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# **Congressional Oversight of Intelligence: Background and Selected Options for Further Reform**

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## Congressional Oversight of Intelligence: Background and Selected Options for Further Reform

Prior to the establishment of the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) in 1976 and 1977, respectively, Congress did not take much interest in conducting oversight of the intelligence community (IC). The Subcommittees on the Central Intelligence Agency (CIA) of the congressional Armed Services Committees had nominal oversight responsibility, though Congress generally trusted that IC could more or less regulate itself and conduct activities that complied with the law, were ethical, and shared a common understanding of national security priorities. Media reports in the 1970s of the CIA's domestic surveillance of Americans opposed to the war in Vietnam, in addition to the agency's activities relating to national elections in Chile, prompted Congress to change its approach. In 1975, Congress established two select committees to investigate intelligence activities, chaired by Senator Frank Church in the Senate (the "Church Committee"), and Representative Otis Pike in the House (the "Pike Committee").

Following their creation, the Church and Pike committees' hearings revealed the possible extent of the abuse of authority by the IC and the potential need for permanent committee oversight focused solely on the IC and intelligence activities. SSCI and HPSCI oversight contributed substantially to Congress's work to legislate improvements to intelligence organization, programs, and processes, and it enabled a more structured, routine relationship with intelligence agencies. On occasion, this has resulted in Congress advocating on behalf of intelligence reform legislation that many agree has generally improved IC organization and performance. At other times, congressional oversight has been perceived as less helpful, delving into the details of programs and activities.

Other congressional committees have cooperated with the HPSCI and SSCI in their oversight role since their establishment. Intelligence programs are often closely tied to foreign and defense policy, military operations, homeland security, cybersecurity, and law enforcement. Committees in both chambers for Foreign Affairs/Relations, Armed Services, Appropriations, Judiciary, and Homeland Security, therefore, share jurisdiction over intelligence. Some have suggested the current overlapping jurisdictions for oversight of the IC in Congress contribute to the perception of weak congressional intelligence committees that have relatively little authority and insufficient expertise. Others cite the overlapping responsibilities as a strength. Oversight of the IC spread over more committees can contribute to greater awareness and transparency in Congress of classified intelligence activities that are largely hidden from public view. They also claim that since the terrorist attacks of September 11, 2001, Senate and House rules have changed to enable the congressional intelligence committees to have more authority and be more effective in carrying out their oversight responsibilities. Further reform, they argue, may be unrealistic from a political standpoint.

An oft-cited observation of the *Commission on Terrorist Attacks upon the United States* (i.e., the *9-11 Commission*) that congressional oversight of intelligence is "dysfunctional" continues to overshadow discussion of whether Congress has done enough. Does congressional oversight enable the IC to be more effective, better funded, and better organized, or does it burden agencies by the sheer volume of detailed inquiries into intelligence programs and related activities?

A central question for Congress is as follows: Could additional changes to the rules governing congressional oversight of intelligence enable Congress to more effectively fund programs, influence policy, and legislate improvements in intelligence standards, organization, and process that would make the country safer?

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## Introduction

This report provides a review of congressional oversight of the intelligence community (IC) since establishment of the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI), particularly since the 9-11 Commission published its recommendations in its 2004 report. It also explores selected options for further reform, and offers questions that Congress may consider to assess the effectiveness of its oversight.

In legislating, confirming appointees, authorizing programs, and appropriating funds, Congress enables the IC, a community of 17 discrete intelligence elements, to conduct the business of intelligence in support of U.S. national security. In addition, Congress has perspective that few others outside of the IC have. Oversight of the IC enables Congress to determine whether classified intelligence programs that are restricted from public disclosure are legal, ethical, and respectful of civil liberties. When there have been perceived abuses, Congress has often intervened to conduct hearings and legislate changes in intelligence process or organization.<sup>1</sup>

Several competing, sometimes overlapping, perspectives exist on the purpose for conducting congressional oversight of the IC:

- Some have argued that the primary responsibility of the intelligence committees is to provide the authority and strategic direction to enable continual improvement in the performance of intelligence programs in support of the most pressing national security challenges.
- Others have pointed to the role of the congressional intelligence committees in counterbalancing the power of the executive branch. This could result either through monitoring the IC as it implements programs and activities that support the executive's national security policies, or through ensuring that the IC is able to function independently of occasional instances of officials in the executive branch (including the President) choosing to politicize intelligence, or influence intelligence deliverables to support assumptions underlying policy decisions. This perspective holds that the IC must be able to exercise independence to be

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<sup>1</sup> Despite what is often assumed to be the IC's antipathy toward congressional oversight, IC senior officials have consistently expressed qualified support for Congress's oversight responsibility. Former DNI James Clapper, for example, has commented,

