate Intelligence and Foreign Affairs committees from 1985-2005. Each Congress (109th, 110th) is composed of two one-year sessions. From 1985-2005, the average number of resolutions considered by the SSCI was 6, which is minimal compared to the Senate Foreign Affairs committee that reviewed an average of 118. In addition, the difference in number of resolutions that became public law is also staggering. During that same period, the SSCI had an average of one resolution becoming law, while the foreign affairs committee had 13. Congress cannot claim to conduct thorough oversight of the IC, if it cannot set funding levels for national security programs. A study of interest group spending in the defense industry provides additional evidence to confirm the lack of legislative incentives in intelligence policy.

Table 14
Legislative Activity Levels of Senate Intelligence vs. Foreign Relations 1985-2005

| Committee | Congress | Year | Resolutions Considered | Resolutions that became Public Law | Success Rate % |
|--------------------------|-----------------|-------------|-------------------------------|---|-----------------------|
| Intelligence | 109th | 2005 | 9 | 0 | 0 |
| | 106th | 2000 | 2 | 0 | 0 |
| | 104th | 1995 | 7 | 2 | 29 |
| | 101st | 1990 | 9 | 0 | 0 |
| | 99th | 1985 | 2 | 2 | 100 |
| <i>Average</i> | | | 6 | 1 | 17 |
| Foreign Relations | 109th | 2005 | 107 | 6 | 6 |
| | 106th | 2000 | 122 | 9 | 7 |
| | 104th | 1995 | 72 | 4 | 6 |
| | 101st | 1990 | 147 | 29 | 20 |
| | 99th | 1985 | 142 | 17 | 12 |
| <i>Average</i> | | | 118 | 13 | 8 |

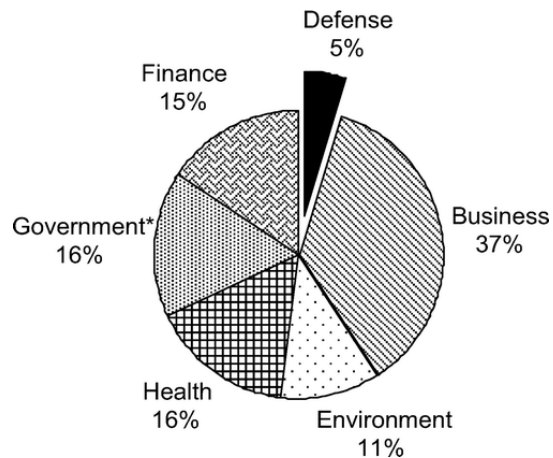
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As mentioned previously in this work, lobbyists serve as a voice for various interest groups who seek to complain or highlight successes in various agency policies. Due to the secret nature of intelligence issues, interest groups are often unable to voice public opinion or concerns in the policy process. Figure 3 is a pie chart from Zegart and Quinn, which outlines lobbying spending by industry from 1998-2008. According to this data, defense industry spending, which amounted to 5 percent, is miniscule when compared to business interest groups that spent 37 percent. Defense spending is a significant portion of the annual federal budget. However, the absence of interest groups in the policy area causes an obvious disconnect in congressional priorities. Since members of Congress operate solely on the base of voter incentives, it is no surprise that congress remains complacent in restructuring intelligence oversight. The legislature's

⁹⁴ Amy B. Zegart and Julie Quinn, 2010, "Congressional Intelligence Oversight: The Electoral Disconnection", *Intelligence and National Security*, 25:6, 744-766.Pg. 756.

habit of practicing passive review of the IC reveals a frightening reality that demonstrates a congressman's political objectives often supersede U.S. national security concerns.

Figure 3: Lobby Spending by Industry from 1998-2008



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Need for Committee Member Expertise

The final factor that contributes to the dysfunctional oversight structure is the lack of expertise at the committee level. Given the unique secrecy surrounding national security programs, members enter Congress with little, if any, experience in this policy subject. Fresh from the campaign trail members arrive to Capitol Hill ready to chart the course for their legislative agenda in the upcoming session. One way that members decide which policy issues they will impact is through their committee assignments. Members can express desire in serving on specific committees that interest their constituency. However, the House and Senate intelligence committees are unique when compared to the other committees operating on the Hill because party leadership assigns

⁹⁵ Zegart and Quinn, Pg. 756.

seats on the select committees.⁹⁶ Originally, this measure was put in place to ensure that informed, mature members of Congress were selected to serve on the intelligence committees but this intention has faded with time. Britt Snider affirms this transition when he argues,

“In the beginning, great care was taken to ensure “responsible,” seasoned members were named. Many of those appointed, in fact, were chairmen or ranking members of other committees. In recent years, however, new, inexperienced legislators have from time to time been appointed, apparently as political favors.”⁹⁷

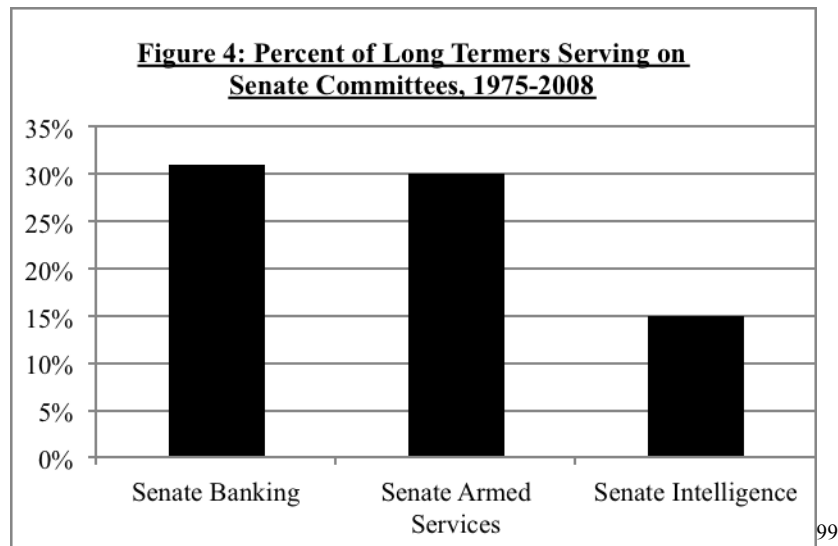
This transformation has failed to generate experienced and knowledgeable members to serve on the intelligence committees over the years. This issue should be of grave concern for Congress as it considers possible reform methods because many young members are often overwhelmed by the endless list of policy issues on their plate. Since serving on the intelligence committee is just one of multiple committee assignments, it is critical that the members who are selected to serve in this capacity are mature enough to handle this important responsibility in addition to other committee assignments.

Lastly, the current structure is problematic because the House still has specific measures in place to limit the number terms members can serve on the select committee. As a result, turnover on the HPSCI is high and subject matter expertise continues to decline as knowledgeable members are denied the opportunity of continued service. This is a unique problem for the intelligence committee because more than 90 percent of other congressional committees allow for unlimited service, which creates an environment

⁹⁶ Judy Schneider. "Committee Assignment Process in the U.S. Senate: Democratic and Republican Party Procedures." Congressional Research Service , 2006.
<<http://faculty.washington.edu/jwilker/353/353Assignments/SenateCommitteeAssignmentProcess.pdf>>.

⁹⁷ Snider, Britt L. "Congressional Oversight of Intelligence: Some Reflections on the Last 25 Years." 18.

where members become subject matter experts in particular fields.⁹⁸ Figure 4 from Amy Zegart's "Roots of Weak Congressional Intelligence Oversight," quantifies the lack of member experience on the senate intelligence committee. For example, during the years 1975-2008, the Senate Banking committee had 31 percent of its members who had served on the committee 10 years or longer. During that same period, the Senate Intelligence committee had a mere 15 percent of its members who had served 10 years or longer. Committee members with intelligence expertise are valuable assets and the House should put measures in place to ensure retention of experienced policymakers. This will ensure members develop a strong working knowledge of the IC and its complex operations.



Note: Zegart defines "Long Termers" as members who have served on the committee for 10 years or longer.

The constant cycle of member turnover also impacts committee staff members who are subsequently removed from their positions as new members are selected to serve

⁹⁸ Zegart and Quinn, Pg. 765.