The Intelligence Community needs oversight. Unfortunately, our history is replete with abuses over time.... So we need ... an independent, autonomous oversight. Is what we're doing legal, ethical, moral and in accordance with American standards and values? And that, to me, should be the main purpose of those [intelligence] committees.... What sometimes happens.... It kind of devolves into micromanagement, where essentially people want to do the job of seniors in the Intelligence Community for them. And that's not good either because I think you have a tendency to lose sight of the big things, the important things: Is what the Community is doing legal, moral, and ethical? [James Clapper, Interview with Rep. James Himes, *After Words with James Clapper*, C-SPAN, May 21, 2018, at <https://www.c-span.org/video/?c4732869/oversight-us-intelligence-community>.]

See also comments by former assistant to Sen. Frank Church, Loch Johnson, who remarked that with the notable exception of William Casey, Directors of Central Intelligence (DCI) have preferred the HPSCI and SSCI's more disciplined approach to oversight of intelligence because it allows them to share accountability.

I've interviewed every single DCI from Helms forward and most of them understand what I call the new oversight, the post-Church Committee days.... One of the reasons they like the new oversight is, as they tell me, because it allows them to share accountability. If you have a blow-up like the Bay of Pigs episode then you can point to the Hill and say, well, I told those people about it, they were with me. That takes a great burden off some of these intelligence managers. [Conference Report: Strengthening Intelligence Oversight, Brennan Center for Justice at New York University School of Law, pp. 30-31 at [https://www.brennancenter.org/sites/default/files/analysis/Strengthening\\_Intelligence\\_Oversight\\_Conference\\_Report.pdf](https://www.brennancenter.org/sites/default/files/analysis/Strengthening_Intelligence_Oversight_Conference_Report.pdf).]

able to *speak truth to power* without abusing the power that that independence implies.

- Another perspective of the role of congressional oversight of the IC is that it serves as an external check on the power of the IC apart from the executive branch. This perspective draws from a perception of deep-seated biases inside the IC that proponents believe may be unethical, illegal, or resistant to executive policy.

Each perspective may animate the thinking of various Members of the congressional intelligence committees at any given time. To the extent that Members share a perspective on oversight of the IC, they may be more likely to share views on the ways to conduct the oversight. Significant differences of opinion among Members on the purpose for conducting intelligence oversight, however, may signal a discordant tone in Congress's relations with the IC and hamper oversight efforts.<sup>2</sup>

Some believe that the intelligence committees' perceived tradition of bipartisanship and objectivity is of particular importance for effective oversight and a constructive relationship with the IC. Others, both within and outside of Congress, focus on what they perceive as weaknesses in the structure and authority of the congressional intelligence committees. While the IC has experienced significant reform over the past 40 years since the establishment of the HPSCI and the SSCI, some have contended that Congress could do more to change the rules governing the committee structure and authority for conducting intelligence oversight.<sup>3</sup> They note, for example, that the number of committees that claim jurisdiction over intelligence matters dilutes the authority of the HPSCI and SSCI. Critics also note that despite the diffusion of responsibility for oversight of intelligence in Congress, the growth of the IC—in the size and number of its subordinate elements, as well as its budget—has outstripped Congress's ability to provide adequate checks on the power of the executive or to develop the expertise and dedicate the time to strategically influence intelligence programs and policy.

## Background

### Hughes-Ryan Amendment of 1974

In 1974, the Hughes-Ryan amendment of the Foreign Assistance Act of 1961 (P.L. 93-559 §32) provided the first statutory basis for congressional oversight and notification to Congress of covert action operations. This legislation resulted from Congress not being informed of Central Intelligence Agency (CIA) activities abroad—in Chile and Southeast Asia in particular. The Hughes-Ryan legislation prohibits the use of appropriated funds for covert action unless the

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<sup>2</sup> See, for example, James Clapper, Interview with Rep. James Himes, *After Words with James Clapper*, C-SPAN, May 21, 2018, at <https://www.c-span.org/video/?c4732869/oversight-us-intelligence-community>.

<sup>3</sup> See James R. Clapper, *Facts and Fears: Hard Truths from a Life in Intelligence* (New York: Viking Press, 2018), p. 139. Former DNI Clapper also has expressed strong views of the importance of bipartisanship from how it is perceived within the IC: “The [intelligence] committees are credible when they do things on a bipartisan basis because that has credibility both within the Intelligence Community and, I think, for the rest of the country.” [Clapper Interview with Rep. James Himes, *After Words with James Clapper*, C-SPAN, May 21, 2018, at <https://www.c-span.org/video/?c4732869/oversight-us-intelligence-community>]

President issues a finding to Congress explaining the importance of the covert action to national security.<sup>4</sup>

## Church and Pike Committees

In 1974, media reporting about potentially illegal domestic surveillance by the IC of the anti-Vietnam War movement prompted Congress to establish two select committees on intelligence to investigate—in the Senate, chaired by Idaho Senator Frank Church, and in the House, chaired by Representative Otis Pike.<sup>5</sup> Previously, the Subcommittees on the CIA of the Senate and House Committees on Armed Services exercised nominal oversight of the IC. However, they were viewed by many to be too close to the agencies they oversaw to be objective. Many in Congress came to believe that the legal and ethical abuses by IC agencies resulted in part from an attitude characterized by some as “benign neglect”<sup>6</sup> among the committees that had jurisdiction over intelligence matters.<sup>7</sup> Senator Frank Church described the situation in the 1970s, saying “the Intelligence Community’s immunity from congressional oversight had been a basic reason for the failures, inefficiencies and misdeeds of the past.”<sup>8</sup> The work of the Church and Pike committees, therefore, provided the first formal effort to understand the scope of the IC’s illegal and unethical intelligence activities. These committees became the model for a permanent oversight framework that could hold the intelligence community accountable for spending appropriated funds legally and ethically, and in support of identifiable national security objectives.<sup>9</sup>

<sup>4</sup> At the time of the Hughes-Ryan Amendment, six committees in Congress were to be informed of a presidential finding on covert action. The Hughes-Ryan provisions became outdated by the establishment of the Senate and House Select Committees on Intelligence in 1976 and 1977, respectively, because the intelligence committees assumed sole authority to authorize appropriations for intelligence activities. The Hughes-Ryan Amendment was consequently amended by the Intelligence Authorization Act of 1981 and formally repealed by the Intelligence Authorization Act for Fiscal Year 1991. In S.Rept. 102-85, which accompanied the Senate bill, the SSCI indicated that the provisions were intended to “consolidate intelligence oversight provisions at a single place in the law and expand the requirement for Presidential approval of covert action to all entities of the United States Government (to parallel Executive Order 12333)” and would serve to eliminate “differences in language and scope between [existing statutes that] have been a source of unnecessary confusion and disagreement between the branches.” The SSCI noted that the provisions would furthermore “bring the statutes more closely into line with [Executive Order 12333]” by expanding the notification requirements established by the Hughes-Ryan Amendment to include the whole of the U.S. government. See <https://www.gpo.gov/fdsys/pkg/STATUTE-105/pdf/STATUTE-105-Pg429.pdf>.

<sup>5</sup> Journalist Seymour Hersh broke the story of the CIA’s illegal domestic surveillance. See Seymour M. Hersh, “Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years,” *New York Times*, December 22, 1974, at <https://www.nytimes.com/1974/12/22/archives/huge-cia-operation-reported-in-u-s-against-antiwar-forces-other.html>

<sup>6</sup> James S. Van Wagenen, *A Review of Congressional Oversight: Critics and Defenders* (Washington DC: Center for the Study of Intelligence, Central Intelligence Agency, 2007), at <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/97unclass/wagenen.html>.

<sup>7</sup> One Senator, Leverett Saltonstall of Massachusetts, who served on the CIA subcommittees of the Senate Armed Services and Senate Appropriations Committees during his time in the Senate from 1945 to 1967, described the attitude many in Congress had toward a more aggressive oversight posture: “It is not a question of reluctance on the part of CIA officials to speak to us. Instead it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a Member and as a citizen, would rather not have.” [Quoted from Harry Howe Ransom, *The Intelligence Establishment* (Cambridge: Harvard University Press, 1970), p. 169.]

<sup>8</sup> Quoted from CRS Report 76-149 F, *To Create a Senate Select Committee on Intelligence: A Legislative History of Senate Resolution 400*, by William Newby Raiford, August 12, 1976, p. 1 (out of print).

<sup>9</sup> See also Conference Report: Strengthening Intelligence Oversight, Brennan Center for Justice at New York University School of Law, 2015. A former member of the 9/11 Commission, Ambassador William Green Miller, commented on the conditions which led to establishment of the Church Committee: “Our overall assessment was that our constitutional system of divided powers was threatened by the skewing of the needs of national security.” [p. 3]

## Establishment of the Select Committees on Intelligence

In 1976, Congress established the Senate Select Committee on Intelligence (SSCI). The following year, it established the House Permanent Select Committee on Intelligence (HPSCI).