⁹⁹ Amy B. Zegart, "The Roots of Weak Congressional Intelligence Oversight."

on the committee, regardless of their experience. The Sunlight Foundation, a 501 (C) (3) organization that focuses on government transparency, released a report on congressional committee turnover in 2012. This report called out the House intelligence committee for its retention rate of 38.9 percent from 2009-2011. This low retention rate is significant because the HPSCI was one of three House committees with a rating below 40 percent.¹⁰⁰ The House intelligence committee staff retention rate pales in comparison to the House Joint Committee on Taxation, which retained 82.4 percent and the House Budget Committee, which retained 64.3 percent of its staff during the same period.¹⁰¹ Congress must take action to address this issue because committee staffers play a pivotal role in guiding the oversight priorities for each session and advising committee members on complex policy issues. Therefore, this decline in staff institutional knowledge, which hampers the legislative branch's ability to conduct thorough oversight of the executive branch should be of grave concern for members of Congress and the intelligence committees.

Conclusion:

The American form of government is an elaborate system of checks and balances, which is fundamentally dependent upon legislative examination of the executive branch. Dysfunctional oversight results in poor review of executive branch activities, which is a monumental disservice to the taxpayers who depend on elected officials to conduct a thorough review on their behalf. It is evident that scholars in the field and members of Congress agree that intelligence oversight remains dysfunctional. Congress is the only

¹⁰⁰ Lee Drutman "Sunlight Foundation." Sunlight Foundation, Feb. 6, 2012.
<<http://sunlightfoundation.com/blog/2012/02/06/turnover-in-the-house/>>.

¹⁰¹ Ibid.

entity within the American government that possesses the constitutional authority outlined in Article I, Section 8 to change the current oversight structure. Since Congress has the constitutional obligation to ensure proper review of executive branch activities, it can no longer remain silent regarding the shortcomings of the current oversight process.

The years of Congressional absentness in intelligence policy leading up to 9/11 and the lack of debate prior to the Iraq invasion further confirm the legislative branch's apathy to perform sound intelligence oversight. As a result of policy neglect and passive oversight on Capitol Hill, the relationship between the agencies and the legislative branch has deteriorated and is no longer mutually beneficial. This dissatisfactory relationship between congress and the IC diminishes the credibility of the U.S. intelligence agencies in the eyes of the general public and creates an environment where countless congressional and federal agency resources are wasted.

This chapter affirms that the decentralization of IC committee authority, lack of congressional incentives for members, and subject matter expertise at the committee level are the most significant obstacles to effective oversight. These issues must be addressed through comprehensive oversight reform to improve and consolidate the intelligence policy process. There are various directions Congress could take concerning IC oversight reform. Methods of improvement could include: reforming the intelligence committee member selection process, the creation of a joint committee or passing legislation to create a joint appropriations and authorizing authority. Congress must make it a priority to set self-interests aside and develop a comprehensive plan to achieve a mutually beneficial oversight relationship with U.S. Intelligence agencies in the upcoming Congress. The success of the US intelligence community is of vital importance in a post

9/11 America where the battle against terrorism is ever evolving. However, until Congress recognizes it is the only entity with the responsibility and power to improve intelligence oversight it is unlikely there will be a change to the status quo.

Chapter 4

A Joint Committee on Intelligence: A Plausible Solution for America's Post-9/11 Oversight Challenges?

Introduction:

The 9/11 Commission Report confirms the widespread dissatisfaction with congressional intelligence oversight when it states, “Having interviewed numerous members of Congress from both parties, as well as congressional staff members, we found that dissatisfaction with congressional oversight remains widespread.”¹⁰² Although the lack of review or ineffective congressional intelligence oversight has received significant attention, little is written regarding potential solutions for today’s challenges. This chapter seeks to prompt members of the intelligence policy debate to focus on reform solutions, rather than continuing to emphasize the problems at hand.

This chapter will assess a joint committee on intelligence as a potential solution for today’s oversight challenges. The first section will offer terms and definitions to assist the reader and provide an overview of the obstacles that impact effective congressional oversight of the U.S. Intelligence Community. The subsequent section will identify the current challenges that hamper intelligence oversight. After establishing this foundation, the chapter will provide a brief historical review of joint committees in the U.S. Congress. Using this background information, the author will evaluate a joint committee’s ability to improve congressional the current intelligence oversight system. The methodology for this investigation will include: a comparison of intelligence

¹⁰² 9/11 Commission Report : the Official Report of the 9/11 Commission and Related Publications. [Washington, D.C.]: U.S. G.P.O., 2004. 419.

committee budgets and membership data in contrast with joint congressional committees. In addition, this study will review the circumstances leading up to Edwards Snowden leaks to demonstrate the timely significance of legislative incentives in intelligence policy and the prospects of joint committee on intelligence.

What is a Joint Committee?:

In 2004, the 9/11 Commission outlined two options for improving congressional intelligence oversight: a joint committee on intelligence or a separate intelligence committee in each chamber that possesses both authorizing and appropriating authority.¹⁰³ A joint committee refers to a single congressional committee which is consists of members from both the U.S. House of Representatives and the U.S. Senate who have jurisdiction over a specific policy area. Throughout U.S. history, Congress used joint committees to address immediate concerns and serve as permanent forces in the congressional structure.

The History of Joint Committees in the U.S. Congress:

Joint committees can be established one of two ways: by a concurrent resolution, which is not legally binding, or by the passage of legislation.¹⁰⁴ Throughout history, Congress utilized joint committees to tackle immediate policy concerns or address long-term congressional prerogatives. For example, after the assassination of President Lincoln, Congress created a joint committee to investigate the Ford Theatre tragedy. In

¹⁰³ 9/11 Commission Report.

¹⁰⁴ Elaine L. Halchin and Frederick M. Kaiser. "Proposed Joint Committee On Intelligence Characteristics." *Congressional Research Service: Report* (2012): 9-16. *International Security & Counter Terrorism Reference Center*. Web. 2 Dec. 2013. 5.

addition, during presidential inaugural years, Congress institutes a joint committee to be in charge of the inaugural ceremonies. Currently, the 113th U.S. Congress has five standing joint committees: the Joint Economic Committee (JEC), the Joint Committee on the Library (JCL), the Joint Committee on Printing (JCP) and the Joint Committee on Taxation (JCT).¹⁰⁵ Today, joint committees vary in policy responsibility and size depending on the nature of their duties. For example, the JEC monitors the U.S.'s makes various suggestions regarding how to improve the state of the economy and has 20 members. In contrast, the JCP's sole focus is oversight of the Government Printing Office and it is composed of 10 members.

The idea of a joint intelligence committee was introduced as early as 1948. During the Reagan administration, seven American hostages were held in Lebanon by a group of Iranians with connections to the Army of the Guardians of the Islamic Revolution. The National Security Council and the CIA were involved in an arms deal with the Contras, a rebel force in Nicaragua, which later became known as the Iran-Contra Affair.¹⁰⁶ This scandal resulted in the establishment of the Iran-Contra Committee and the Tower Board to investigate the IC's involvement in the questionable arms deal. At the time, the Iran-Contra Committee minority report, the Tower Board Report and President Ronald Reagan expressed support for a joint committee on intelligence.¹⁰⁷ Since this initial push for a joint committee on intelligence, several other scholars and members of the IC have voiced support for this cause. Most recently, the 9/11

¹⁰⁵ Karen L. Haas. "List of Standing Committees and Select Committee and their Subcommittees of the House of Representatives of the United States together with Joint Committees of the Congress, One Hundred Thirteenth Congress" 2014. Web. <http://clerk.house.gov/committee_info/scsoal.pdf>.

¹⁰⁶ "Iran-Contra Affair." Columbia Electronic Encyclopedia, 6Th Edition (2013): 1. MasterFILE Premier. Web. 23 Mar. 2014.

¹⁰⁷ Gerald B. Solomon, "A Tight Plug on Intelligence Leaks," *New York Times*, June 10, 1987. Web. <<http://www.nytimes.com/1987/06/10/opinion/a-tight-plug-on-intelligence-leaks.html>>.

Commission suggested a joint committee on intelligence would improve the legislature's oversight of the IC.

In 2004, the 9/11 Commission cited the Joint Committee on Atomic Energy (JCAE) as an example for Congress to use when considering the formation of a joint intelligence committee. In 1946, the JCAE, a group composed of 18 members from the House and Senate, was established with the Atomic Energy Act.¹⁰⁸ The JCAE consisted of an equal number of Representatives and Senators who could bring forth legislation to both chambers.¹⁰⁹ During the peak of its existence, the JCAE was referred by many as the "most powerful congressional committee in the history of the nation."¹¹⁰ It is interesting to note that despite the 9/11 Commission's praise of the JCAE, this committee received criticism from the executive branch for its ability to safeguard classified information.¹¹¹

The JCAE was an active body for fourteen years before being dissolved in 1977.¹¹² Scholars and legislators speculate that the committee was disbanded because of changing political dynamics in Congress and the fact that nearly half of the 18 seats on the committee were vacant when the JCAE was dissolved.¹¹³ At this point in history, atomic energy issues expanded to impact several other policy areas, which prompted competing jurisdictions within Congress to question the JCAE's monopoly of power.¹¹⁴ Lastly, in the 95th Congress (1977-1979), Senate leadership made attempts to reduce the

¹⁰⁸ Haas, Karen L. " List of Standing Committees and Select Committee and their Subcommittees of the House of Representatives of the United States together with Joint Committees of the Congress, One Hundred Thirteenth Congress " 2014.Web.
<http://clerk.house.gov/committee_info/scsoal.pdf>.