Since their establishment, however, the HPSCI and SSCI have been assisted in their oversight role by other committees that long had jurisdiction over intelligence matters related to their areas of responsibility.<sup>10</sup> Intelligence and intelligence-related activities are often closely tied to foreign and defense policy, military operations, homeland security, cybersecurity, and law enforcement. Committees in both chambers for Foreign Affairs/Relations, Armed Services, Appropriations, Judiciary, and Homeland Security (after they were created), therefore, today share oversight jurisdiction of intelligence programs.

Some observers of the IC have suggested these overlapping committee jurisdictions contribute to a perception of weak congressional intelligence committees that have relatively little authority and insufficient expertise. Others suggest that structural changes are less a concern than the degree of collegiality among members of the intelligence committees. These critics also suggest that committee members have had a tendency to focus less on forward-looking, strategic intelligence issues rather than tactical levels of intelligence.

## Executive Order 12036

On January 24, 1978, President Jimmy Carter issued Executive Order 12036, *United States Foreign Intelligence Activities*. In a signing statement, President Carter described the order as “[ensuring] that foreign intelligence and counterintelligence activities are conducted in full compliance with the laws of the United States and are consistent with broader national security policies.”<sup>11</sup>

Under a section on “Oversight of Intelligence Organizations,” the order established that the

... [Director of Central Intelligence] and heads of departments and agencies of the United States involved in intelligence activities shall ... keep the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate fully and currently informed concerning intelligence activities, including any significant anticipated activities which are the responsibility of, or engaged in, by such department or agency.<sup>12</sup>

Carter described these provisions as “[instructing] the DCI and senior officers of the Intelligence Community ... to report to the congressional intelligence committees in a complete and prompt manner,” thereby strengthening the intelligence oversight process.<sup>13</sup>

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<sup>10</sup> The congressional intelligence committees exercise sole oversight jurisdiction only over the CIA and ODNI.

<sup>11</sup> Statement of President Jimmy Carter on Executive Order 12036, “United States Foreign Intelligence Activities Statement,” January 24, 1978, available at <https://www.presidency.ucsb.edu/documents/united-states-foreign-intelligence-activities-statement-executive-order-12036>

<sup>12</sup> See §3, “Oversight of Intelligence Organizations,” Executive Order 12036, “United States Foreign Intelligence Activities,” January 24, 1978, available at <http://www.presidency.ucsb.edu/ws/index.php?pid=31100>.

<sup>13</sup> Statement of President Jimmy Carter on Executive Order 12036, “United States Foreign Intelligence Activities Statement,” January 24, 1978, available at <https://www.presidency.ucsb.edu/documents/united-states-foreign-intelligence-activities-statement-executive-order-12036>.



## Intelligence Authorization Act for Fiscal Year 1981

Congressional intelligence committees authorize intelligence activities through annual intelligence authorization acts. Section 504 of the National Security Act of 1947 (50 U.S. Code §3094) provides the statutory basis for authorization of *specific* intelligence or intelligence-related activities rather than a general authorization for intelligence activities within a department or agency.<sup>14</sup>

The Intelligence Authorization Act for Fiscal Year 1981 (P.L. 96-450) codified E.O. 12036 requirements for *prior notification* of Congress, specifically the requirements for the IC to keep the congressional intelligence committees “fully and currently informed” of intelligence activities, including any significant anticipated intelligence activities.<sup>15</sup> This includes providing to the congressional intelligence committees information they might request in the course of their oversight responsibilities. It also requires IC elements to report any illegal activities or significant intelligence failures. Lastly, in the event of any covert action the urgency of which prevents prior notification to Congress, the legislation requires the President to notify the congressional intelligence committees “in a timely fashion” subsequently.<sup>16</sup>

## The CIA Inspector General Act of 1989

The CIA did not have an independent IG until Congress, perceiving that the agency lacked the inclination to adequately oversee its own activities in the events leading to the Iran-Contra scandal, took action. The CIA Inspector General Act of 1989 provided for a statutory IG, appointed by the President and confirmed by the Senate, who is responsible for ensuring the congressional intelligence committees are kept “fully and currently informed” of “significant problems and deficiencies as well as the necessity for and the progress of corrective actions.”<sup>17</sup> The CIA IG is required to provide semiannual reports to the congressional intelligence committees, along with copies of other reports upon request.<sup>18</sup>

## The 9/11 Commission Recommendations and Subsequent Reform

The Report of the 9/11 Commission provides a rubric for assessing the progress of congressional oversight of intelligence, and the report’s recommendations have helped frame discussions of further reform. As the commission noted, oversight reform would not be easy:

Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need.... Having interviewed numerous members of Congress from both parties, as well

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<sup>14</sup> §504 of the National Security Act of 1947, as amended [50 U.S. Code §3094(a)-(b)].

<sup>15</sup> In recognition of the authority of the recently established congressional intelligence committees for authorizations for appropriations, the Intelligence Authorization Act of 1981 repealed the Hughes-Ryan Amendment.

<sup>16</sup> For more information, see CRS Report R45191, *Covert Action and Clandestine Activities of the Intelligence Community: Selected Notification Requirements in Brief*, by Michael E. DeVine and Heidi M. Peters.

<sup>17</sup> P.L. 101-193, §801, codified as 50 U.S.C. §3517.

<sup>18</sup> See L. Britt Snider, *The Agency and the Hill: CIA’s Relationship with Congress, 1946-2004* (Washington D.C.: CIA Center for the Study of Intelligence, 2008), pp. 147-149. Snider, the CIA’s second statutory IG, was instrumental in drafting the CIA Inspector General Act of 1989.



as congressional staff members, we found that dissatisfaction with congressional oversight remains widespread.... When their unfamiliarity with the subject is combined with the need to preserve security, a mandate emerges for substantial change.... Tinkering with the existing structure is not sufficient.<sup>19</sup>

Some, while acknowledging the commission's assessment of Congress's oversight of intelligence as "dysfunctional," have suggested many of its recommendations would be very difficult to implement from a political standpoint.<sup>20</sup> Ultimately, however, the commission's recommendations provoked considerable debate and led to changes in Congress's role in ensuring the IC has the resources, organization, systems, and processes to support national security more effectively. A number of the commission's recommendations for the Senate, for example, have been implemented. Nevertheless, many have suggested more needs to be done and continue to cite the commission's recommendations as a frame of reference for further reform.

The commission recommended replacing the HPSCI and SSCI with a joint committee on intelligence. It also suggested this joint committee should include a subcommittee on oversight to provide the necessary focus on programs and activities that might otherwise be overlooked. As an alternative to a joint committee, the commission recommended consolidating authorizations and appropriations in the HPSCI and SSCI, a reform measure that would be a direct challenge to the authority of the Appropriations Committees. The commission also recommended separating the National Intelligence Program (NIP) appropriation from the Defense appropriation,<sup>21</sup> and, to promote bipartisanship, changing committee rules to ensure the majority never exceeds minority representation by more than one. Finally, the commission recommended abolishing term limits in order to promote depth and experience among committee members.

## Senate Revisions

### Senate Resolution 445

In October 2004, during the 108<sup>th</sup> Congress, the Senate adopted S.Res. 445, an amendment of S.Res. 400—the chamber's rules governing intelligence oversight. It included a number of the recommendations of the 9/11 Commission. This resolution to change committee rules was intended to increase the power of the SSCI as a select committee over its previous authority in relation to standing committees. S.Res. 445, for example, gave the SSCI jurisdiction over reviewing, holding hearings, and reporting to the Senate floor presidential nominations of civilians for IC positions requiring Senate confirmation. S.Res. 445 also limited the standing committees' authority to change proposed legislation referred to them by the SSCI. Other changes included a provision to promote bipartisanship on the committee: Membership was decreased from 17 to 15, 8 members for the majority and 7 for the minority. Funding for hiring staff would be divided 60% to 40% between the majority member who chaired the committee and the minority member selected as the vice chair. Still another provision provided funds to hire a professional staff member to serve as designated representative to each SSCI member on

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<sup>19</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington D.C.: Government Printing Office, 2004), pp. 419-420.

<sup>20</sup> *Ibid.*, p. 420. See also Thomas H. Kean and Lee H. Hamilton, *Without Precedent: The Inside Story of the 9/11 Commission* (New York: Alfred A. Knopf, 2006), p. 287.

<sup>21</sup> *Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington D.C.: Government Printing Office, 2004), p. 416: "Congress should pass a separate appropriations act for intelligence, defending the broad allocation of how these tens of billions of dollars have been assigned among the varieties of intelligence work."

intelligence matters. With the aim of building IC expertise among SSCI members, S.Res. 445 abolished the SSCI's eight-year term limit.<sup>22</sup> In addition, one-third of members were not to have served on the committee during the preceding Congress. S.Res. 445 promoted closer ties with the Senate Armed Services Committee (SASC) by providing that the chair and ranking member of the SASC serve on the SSCI as ex officio members (with no voting authority). S.Res. 445 also created a Subcommittee on Oversight in the SSCI to enable greater focus on oversight that the 9/11 Commission and others had recommended. Lastly, Section 402 of S.Res. 445 called for the establishment of a Subcommittee on Intelligence in the Senate Committee on Appropriations.<sup>23</sup>