¹⁰⁹ Ibid.

¹¹⁰ Frederick M. Kaiser, Frederick 5 J.L. & Pol. 127 (1988-1989)
Proposed Joint Committee on Intelligence: New Wine in an Old Bottle, 140.

¹¹¹ Ibid. 139.

¹¹² Ibid. 140.

¹¹³ Ibid.

¹¹⁴ Ibid.

number of committee assignments for its members. As a result of this structural change, the number of standing committees was reduced and specific joint committees were disbanded.¹¹⁵ The following section of this chapter will evaluate the potential of a joint committee to address today's post 9/11 oversight challenges.

Post-9/11 Oversight Obstacles:

The plausibility of a joint committee on intelligence will be assessed as it relates to the obstacles outlined in the previous chapter, which include: the need for centralization in congressional committee authority, legislative incentives for members of Congress and subject matter expertise at the committee level. This analysis will conclude that a joint committee intelligence committee is a "one size fits all" reform method that is not designed to remedy the problems present in the current oversight structure.

Evaluating a Joint Committee as a Solution:

Centralization of Congressional Committee Authority of the IC

One of the many complaints among IC members and legislators is the disjointed congressional oversight structure. Under the current system, six committees have jurisdiction of the IC and countless other committees in Congress beckon agency leaders to Capitol Hill to provide testimony or briefings regarding agency activities. The 9/11 Commission Report highlights the overlap in congressional national security oversight when it explains, "The Leaders of the Department of Homeland Security now appear before 88 committees and subcommittees of Congress."¹¹⁶ As demonstrated in the

¹¹⁵ Kaiser, 141.

¹¹⁶ 9/11 Commission Report.

previous chapter, IC budget authority is separated into the authorization and appropriation processes and compromised of the Military Intelligence Program and the National Intelligence Program. This separation in program funding results in several committees claiming authority over IC spending. The institutional challenges outlined above increase the workload for the agencies that must respond in a timely manner to congressional inquiries. Lastly, the current structure with two committees, each with a significant staff size, poses a challenge to maintaining secrecy controls.

If Congress chose to establish a joint committee on intelligence, the legislative branch could consolidate the various committees with IC oversight authority in a single joint committee composed of equal Senate and House members. Currently, the HPSCI has 21 members, 12 majority members from the Republican Party and 9 minority members from the Democratic Party. However, the SSCI has 15 members, 8 Democratic senators from the majority and 7 Republicans from the minority. When discussing joint committee membership, the 9/11 Commission recommended that a joint committee include representatives from Armed Services, Judiciary, Foreign Affairs and the Defense Appropriations subcommittee.¹¹⁷ The Commission argued this structure would make the oversight process more efficient by involving all congressional partners in a single policy debate. Under the current structure however, each committee with jurisdiction over the IC holds separate hearings and requests briefings from the IC for its individual members. Therefore, a joint committee could eliminate the potential for redundant hearings, investigations and reduce the number of member briefings.

Table 15 outlines membership in the intelligence committees, the Joint Intelligence Committee and the hearing activity in each chamber in 2013. Together, the

¹¹⁷ 9/11 Commission Report. 421.

HPSCI and the SSCI held a total of 91 hearings. In contrast, the Joint Economic Committee hosted a mere 21 hearings. It is likely that by consolidating the two intelligence oversight bodies into a single bipartisan unit with equal representation from each house, Congress would simultaneously reduce the number of hearings and redundancy in the oversight process. Another advantage of a joint committee system is the ability to streamline the legislative process.

Table 15
2013 Intelligence Oversight

| 2013 Intelligence Oversight Statistics | | |
|---|---------------------------------|----------------------------------|
| <i>Committee</i> | <i>Number of Members</i> | <i>Number of Hearings</i> |
| HPSCI | 21 | 22 |
| SSCI | 15 | 72 |
| JEC | 20 | 21 |

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If Congress consolidated IC oversight in a joint committee it would make the policy process more efficient. Legislation put forth by the joint committee with support from equal members of House and Senate would eliminate the need for a lengthy conference process to establish an agreement between the two houses during the legislative process. In a 2004 CRS report, Frederick Keiser argues a joint committee on intelligence would,

¹¹⁸ United States. Joint Economic Committee. *House Members, Senate Members*. 113th Cong. Cong. Rept. Joint Economic Committee, n.d. Web. 6 Dec. 2013. <<http://www.jec.senate.gov/public/index.cfm?p=HouseMembers>>., Rogers, Mike, Hon. "Annual Report on the Activity of the House Permanent Select Committee on Intelligence for the 113th Congress." U.S. Government Printing Office, n.d. Web. 2 Dec. 2013. <http://beta.congress.gov/113/crpt/hrpt310/CRPT-113hrpt310.pdf>., United States. Cong. Senate. Select Committee on Intelligence. By Diane Feinstein, Hon. 113th Cong., 1st sess. S. Rept. 113-7. N.p., n.d. Web. 2 Dec. 2013. <<http://beta.congress.gov/113/crpt/srpt7/CRPT-113srpt7.pdf>>.

“Streamline the legislative process, because only one committee, rather than two, would have to consider and report legislative proposals and authorizations to the floors of both chambers; members from the same joint committee, moreover, might comprise all or a majority of the membership of conference committees, which might be less necessary in the first place because of the bicameral, bipartisan makeup of a joint committee.”¹¹⁹

Simplifying the current oversight structure with a joint committee would not only reduce the burden on the IC who is tasked with briefing the members on intelligence policy, it would expedite the legislative process for intelligence related appropriations. Ultimately, this practice would benefit U.S. national security interests because Congress would be able to communicate more efficiently with the IC and legislate expediently during national security emergencies. In addition to simplifying the oversight process, a joint committee would be an economically prudent option for Congress.

During today’s economically challenging times, legislators are always searching for new ways to reduce the federal budget. Figure 5 is a section from a Senate Committee on Rules and Administration report, which outlines the SSCI’s appropriations for March 1, 2013 through September 30, 2013. During this period, the SSCI was awarded \$3,739,220 for committee operations costs. Figure 6, from a Committee on House Administration report, reveals the HPSCI was allocated a total of \$8,779,516 in the 113th Congress. Together, the House and Senate intelligence committee budgets are monumental when compared to the JEC, which was appropriated \$4,195,000.¹²⁰

¹¹⁹ Kaiser, 9.

¹²⁰ United States. Cong. Senate. Joint Economic Committee. 113th Cong. S. Rept. 113-070. N.p., n.d. Web. 6 Dec. 2013. <http://thomas.loc.gov/cgi-bin/cpquery/?&sid=cp11323vD4&r_n=sr070.113&dbname=cp113&&sel=TOC_79680&>.

Figure 5
SSCI Budget for the 113th Congress
Sec. 18. Select Committee on Intelligence

| | FY 2013 (7 mths) |
|---------------------------------------|---------------------|
| Salary Baseline | \$3,671,736 |
| 2013 COLA | |
| Consultants | 10,000 |
| Training | 0 |
| Official Mail | 7,317 |
| Administrative Expenses | 50,167 |
| Budget Authority 113th Congress | 3,739,220 |

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Figure 6
House Committee Budgets 113th Congress

| Committees | 1st session | 2nd session | Total |
|---|-------------|-------------|--------------|
| Agriculture | \$5,036,187 | \$5,036,187 | \$10,072,374 |
| Armed Services | 6,563,535 | 6,563,535 | 13,127,070 |
| Budget | 5,138,824 | 5,138,824 | 10,277,648 |
| Education and the Workforce | 6,952,763 | 6,952,763 | 13,905,526 |
| Energy and Commerce | 9,520,516 | 9,520,516 | 19,041,032 |
| Ethics | 3,020,459 | 3,020,459 | 6,040,918 |
| Financial Services | 7,394,482 | 7,394,482 | 14,788,964 |
| Foreign Affairs | 7,388,112 | 7,388,112 | 14,776,224 |
| Homeland Security | 7,033,588 | 7,033,588 | 14,067,176 |
| House Administration | 4,600,560 | 4,600,560 | 9,201,120 |
| Select Committee on Intelligence | 4,389,758 | 4,389,758 | 8,779,516 |
| Judiciary | 7,077,016 | 7,077,016 | 14,154,032 |
| Natural Resources | 6,555,829 | 6,555,829 | 13,111,658 |
| Oversight and Government Reform | 8,940,437 | 8,940,437 | 17,880,874 |
| Rules | 2,857,408 | 2,857,408 | 5,714,816 |
| Science, Space, and Technology | 5,282,755 | 5,282,755 | 10,565,510 |
| Small Business | 2,992,688 | 2,992,688 | 5,985,376 |
| Transportation and Infrastructure | 8,182,307 | 8,182,307 | 16,364,614 |
| Veterans' Affairs | 3,048,546 | 3,048,546 | 6,097,092 |
| Ways and Means | 8,423,411 | 8,423,411 | 16,846,822 |

¹²¹ United States. Congress, Senate. *The Committee on Rules and Administration*. 113th Cong., 1st sess. S. Rept. 113-41. N.p., n.d. Web. 2 Dec. 2013. <<http://beta.congress.gov/113/crpt/srpt41/CRPT-113srpt41.pdf>>. 8.

¹²² United States. Congress, House. *Committee on House Administration*. 113th Cong., 1st sess. H. Rept. 113-20. N.p., n.d. Web. 2 Dec. 2013. <<http://beta.congress.gov/113/crpt/hrpt20/CRPT-113hrpt20.pdf>>. 4.

In addition to budgetary advantages, a single joint committee on intelligence would also limit the number of members who are briefed on national security operations. In turn, this practice would increase Congress' ability to maintain a high level of secrecy in an effort to preserve U.S. national security. In 2001, Congress and the Bush administration clashed when members leaked classified information the Washington Post. Senator Tom Daschel (D-SD) expressed the severity of the disclosure when he stated, "When information that is sensitive to our operations, sensitive in terms of national security — when that information is leaked it does serious damage."¹²³ After the leak and firm condemnation from the Bush administration, Congress vowed to instill stricter regulations to secure classified information.¹²⁴ The concern for preserving the secrecy of classified information throughout the oversight process lingers today in the congressional committee system. For example, an overwhelming majority of House and Senate Intelligence hearings are closed to the public and the media in an effort to protect U.S. national security interests. A decrease in the number of members with access to classified information through the establishment of a joint committee would further support Congress' mission to protect classified information.

Table 15 confirms that the HPSCI has 21 members and the SSCI has 15, which amounts to a total of 36 legislators that are privy to highly classified information. In comparison, the JEC on has 20 members, which is 40 percent less than the number of legislators on the intelligence committees. If Congress chose to establish a joint committee on intelligence modeled after the JCAE, with 18 members with equal representation from the House and Senate, this would significantly reduce the number of

¹²³ Carter M. Yang. "Bush, Congress Call Truce Over Leaks." *ABC News*. ABC News Network, 10 Oct. 2001. Web. 27 Jan. 2014. <<http://abcnews.go.com/Politics/story?id=121300&page=1>>.

¹²⁴ Ibid.

individuals with access to classified information regarding U.S. intelligence programs. As a result, the level of secrecy would be increased and it would be easier to safeguard information from potential leaks.

Legislative Incentives for Intelligence Policy

Scholars and members of the IC agree overwhelmingly that legislative incentives drive oversight activity on Capitol Hill. The 9/11 Commission Report affirms the importance of legislative incentives when it explains, “To a member, these assignments are almost as important as the map of his or her congressional district.”¹²⁵ However, this natural trend in politics poses a unique challenge for intelligence oversight. National security policies and programs are wrapped in secrecy and thus often discussed in private hearings. Due to the closed-door nature of the intelligence committees, members cannot publicize their statements or actions at the committee level to the general public or potential political supporters. In turn, this practice creates a disincentive for members of Congress to serve on the intelligence committees and contribute to national security policy, which should be a primary focus for members of Congress. Intelligence oversight scholars, Amy Zegart and Julie Quinn affirm this challenge when they explain,

“No matter what security threats confront the United States, Congress will always have an overabundance of farm subsidy experts and a shortage of intelligence experts. Why? Because farm interests are clustered in geographic regions with organized interests who provide free information and reward representatives for advocating their positions.”¹²⁶

It is evident that in order to ensure U.S. national security interests come first, oversight reform must address the void of legislative incentives in the intelligence policy process. At the structural level, a joint committee on intelligence would increase the stature of individuals with jurisdiction over intelligence policy.

¹²⁵ 9/11 Commission Report. 419.

¹²⁶ Amy Zegart and Julie Quinn, 761.

The institution of a joint committee would reduce the number of legislators with jurisdiction over a specific policy domain, which in turn, would make serving on the committee a more selective and enticing opportunity for members of Congress. A joint committee on intelligence, modeled after the JCAE, composed of members without term limits and the ability to present legislation to both houses, would be the first of its kind since the JCAE was abolished in 1977. A committee with this clout and power in the legislature would be an more attractive assignment for members seeking to impress their constituents. Currently, the HPSCI operates with eight-year term limits for members, despite persistent recommendations from the IC and scholars to remove this restriction. Term limitations act as a disincentive for members to serve on the HPSCI because they restrict the Representative's ability to rise to a leadership position and retain his or her rank on the committee. Furthermore, the HPSCI's term limits prevent members from maintaining positions on the committee in the long-term, which drastically reduces the level of expertise at the committee level.

Policy makers who support term limits for the HPSCI claim this measures will prevent legislators from developing inappropriate relationships with the IC that could hinder their ability to conduct unbiased oversight. This theory lacks the evidence to support such a claim. In practice, other congressional committees with IC jurisdiction, like the Foreign Affairs or Appropriations for example, operate without term limits. Zegart and Quinn elaborate on this fact when they state,

“Although many contend that Intelligence Committee term limits were designed to keep legislators from being co-opted by the intelligence agencies they oversee, that logic has never been applied to the Armed Services Committees or most of Congress's other committees, which presumably face similar co-optation challenges.”¹²⁷

¹²⁷ Zegart and Quinn.

Congress should recognize that other committees with IC oversight responsibilities continue to operate successfully without a term limit system in place. This fact should serve as evidence that Congress can remove the term limitations in the HPSCI by establishing a joint committee on intelligence.

Based on the research in this work, a joint committee without term limits would result in an increase in the appeal to serve on the selective body. Frederick Keiser attests to this fact in his 2004 Congressional Research Service (CRS) report when he explains, “A JCI with these characteristics would be unique in the current era, the first of its kind since 1977, and apparently one of only a few in the history of Congress, also elevating its stature.”¹²⁸ Increasing the clout of serving on the intelligence committee would be a step in the right direction to increase legislative incentives. However once members are recruited to serve on a joint intelligence committee, additional measures would be necessary to encourage the zeal for day-to-day oversight activities at the committee level.

In other policy domains like education and agriculture, interest groups and concerned members of the public remain informed and involved in the policy debate. However, given the secret nature of intelligence policy, Congress lacks the typical institutional mechanisms that stimulate routine and thorough oversight in other policy domains. Zegart and Quinn affirm this fact when they explain, “Thus, taking into account those groups likely or possibly likely to be involved with intelligence, we arrived at a grand total of 776 groups, or 3% of all registered interest group organizations in Washington.”¹²⁹ This shockingly small audience for intelligence policy has a direct and negative impact on the legislator’s electoral motivation to conduct oversight of the IC. To

¹²⁸ Keiser. 10.

¹²⁹ Zegart and Quinn, 762.

ensure congressmen remain motivated to conduct IC oversight, the general public, specifically the constituencies of those serving on the joint committee, must provide an electoral incentive for members to pursue effective IC oversight. If the general public is going to be actively involved in the policy process and prompt members of Congress to be effective stewards of the IC, individuals must be better educated regarding national security policy. The importance of an informed and engaged electorate is evident in the ongoing debate regarding the National Security Administration (NSA) and the Edward Snowden leaks.