## Improved Coordination between Intelligence and Appropriations Committees

In February 2007, a memorandum of agreement (MOA) was agreed to by the SSCI and the Senate Appropriations Committee (SAC) and the SAC Subcommittee on Defense (SAC-D) that allowed for staff of the committees to be notified of and attend each other's hearings on intelligence. It also allowed each member of the SSCI who also served on the SAC to have SSCI staff attend appropriations hearings and markups, and to review and comment on intelligence appropriations legislation prior to a committee vote. The leadership of the SAC claimed the MOA rendered unnecessary an intelligence appropriations subcommittee.<sup>24</sup> A former vice chairman of the SSCI, Senator Christopher Bond, was more critical of the MOA, arguing that it was "weak and would not effect real change."<sup>25</sup>

## House Revisions

### Coordination between House of Representatives Intelligence and Appropriations Committees

In 2007, the House of Representatives in the 110<sup>th</sup> Congress adopted H.Res. 35 to amend the Rules of the House of Representatives to establish a Select Intelligence Oversight Panel (SIOP) of

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<sup>22</sup> Committee term limits had been intended to preserve objectivity on the part of members who otherwise might become too close to the agencies they oversaw. They had the unintended effect of undercutting members' expertise.

<sup>23</sup> S.Res. 445, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess. (2003-2004) at <https://www.congress.gov/bill/108th-congress/senate-resolution/445/text>. Although S.Res. 445 was approved by the Senate by a vote of 79-6, §402, providing for the establishment of a Subcommittee on Intelligence in the Senate Appropriations Committee, has never been implemented due to opposition from the Appropriations Committee Subcommittee on Defense. See Jennifer Kibbe, "Congressional Oversight of Intelligence: Is the Solution Part of the Problem?" *Intelligence and National Security*, vol. 25, no. 1, March 2010.

<sup>24</sup> In a letter objecting to certain oversight reform initiatives of the SSCI—specifically a SSCI proposal to establish a Appropriations Committee Subcommittee on Intelligence, then-SAC chair Sen. Robert Byrd and vice chair Sen. Thad Cochran wrote,

The Committees on Appropriations and Intelligence have already initiated several reforms responding to the need to improve the intelligence oversight process ... through a memorandum of understanding reached between the two Committees last year. We question why additional reforms are necessary or would be beneficial to the Senate...In effecting the February 28, 2007, Memorandum of Understanding between the Chairman of the Intelligence Committee and the Chairman and ranking members of the Appropriations Committee, the two Committees established a system which ensures that the leaders of each committee have the ability to review and comment on the workings of each other's committees. It has allowed for closer working relationships between staff of the two committees. But it has also allowed for the continued independence of review which is accomplished by having separate oversight panels. [*Letter of Senator Robert Byrd and Senator Thad Cochran to Senator Harry Reid and Senator Mitch McConnell*, April 5, 2008.]

<sup>25</sup> Opening Statement of Sen. Christopher Bond, *Hearing before the Select Committee on Intelligence of the United States Senate*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., November 13, 2007, at <H:\2018 Projects\073118 Intel Oversight Reform\060118 IC Oversight Reform\CHRG-110shrg48096.htm>

the Committee on Appropriations to (1) “review and study on a continuing basis budget requests for and execution of intelligence activities”; (2) make recommendations to appropriate appropriations subcommittees; and (3) report on an annual basis to the Defense Subcommittee to provide “budgetary and oversight observations and recommendations” for consideration in the classified annex to the Defense appropriations bill.<sup>26</sup> The SIOP’s advantage was its composite membership from the committees with the most insight on intelligence programs and activities. The panel was composed of 13 members, not more than 8 from the majority party, appointed by the Speaker of the House, to include the chair and ranking member of the House Appropriations Committee (HAC), the chair and ranking member of the House Appropriations Committee Subcommittee on Defense (HAC-D), 6 members of the HAC, and 3 members of the SSCI. The HAC-D, however, rather than the SIOP, had the authority to report a bill to the HAC. The SIOP was abolished in 2011, by H.Res. 5, 112<sup>th</sup> Congress, to be replaced by an agreement between the HPSCI and the HAC for three HAC members (two representing the majority, one representing the minority party) to be able to participate in HPSCI hearings and briefings.<sup>27</sup>

### Intelligence Authorization Act for Fiscal Year 2010

The Intelligence Authorization Act of 2010 (P.L. 111-259) provided several measures to strengthen the layers of intelligence oversight.<sup>28</sup> The legislation established an Inspector General (IG) within the Office of the DNI, appointed by the President and confirmed by the Senate. It also established IGs in the DOD intelligence agencies—the National Security Agency (NSA), the National Geospatial-Intelligence Agency (NGA), the National Reconnaissance Office (NRO), and the Defense Intelligence Agency (DIA). Although the reports of the IGs are classified, they are shared with the congressional intelligence committees, and consequently have been seen as reducing the burden of Congress’s oversight responsibilities.<sup>29</sup> P.L. 111-259 also strengthened congressional notification requirements for (1) cybersecurity programs; (2) NIP systems acquisitions, including significant unforeseen cost increases; and (3) decisions by the executive branch not to provide notification to the full membership of the intelligence committees.<sup>30</sup> Lastly, this legislation also reaffirmed the authority of the Government Accountability Office (GAO) to

<sup>26</sup> H.Res. 35, 110<sup>th</sup> Cong., at <https://www.congress.gov/bill/110th-congress/house-resolution/35/text?q=%7B%22search%22%3A%5B%22H.+Res.+35%22%5D%7D&r=2>.