Dysfunctional Oversight in Action- The Snowden Leaks

First and foremost, Edward Snowden's decision to leak classified information jeopardized U.S. national security and the reputation of the IC at home and abroad. This thesis does not seek to evaluate the purpose or justification for Snowden's actions. However, this case study can be used to exemplify the significance of effective intelligence oversight and its impact on the general public's opinion of U.S. national security programs. In order to understand the devastating impact of Snowden's actions, it is necessary to first review the historical background that led to the NSA surveillance programs. First, the Foreign Intelligence Surveillance Act (FISA) of 1978 outlined the requirements and procedures for foreign surveillance and intelligence collection. This legislation also created a Foreign Intelligence Surveillance Court (FISC), which is a body that meets behind closed doors to review and process requests for search warrants.¹³⁰ The FISC is composed of 11 U.S. district court judges publicly designated by the Chief

¹³⁰ Eric Lichtblau, "In Secret, Court Vastly Broadens Powers of N.S.A.." *The New York Times*. The New York Times, 6 July 2013. Web. 26 Feb. 2014. <http://www.nytimes.com/2013/07/07/us/in-secret-court-vastly-broadens-powers-of-nsa.html?_r=0>.

Justice of the United States from seven circuits.¹³¹ At least three of the district judges must reside within 20 miles of the District of Columbia. In addition, the Chief Justice determines which judge will act as the presiding judge.¹³² The purpose of the FISC was to establish an appropriate balance between U.S. national security interests and the public's concerns for the respect of privacy rights. However, in an effort to respond to new intelligence challenges regarding homegrown terrorism in the U.S sweeping changes were made to the FISA in the aftermath of 9/11.

One of the legislative measures put into action was the Uniting and Strengthening America by Providing Appropriate Tools Required to intercept and Obstruct Terrorism (USA PATRIOT) Act, which was signed into law by President Bush on October 26, 2001. The USA Patriot Act made several critical changes to FISA, which are still highly debated among legislators, scholars and the general public. A 2003 CRS report outlines the most controversial aspect of the USA Patriot Act when it explains,

“The amended language changed the certification demanded of a federal officer applying for a FISA order for electronic surveillance from requiring a certification that the purpose of the surveillance is to obtain foreign intelligence information to requiring certification that a significant purpose of the surveillance is to obtain foreign intelligence information.”¹³³

This was a significant development because prior to the passage of the USA Patriot Act, officers were limited to requesting a FISA order for foreign intelligence only. However, under the new law, a decent amount of the surveillance must pertain to foreign intelligence gathering. Thus, the new law opened the door for domestic intelligence surveillance. During the Bush administration, the Protect America Act (2007), further

¹³¹ Ibid.

¹³² Elizabeth B. Bazan. "The U.S. Foreign Intelligence Surveillance Court And The U.S. Foreign Intelligence Surveillance Court Of Review: An Overview: RL33833." *Congressional Research Service: Report* (2007): 1. *International Security & Counter Terrorism Reference Center*. Web. 27 Dec. 2013. 5.

¹³³ Bazan. 1.

amended FISA by removing the requirement for a warrant in order to conduct surveillance of foreign targets outside the U.S. In addition to these sweeping legislative changes, the Bush administration implemented a new operation called the Terrorist Surveillance Program, which was spearheaded by the National Security Administration (NSA). The Terrorist Surveillance Program was renamed PRISM in 2007 and in 2013, it received an overwhelming amount of media attention when former NSA contractor, Edward Snowden, disclosed the details of its operations to news outlets worldwide.¹³⁴

Snowden leaked over 200,000 classified documents that outlined the specifics of various NSA surveillance programs and a court order with cellphone carrier Verizon. In 2013, *The Guardian* reported that the court, “requires Verizon on an “ongoing, daily basis” to give the NSA information on all telephone calls in its systems, both within the US and between the US and other countries.”¹³⁵ The NSA received permission from the FISC to conduct such surveillance but prior to Snowden’s media frenzy, this program was concealed from the general public. This form of surveillance, which stands in opposition to the FISA system that reviewed individuals on a case-by-case basis prior to surveillance, sparked staunch criticism from the American public.

Initially, the general public viewed Snowden as a whistleblower and a privacy rights hero. A June 2013 Huffington Post poll affirmed the sense of distaste for the NSA when it reported that “According to the new poll, 38 percent of Americans think that Snowden releasing top-secret information about government surveillance programs to the

¹³⁴ Mark Hosenball. "NSA Chief Says Snowden Leaked up to 200,000 Secret Documents." *Reuters*. Thomson Reuters, 14 Mar. 2013. Web. 27 Jan. 2014.
<<http://www.reuters.com/article/2013/11/14/us-usa-security-nsa-idUSBRE9AD19B20131114>>.

¹³⁵ Glenn Greenwald. "NSA Collecting Phone Records of Millions of Verizon Customers Daily." *The Guardian*. Guardian News and Media, 06 June 2013. Web. 26 Jan. 2014.
<<http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>>.

media was the right thing to do, while 35 percent said it was the wrong thing.”¹³⁶

However, the general public’s view of Snowden shifted noticeably as his story and the far-reaching effects of the leaks unfolded. A November 2013 Washington Post-ABC News poll revealed, “Six in 10 Americans — 60 percent — say Snowden’s actions harmed U.S. security... Clear majorities of Democrats, Republicans and independents believe disclosures have harmed national security.”¹³⁷ This poll data demonstrates how drastically the American public’s opinion shifted in five months as more information regarding the NSA leaks was disclosed.

Many news commentators and scholars believe this drastic change in public opinion correlates to the lack of public knowledge of the NSA and its national security programs. Richard Ledgett, an intelligence veteran who is in charge of a taskforce investigating the leaks, affirmed the positive impact of public education in a 2013 interview when he stated, “I think quite frankly had we done more of that over the last five or 10 years we might not be in the same place that we are vis-a-vis the public perception of who we are and what we do.”¹³⁸ The idea that the general public remains relatively uneducated about national security issues and intelligence programs is not a new phenomenon. Intelligence oversight scholar Amy Zegart conducted a YouGov poll in 2013 with a 1,000 participants to evaluate the public’s knowledge of the NSA and its intelligence activities. The poll asked respondents if the NSA conducts operations that

¹³⁶ Emily Swanson. "NSA Leaks Poll Finds Americans Divided Over Edward Snowden's Actions." *The Huffington Post*. TheHuffingtonPost.com, 13 June 2013. Web. 27 Jan. 2014. <http://www.huffingtonpost.com/2013/06/13/nsa-leaks-poll_n_3430506.html>.

¹³⁷ Scott Clement. "Poll: Most Americans Say Snowden Leaks Harmed National Security." *Washington Post*. The Washington Post, 21 Nov. 2013. Web. 27 Jan. 2014. <http://www.washingtonpost.com/politics/poll-most-americans-say-snowden-leaks-harmed-national-security/2013/11/20/13cc20b8-5229-11e3-9e2c-e1d01116fd98_story.html>.

¹³⁸ Tabassum Zakarim and Warren Strobel. "After 'cataclysmic' Snowden Affair, NSA Faces Winds of Change." *Yahoo News Canada*. Reuters, 14 Dec. 2013. Web. 27 Jan. 2014. <<http://ca.news.yahoo.com/exclusive-cataclysmic-snowden-affair-nsa-032218664.html>>.

capture or kills terrorist. The results revealed that 32 percent of respondents believed the NSA conducted operations to capture or kill foreign terrorists and an additional 39 percent of respondents were unsure of the correct answer. This data is staggering because it confirms 71 percent of those surveyed either didn't know the answer to this basic policy question or got it wrong.¹³⁹ Furthermore, since this poll was conducted in November 2013 after the NSA received months of intense media attention, a significant majority of Americans remain ignorant regarding the agency and its activities. If the American people remain in the dark about the mission and basic operations of the NSA, it is impossible for the agency to gain public support. Additionally, it is important to note that prior to the Snowden scandal, the constitutionality of the NSA's intelligence programs was not openly questioned by members of Congress.

Regretfully, it took Snowden's illegal actions, which ultimately jeopardized U.S. national security, to motivate the legislative branch to exercise its oversight authority over the NSA. Once the American public became aware of the privacy concerns regarding the agency's programs, Congress held hearings and conducted investigations regarding the constitutionality of surveillance programs. In addition, members from both parties welcomed every opportunity to blast the NSA and its operations in the media. It is extremely problematic that it took a compromise of classified information to motivate Congress to take action and review the NSA's activities.

What is more troubling than Congress' years of silence, is that Snowden cites the legislature's passive oversight as his greatest motivation for disclosing the classified

¹³⁹ Amy B. Zegart. "Lawfare." *Lawfare*. Lawfareblog.com, 7 Nov. 2013. Web. 27 Jan. 2014. <<http://www.lawfareblog.com/2013/11/real-spies-fake-spies-nsa-and-more-what-my-2012-and-2013-national-polls-reveal/#.UtqV5hb0CT8>>.

information. In a December, 2013 interview with the Washington Post Snowden explained,

"Dianne Feinstein elected me when she asked softball questions" in committee hearings, he said. "Mike Rogers elected me when he kept these programs hidden.... The FISA court elected me when they decided to legislate from the bench on things that were far beyond the mandate of what that court was ever intended to do. The system failed comprehensively, and each level of oversight, each level of responsibility that should have addressed this, abdicated their responsibility."¹⁴⁰

This quotation demonstrates that Snowden lost faith in every aspect of the federal government's oversight capabilities, which included Congress' ability to conduct thorough and unbiased review of the intelligence agencies. Therefore, Snowden felt morally responsible to expose the NSA's activity and give the American people the opportunity to have the debate that should have been occurring among overseers on Capitol Hill. Congress responded to the public's outcry with robust NSA oversight after the leaks were exposed but the damage to national security and the integrity of U.S. intelligence programs was already complete. It is critical to note that Congress' failure to review the NSA does not justify Snowden's decision to jeopardize U.S. National Security. However, this case study provides a timely reminder of the importance of legislative incentives and the grave consequences of inadequate intelligence oversight.

A joint committee is a structural change for Congress but it does not address the uninformed electorate that holds a powerful influence over legislators. For this reason, a joint committee would not be able prevent crises like the Snowden leaks in the future. In order to demand thorough intelligence oversight from members of Congress, the American people must first be informed about national security programs. It is important

¹⁴⁰ Matt Berman. "National Journal." *NationalJournal.com*. National Journal, 24 Dec. 2013. Web. 27 Jan. 2014. <<http://www.nationaljournal.com/congress/edward-snowden-congress-s-failures-forced-my-hand-20131224>>.

to note, that this process does not require the disclosure of classified information. Instead, Congress should find ways to communicate appropriate details about America's intelligence efforts with the general public. This process could include increasing the number of public hearings in the HPSCI and SSCI to allow the general public to take part on a basic level in the intelligence policy debate. To put the current situation into perspective, the HPSCI held 22 hearings in 2013 and only three of those hearings, or 14 percent, were open to the public.¹⁴¹ The high volume of closed-door hearings in the current oversight system prevents the general public from assessing congressional oversight of the IC. The public cannot hold members accountable for its responsibility to provide a check on the executive branch if it cannot determine what, if any, oversight is being done at the committee level.

In addition to the measures outlined above, the congressmen who serve on the intelligence committees should take a more active role in educating their constituents and the general public at large regarding the unclassified details of U.S. intelligence programs. Former Senate leader Lee Hamilton expresses support for sharing more information with the general public in a Center for American Progress report when he explains, "The general public can be a very important driving force behind good oversight. Congress needs to provide clear reports from each committee outlining the main programs under its jurisdiction and explaining how the committee reviewed them."¹⁴² In an effort to improve the current system, members could utilize committee

¹⁴¹ United States. Congress. House. Permanent Select Committee on Intelligence. *H. Rept. 113-310*. 113th Cong., 1st sess. H. Rept. 113-310. U.S. Government Printing Office, n.d. Web. 27 Jan. 2014. <<http://beta.congress.gov/congressional-report/113th-congress/house-report/310/1>>.

¹⁴² Dennis McDonough, Mara Rudman, and Peter Rudlet. "No Mere Oversight." *No Mere Oversight*. Center for American Progress, June 2006. Web. 6 Dec. 2013. <<http://www.americanprogress.org/kf/NOMEREOVERSIGHT.PD>>. 29.

reports and post regular updates on the committee's websites to share pertinent information with the general public regarding the IC's activities in an effort to keep the American people more informed. This practice represents a drastic shift from the intelligence committee's current use of committee reports. According to a 2013 HPSCI report, the committee produced a total of two reports in 2013, both of which concerned pieces of legislation. This data affirms that the HPSCI is not providing the American people with sufficient updates regarding the body's oversight activities of the IC's operations. In addition to addressing the fundamental concerns outlined above regarding legislative incentives, Congress must take action to increase subject matter expertise at the committee level.

Improving Subject Matter Expertise at the Committee Level

Given the secret nature of intelligence operations and IC activities, most legislators lack prior knowledge of national security issues before serving on the HPSCI and the SSCI. As such, the IC is required to provide lengthy briefings and routine updates to get members and committee staff up to speed on intelligence related issues. Therefore, changes to committee membership and staff have a significant impact on the effectiveness of congressional oversight and the workload for the IC, who provides congressional briefings and staff committee hearings. Expertise at the committee level is difficult to attain because congressmen, who often have a multitude of committee assignments, lack the time required to learn about the IC's programs.

The Center for American Progress conducted a survey in 2006 and interviewed members of Congress who serve on the intelligence committees and their staff regarding

oversight obstacles faced by legislature. The report confirms that members of Congress “indicated that it is extremely difficult for already busy committee members to master the intricacies of these programs in order to provide effective and robust oversight of them.”¹⁴³ Furthermore, this study found that congressmen admitted it was easier to conduct “got-cha” oversight of the IC, which will win points with their constituents, instead of investing the amount of time needed to attain expertise regarding the IC’s programs.¹⁴⁴ This is problematic because America’s national security should always be the top priority for members of Congress instead of campaign outcomes on Election Day. However, without institutional mechanisms in place to counteract legislator’s political ambitions and stimulate expertise at the committee level, it is unlikely this impediment will be resolved by a joint intelligence committee.

If a joint intelligence committee abolished the House’s 9-year term limit for committee members discussed in the previous chapter, it would improve the ability for members to build knowledge expertise. Although it is unlikely that Congress will be able to eliminate the multitude of obligations that compete for each member’s attention during a busy legislative session, a joint committee on intelligence, which was modeled after the JCAE without term limits, would finally give members who are passionate about intelligence policy the opportunity to remain committed to their IC oversight responsibilities. Thus over time, members would have the chance to develop a strong working knowledge of the vast scope of the IC’s activities and the technical specifics of agency programs. In addition to the importance of the member’s expertise, it is important for Congress to consider the need for a strong working knowledge at the staff level.

¹⁴³ Dennis McDonough, Mara Rudman, and Peter Rudlet, 27.

¹⁴⁴ Ibid.

Changes to intelligence committee membership directly correlate to drastic shifts in the makeup of committee staff. For example, when chamber majority leadership shifts in an election year, committee staff is often drastically changed to reflect the new Chairman's political views and policy agenda. This could include firing current staff members to replace them with individuals with a different political alliance or different policy specialty. These changes are increasingly hazardous in regards to IC oversight, which requires a vast knowledge base of the nation's intelligence programs and agency activities. Similar to members of Congress, committee staffers require briefings and ample time to get up to speed on intelligence programs. In turn, this challenge can delay the legislature's ability to conduct constant and effective oversight after sweeping changes in an election year. Table 16 from a 2012 Sunlight Foundation report reveals the severity of the HPSCI's staff retention problems. For example, the HPSCI had a retention rate of a mere 38.9 percent, while the Joint Committee on Taxation successfully retained 82.4 percent. Unlike the HPSCI, the Joint Committee on Taxation (JCT) operates without term limits. This structural difference in the JCT results in lower member turnover, which leads to lower levels of staff turnover. In light of the merits and inadequacies of a joint intelligence committee discussed above, the following section summarizes the overall assessment of this reform method.

Table 16

| Retention Rates by Committee from the third quarter of 2009 and the third quarter of 2011 | |
|--|------------------------------|
| <i>Committee</i> | <i>Retention rate</i> |
| Natural Resources | 35.90% |
| Education & The Workforce | 38.00% |
| Intelligence | 38.90% |
| Oversight & Government Reform | 40.70% |
| Transportation & Infrastructure | 41.00% |
| Energy & Commerce | 43.90% |
| Homeland Security | 47.80% |
| Small Business | 48.40% |
| Armed Services | 52.90% |
| Agriculture | 53.10% |
| Rules | 54.30% |
| Judiciary | 54.80% |
| Ways And Means | 55.70% |
| Budget | 64.30% |
| Joint Committee On Taxation | 82.40% |

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Conclusion:

Since 1948, members of Congress, scholars and individuals in the IC have suggested the potential utility of a joint committee on intelligence. Most recently, the 9/11 Commission urged members of Congress to consider reforming congressional intelligence oversight with a joint committee on intelligence. Now more than ever, Congress should take note of these calls to reform intelligence oversight to ensure America is adequately prepared to operate in a post 9/11 world and the threat of terrorism. To date, scholars have devoted significant attention to identifying the problems with congressional intelligence oversight but many experts have failed to discuss potential solutions for the problems identified. In this thesis, the critical areas for intelligence oversight improvement include: the lack of centralization in congressional

¹⁴⁵ Lee Drutman. "Sunlight Foundation." *Sunlight Foundation Blog*. Sunlight Foundation, 6 Feb. 2012. Web. 27 Jan. 2014. <<http://sunlightfoundation.com/blog/2012/02/06/turnover-in-the-house/>>.

committee authority, legislative incentives for members of Congress, and subject matter expertise at the committee level. This work seeks to stimulate a new debate in academia that focuses on potential solutions, rather than continuing to cast political blame from one branch to another.