<sup>27</sup> “Chairman Rogers Announces Strategic Partnership with House Appropriators,” *U.S. House of Representatives Permanent Select Committee on Intelligence Press Release*, March 23, 2011, at <https://intelligence.house.gov/sites/intelligence.house.gov/files/documents/032311appropriationsliaisonshpsci.pdf>.

<sup>28</sup> “Layers” of oversight may include, for example, executive branch ODNI, DOD and intelligence agency IGs, the Privacy and Civil Liberties Oversight Board, the judiciary, and the media, in addition to Congress.

<sup>29</sup> P.L. 111-259, §405.

<sup>30</sup> *Ibid.*, §332(b):

Notice on Information Not Disclosed. (1) If the Director of National Intelligence or the head of a department, agency, or other entity of the United States Government does not provide information required by subsection (a) in full or to all the members of the congressional intelligence committees and requests that such information not be so provided, the Director shall, in a timely fashion, notify such committees of the determination not to provide such information in full or to all members of such committees.

This provision addressed a long-standing complaint by Congress that the IC was abusing the restricted notification provisions for covert action or other of the most sensitive intelligence activities. See Nancy Pelosi, “The Gap in Intelligence Oversight,” *The Washington Post*, January 15, 2006. For more on restricted congressional notification procedures, referred to as “Gang of Four” and “Gang of Eight” notifications, see CRS Report R45191, *Covert Action and Clandestine Activities of the Intelligence Community: Selected Notification Requirements in Brief*, by Michael E. DeVine.

conduct audits and evaluations of IC elements at the request of Congress, and report back to the congressional intelligence committees.

In response to Congress's reaffirmation of GAO authority to provide oversight of the IC, and to specify policy on working with the GAO, the DNI issued, on June 30, 2011, *Intelligence Community Directive (ICD) 114, Comptroller General Access to Intelligence Community Information*. The directive outlines a policy of cooperation with the GAO with the exception of matters related to "intelligence capabilities and activities."<sup>31</sup>

## Selected Options for Further Reform

Following is an examination of selected oversight reform proposals that could be considered in developing a framework for discussion. The 9/11 Commission recommended most of them in its report, though some, such as the idea to establish a Joint Committee on Intelligence, have a much longer history.

### Establish a Joint Committee for Intelligence

The 9/11 Commission recommended the establishment of a joint intelligence committee using the Joint Committee on Atomic Energy (JCAE) as a model.<sup>32</sup> The Joint Committee on Atomic Energy (JCAE) was established by the Atomic Energy Act of 1946 (P.L. 585, 60 Stat. 772-773). It had equal representation from the House and Senate. It was seen as largely bipartisan, fostered expertise among its members, influenced policy of the executive branch, and enabled more efficient oversight of matters under its jurisdiction. Unlike any other joint committee of Congress, the JCAE also had the authority to report legislation to the floor of the House and Senate. Until its termination in 1977, it had been considered by many to be one of the most powerful committees in Congress. It was terminated, however, in part due to its having developed what was perceived as a conflict of interest as both a committee that could influence policy on atomic energy uses and the oversight body for the Atomic Energy Commission.

The idea of a joint committee for oversight of intelligence was first proposed by the U.S. Commission on the Organization of the Executive Branch of the Government (the *Second Hoover Commission*) in 1955.<sup>33</sup>

<sup>31</sup> ICD 114, *Comptroller General Access to Intelligence Community Information*, June, 30, 2011, at [https://www.dni.gov/files/documents/ICD/ICD\\_114.pdf](https://www.dni.gov/files/documents/ICD/ICD_114.pdf):

- D. 4: IC elements shall evaluate GAO requests for information on a case-by-case basis.
- a. Generally, IC elements shall cooperate with GAO audits or reviews and make information available to appropriately cleared GAO personnel. Finished, disseminated national intelligence information relevant to a GAO review, information related to the administration of a US government-wide program or activity, and publicly available information shall generally be provided to GAO.
  - b. Information that falls within the purview of the congressional intelligence oversight committees generally shall not be made available to GAO to support a GAO audit or review of core national intelligence capabilities and activities, which include intelligence collection operations, intelligence analyses and analytical techniques, counterintelligence operations, and intelligence funding. IC elements may on a case-by-case basis provide information in response to any GAO requests not related to GAO audits or reviews of core national intelligence capabilities and activities. Access determinations for all such requests shall be made in a manner consistent with this Directive and applicable Departmental directives.