After conducting a thorough critique of a joint intelligence committee modeled after the JCAE, it is evident that this solution would streamline the oversight and legislative process for the IC by consolidating IC review authority in the joint committee. A joint committee would take the seemingly endless list of congressional IC overseers and reduce it to the joint committee, which would improve the legislature's ability to protect classified information. Furthermore, this structural change would result in tax dollar savings by consolidating the intelligence committee budget. A single committee would have fewer staff and require less financial support to function than two separate oversight entities. Lastly, a joint committee with the power to bring legislation to the floor of both houses would improve Congress' ability to make changes to the IC during national security emergencies. This chapter also examined a joint committee's ability to address the lack of electoral incentives in intelligence policy.

Since electoral incentives drive all activity on Capitol Hill, the need legislative motivation in intelligence policy is arguably the most significant challenge to effective congressional oversight. In order for a joint committee to serve as a successful solution for effectively reforming IC oversight, it must first be able to address the absence of electoral incentives. This work confirms that the general public remains in the dark regarding the basic functions of the IC. As a result, members of congress who serve on the intelligence committees are unable to utilize their actions at the committee level to

market themselves to their constituents. Since members of Congress are instinctively motivated by electoral incentives, they often lack the zeal to serve on the intelligence committees. If Congress chooses to adopt a joint committee on intelligence, it will naturally increase the stature of serving on the intelligence committee by reducing the number of members on the committee. However, the research in this chapter validates that this mere structural change will not ultimately resolve the electoral incentive dilemma. The true challenge resides with the American people who remain uninformed regarding the IC's activities and therefore, unable to measure the effectiveness of congressional oversight. Lastly, this chapter explored a joint intelligence committee's impact on subject matter expertise at the committee level.

Due to the tremendous complexity of national security policy, which involves a multitude of moving parts, intelligence oversight requires a unique level of expertise that sets it apart from other policy areas such as agriculture, education, and labor. As discussed earlier in this chapter, a joint committee could address term limits, which currently impede members of Congress from gaining long-term knowledge of the IC. Ultimately, this new structural change would result smaller turnovers for committee staff members, which could stimulate continuity and institutional knowledge.

Although a joint committee on intelligence would offer various solutions to current oversight challenges, it is ill equipped to combat the legislative incentive void in the national security policy. The absence of electoral motivations in this policy domain stems from the general public's ignorance and disinterest in this subject and how it impact's citizens daily lives. Since legislators are driven by electoral motivations from their constituencies, the public education gap is quite arguably the most significant

obstacle to effective oversight. Therefore, a successful reform method will educate the general public regarding the general operations and merit of intelligence programs. Only then, will the American public be capable of holding members of Congress accountable for effective IC oversight. In an effort to cultivate an informed electorate, members of Congress who serve on the intelligence committees need to find ways to better communicate their oversight activities and the importance of the IC programs to the American people. This practice will rekindle the public's confidence in America's checks and balances system and the IC community as a whole.

In light of the Edward Snowden leaks and the American people's current distrust of the IC, Congress must take responsibility for improving its oversight structure. If Congress fails to take action, it is likely that other instances like the Snowden leaks will occur in the future. Events such as these, compromise U.S. national security at large and create a crisis of public confidence in the IC. The American form of government depends on the three branches actively overseeing one another to prevent abuses of power and misguided policies.

Chapter 5

Conclusion

“Oversight is designed to look into every nook and cranny of governmental affairs, expose misconduct, and put the light of publicity to it. Oversight can protect the country from the imperial presidency and from bureaucratic arrogance. It can maintain a degree of constituency influence in an administration. It can encourage cost-effective implementation of legislative programs and can determine whether changing circumstances have altered the need for certain programs.”

Lee H. Hamilton, Vice Chair of the 9/11 Commission ¹⁴⁶

America’s Founding Fathers diligently designed the government with three separate, but equal branches. The executive, judiciary and legislature have distinct powers but possess the ability to provide a check on the power exercised by the other branches. The purpose of this checks and balances system is to counter human ambition and prevent tyranny from within each branch of the federal government. This timeless safeguard is increasingly important in America’s modern administrative state. Over the decades, presidential power expanded significantly. This is due to Congress’ trend of delegating lawmaking authority to federal agencies, which are controlled by the executive branch. While Congress deputized federal agencies to develop policies and enforce the law, the legislature retained its ability to provide a check on the executive through the congressional oversight process. In an effort to maintain the reins on the executive’s authority, Congress utilizes its committee structure to systematically review each federal agency and its operations.

Congress’ oversight authority is without question; the most influential tool the legislature possesses to control the will of the executive branch. The legislature provides

¹⁴⁶ Dennis McDonough, Mara Rudman, and Peter Rudlet, 5.

a watchful eye on the federal agencies with committee hearings, briefings, investigations and reports. If oversight is successful, it is responsible for saving countless taxpayer dollars, exposing policy failures, ensuring agency policies are within constitutional means and holding the federal agencies accountable to the American people at large. Furthermore, the congressional oversight system instills the public's faith in the American government and prevents the executive branch from acting outside of its constitutional bounds. This powerful tool is of prime importance for the U.S. Intelligence Community, which is composed of 17 entities that operate in secret at home and abroad. Due to classified nature of national security policy, the general public often lacks access to information regarding U.S. intelligence operations and the purpose of various national security programs. This information gap causes the public to question the merit of U.S. national security initiatives, which is precisely where the significance the legislature's effective oversight is most apparent.

9/11: An Era of Increased Oversight Activity and a Shift in Focus

This thesis reviews oversight activity since the 9/11 attacks and affirms that Congress demonstrated a pattern of "fire alarm" style oversight. During this period, Congress merely responded to crises as they arose, instead of practicing proactive review of the IC. This fact is evident in the increased amount of intelligence oversight activity in Congress in the form of intelligence committee hearings, legislation, and briefings. In addition to an upswing in committee activity, the intelligence committee staff in both chambers grew significantly. Lastly, the growth in the scope of congressional oversight is also evident when comparing the Intelligence Oversight Act of 1980, which was less than

20 pages in length and passed as part of the IC budget, with the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004. Unlike the budgetary focus of the 1980 reform package, IRTPA instituted sweeping management changes for the IC in over 200 pages. At this point in history, administration of the IC was the focal point of the legislative branch. Lastly, this shift in focus is also confirmed by the legislation reviewed by intelligence committees. Since 9/11, an increasing majority of legislation considered by the House and Senate intelligence committees involved management of the IC. Despite this increase in committee activity and the shift in oversight focus, the relationship between the agencies and the Hill remains in disarray. The various changes to the IC and the intelligence oversight process did not resolve the ongoing problematic relationship between the agencies and the Hill. Furthermore, the general public, scholars and members of Congress remain dissatisfied with the quality of intelligence oversight.

The Recipe for Dysfunctional Oversight

After conducting a thorough investigation of the 2001 terrorist attacks, the 9/11 Commission released its findings in 2004 report. This report outlined various aspects that contributed to the events leading up to 9/11 and one of the components of the report included intelligence oversight. The 9/11 Commission argued that congressional oversight was dysfunctional and negatively impacting the IC. In addition to the 9/11 Commission report, countless members of academia, Congress and leaders within the IC testified to the problematic nature of the current process. Regardless of these warnings and policy recommendations, Congress, which is the only entity with the constitutional power to reform the oversight structure, has failed to amend the current system. This

work asserts that the specific obstacles that impede effective intelligence oversight are blurred committee jurisdictions, the lack of legislative incentives and the need for subject matter expertise at the committee level.

Secrecy limitations create a recipe for a dysfunctional oversight process. Under the current structure, there are over 80 bodies in Congress, in addition to the House and Senate intelligence committees, with jurisdiction over the IC. This convoluted committee structure is further complicated by the disjointed budget process, which is separated by the appropriations and authorization functions. These competing committee jurisdictions are coupled with the need for legislative incentives in the intelligence policy process.

Since a congressman's role on the intelligence committee is conducted behind closed doors and away from the eyes of media, members are less inclined to pursue diligent oversight of the IC. Instead, members have an incentive to practice reactionary oversight and respond to crises as they arise. This practice allows members to avoid political blame and foster public support for their influence over the IC in times of crisis. Lastly, the current structure fails to cultivate expertise at the committee level. Term limits and high member turnover rates prevent congressmen from gaining institutional knowledge of the IC. Consequently, this practice has negative implications for staff turnover and institutional knowledge at the committee level. Since most members of Congress enter legislative service without prior experience in national security policy and IC operations, subject matter expertise at the staff level is a critical component to successful oversight.

It's Time to Focus on Solutions

Now that the specific obstacles to effective oversight are identified, policymakers and academia must rise above the temptation to cast political blame and focus on developing a solution to improve the current system. Many policymakers and participants in the debate argue in favor of a joint committee on intelligence as a plausible solution. However, this thesis proves a joint committee would fail to address conflicting committee jurisdictions in Congress unless it remedied the disjointed appropriations and authorization process. Furthermore, a joint committee would be an inadequate solution unless the legislature instituted rules in each chamber to specify the committees with IC authority. In addition to jurisdictional concerns, a joint intelligence committee also falls short in its ability to improve electoral incentives in this policy domain.

Although a joint committee would reduce the number of members with access to classified information and thus increase the stature of the assignment, it would not provide an electoral motivation for members to serve in this capacity long term. This one-size-fits-all reform method would not cultivate expertise at the committee level for members and staff. More importantly, a joint committee is unable to resolve the public's disinterest in this policy area, which serves as a stimulant for members to practice routine oversight. If Congress fails to institute a reform that is capable of instituting legislative incentives, it is unlikely that it will succeed in building expert knowledge at the committee level.

The Key to Success: Legislative Incentives

This thesis seeks to stimulate members of the policy debate to focus on potential reform methods that will address the obstacles outlined in this work. A joint committee

represents a “one-size-fits-all” approach that is destined to fail. Congress should consider a piecemeal approach, which includes reform components to address each challenge outlined in this work to achieve a more comprehensive solution. Based on the research presented, legislative incentives are the key to successful oversight reform. Members must first be motivated to seek an intelligence committee assignment. More importantly, members must be incentivized to continuing serving in this capacity to improve member retention rates and institutional knowledge on the committee. However, it is important to note that the issue of electoral incentives is twofold.

Ultimately, the American public is responsible for holding Congress accountable for its oversight duties through the power of the vote. Therefore in order to effectively improve the IC oversight process in Congress, the general public must first be educated regarding national security programs and remain actively engaged in the policy debate. In turn, this development will revive legislators’ drive to serve proactively on the intelligence committees. This practice will give policymakers an opportunity to respond to crises before they arise, instead of continuing to practice “fire-alarm” style oversight that is a proven detriment to national security. The final section of this work outlines specific policy recommendations for Congress to consider in the 114th Session.

Initially, the House intelligence committee must abolish the current term limit structure, which prevents members serving as a member of the select committee during more than four Congresses in a period of six successive Congresses.¹⁴⁷ This work affirms that term limits contribute to high member and staff turnover rates. More importantly, this measure negatively impacts the ability for the committees to retain

¹⁴⁷ "House Rules." *Office of the Clerk*. U.S. House of Representatives, 3 Jan. 2013. Web. 4 Feb. 2014. <<http://clerk.house.gov/legislative/house-rules.pdf>>.

longstanding members and build policy expertise at the committee level. For example, the 114th Congress could compose conference rules for each party that removed term limitations for members of the intelligence committee. In order to make this change permanently binding, Congress could pass legislation or a resolution to abolish term limits and prevent them from being reestablished in the future. Since these changes are merely administrative in nature, this reform would be an efficient and low-cost solution. In addition to addressing the continuity concerns expressed above, Congress should consider ways to increase the stature of serving on the intelligence committees.

As previously discussed in this work, the moment congressmen enter office, they begin to fight for committee assignments and leadership positions. Strategic committee assignments are a top focus for legislators because they are used to generate voter support and leverage campaign donations. As such, an effective intelligence reform method must counter this disadvantage with an electoral incentive for members of Congress. The legislature should contemplate requiring service on the intelligence committees as a prerequisite for serving as Chairmen or Ranking Member on the House and Senate Armed Services committees. The Armed Services committees are prominent forces in Congress and many members fight to gain seats on these bodies to please voters with military ties in their districts. This requirement would improve the strategic appeal of the intelligence committees, while stimulating the knowledge sharing among the committees most commonly involved in national security policy. Once again, since this is a minor structural change for Congress, which could be implemented through the rules process. Similar to increasing the significance of serving on the intelligence committees, the legislative branch must commit to addressing the need for member marketability.

Since congressmen are driven by legislative incentives and view their committee activity as a means to an electoral end, Congress should institute mechanisms that improve a congressman's ability to market his or her activity on the intelligence committee. First, the intelligence committees must increase the number of open hearings. This practice will give members more opportunities to use their role in the national security policy process to their electoral advantage. In addition, the committees should expand the number of public reports and make more committee material available on their websites for public consumption. This change will require a balancing act with concerns for transparency and the preservation of national security. Additionally, each committee will need to find creative ways to inform the public of the business it conducts behind closed doors, without revealing the specific details of intelligence operations. For example, each committee could produce a weekly video message to inform the public of recent oversight activity. Perhaps this message could be delivered from different members each week and posted on the committee's website. This effort, combined with an increase in open committee hearings, will give members an opportunity to use their involvement in intelligence policy process to gain support among their constituents. It is important to note that although these fundamental changes would be significant improvements to the current process, they would be unsuccessful without an informed and engaged electorate.

The power of the vote is undoubtedly the most dominant force in Congress. This work asserts that unlike other policy domains, national security does not generate public advocacy or greatly influence voters at the polls on Election Day. Due to the voter's lack of passion for this policy area, congressmen are naturally drawn to focus on other issues

for political capital. Since this natural incentive is irrevocable, the general public must first be educated regarding national security issues and involved in the debate. The increase in open hearings and public committee reports discussed in the previous paragraph will simultaneously stimulate public awareness regarding IC issues. In addition to an expansion of committee activity, congressmen on the intelligence committees should partner with educational institutions, the IC, and think tanks to host annual national security forums. This practice will foster more participation in the national security debate and increase public education in this domain. Policy forums could be hosted on college campuses, which would limit the cost to venue utilities and travel arrangements for guest speakers and engage future leaders.

The solutions presented here require minimal effort from individual members of Congress and demand a minimal monetary commitment making them feasible to implement in today's challenging economic times. In addition to these necessary reforms at the congressional level, academia, think tanks and nonprofits should play an important role in this process by kindling public interest in national security policy. These powerful members of the national security policy debate must join Congress in this noble effort by conducting research and educating the public. This practice will build public interest in this national security policy, which will ultimately improve the oversight process and preserve homeland security.

Future Work

This thesis seeks to spark a new fire in the policy debate that calls members of Congress and academia to focus on developing a recipe for effective oversight. Congress

has all of the ingredients at its fingertips but to date, the legislature has failed to take advantage of these tools to improve IC oversight. This thesis confirms the establishment of electoral incentives and an increase in public education regarding national security issues are the key ingredients to successful oversight reform. The author recognizes that the reform methods proposed here will first require Congress to admit responsibility for the current disarray of the IC oversight process.

It is plausible that Congress may fail to take responsibility for improving the intelligence oversight structure without public support at the ground level. Therefore, the issue of public education may need to take precedent to reforms at the federal level. Members of academia and think tanks should identify effective methods to stimulate public awareness regarding national security policy and instill the positive impact of U.S. intelligence operations. It is necessary for scholars and policy makers to ask, why is the public disinterested in national security policy and are secrecy constraints contributing to this phenomenon? In addition, what will cultivate public concern and passion for this policy domain? Once these questions are answered, the public, with the support of interest groups and academia, can coerce Congress into taking the actions necessary to remedy the haphazard oversight process. Lastly, future work could examine the role of partisan politics in the intelligence policy process. For example, do partisan differences between the legislature and the executive branch impact intelligence oversight levels? Do the intelligence committees conduct more oversight when a particular political party is in control of the House or senate? One can remain optimistic that continued research in this important policy area will stimulate improvements to the current intelligence oversight structure.

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Curriculum Vitae

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