<sup>32</sup> CRS Report RL32358, *9/11 Commission Recommendations: Joint Committee on Atomic Energy—A Model for Congressional Oversight?* by Christopher M. Davis, Out of Print. See also CRS Report DL781694, *Legislative History of the Senate Select Committee on Intelligence*, by Frederick M. Kaiser, Out of Print.

<sup>33</sup> The Task Force on Intelligence Activities was called the *Hoover-Clark Task Force*, named for former President

During the same time frame, Senator Mike Mansfield of Montana proposed a joint committee in 1955 and 1956 to provide oversight of the CIA. “Until we create some sort of ‘watchdog’ committee,” Mansfield said at the time, “we will have nothing but continued anxiety about the Central Intelligence Agency and its widespread activities.”<sup>34</sup> Mansfield’s joint committee would have had six members from each chamber, three from each of the subcommittees with responsibility for intelligence under the Appropriations and Armed Services committees. In 1963, Senator Eugene McCarthy of Minnesota proposed a “Joint Committee on Foreign Information and Intelligence.”<sup>35</sup>

Those who support the idea of a joint committee suggest it would promote more bipartisan, streamlined, and efficient congressional oversight of the IC and, therefore, better relations with intelligence agencies. The 9/11 Commission suggested such a committee be modeled on the JCAE, and that the committee have authority to report legislation to the floor, subpoena power, no term limits, and a subcommittee dedicated to oversight.<sup>36</sup> A single committee could also enable Congress to have a more focused, integrated perspective of intelligence programs and strengthen Congress’s accountability of IC performance, advocates say. A more efficient oversight structure appeals to those who believe the IC is already burdened by the multiple layers of oversight outside of Congress (the ODNI and agency IGs also exercise oversight of intelligence programs, for example). Advocates have also argued that a joint committee would allow for greater depth and understanding in Congress on intelligence matters and therefore provide greater transparency of the IC without compromising security.<sup>37</sup>

Opponents have argued that a joint committee would not be as effective in conducting oversight as the existing structure of committees in each chamber. Concentrating oversight of intelligence among a smaller number in Congress could limit Congress’s perspective of intelligence programs that support multiple departments across the government. They assess the JCAE was not as effective as proponents have claimed. A joint committee also might not have the same degree of influence in either chamber as the HPSCI and SSCI do separately. Critics believe that a weak joint committee would encourage other committees to reassert jurisdiction over intelligence programs and consequently pose a greater risk of leaks of classified information.<sup>38</sup> They also

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Herbert Hoover and the task force chair, General Mark Clark. It reported to the Commission on Organization of the Executive Branch of the Government (the *Hoover Commission*). Its unclassified report, *Commission Report on Intelligence Activities*, initiated the term *intelligence community*. For the findings and recommendations of the Hoover-Clark Task Force, see *Commission Report on Intelligence Activities* of the Commission on Organization of the Executive Branch of the Government, at [https://www.cia.gov/library/readingroom/docs/hoov\\_pt2\\_intl\\_actv.pdf](https://www.cia.gov/library/readingroom/docs/hoov_pt2_intl_actv.pdf).

<sup>34</sup> L. Britt Snider, *The Agency and the Hill: CIA’s Relationship with Congress, 1946-2004* (Washington D.C.: CIA Center for the Study of Intelligence, 2008), p. 11. At the time, however, Mansfield represented a minority opinion: the CIA benefited from an informal, friendly relationship with Congress. According to Snider, SASC chair Leverett Saltonstall subsequently created a subcommittee for CIA affairs at the recommendation of CIA Director Allen Dulles, who wanted to discourage other Members of Congress from adopting Mansfield’s more investigatory mindset. Creation of the SASC subcommittee on CIA affairs, along with establishment of the President’s Board of Consultants on Foreign Intelligence Activities (PBCFIA, see note 9, above), effectively preempted Mansfield’s proposal of a joint committee.

<sup>35</sup> Sen. Eugene J. McCarthy, “Joint Committee on Foreign Information and Intelligence,” *Press Release of the Office of Senator Eugene J. McCarthy*, March 14, 1963.

<sup>36</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington D.C.: Government Printing Office, 2004), pp. 420-421.

<sup>37</sup> See Harry Howe Ransom, *The Intelligence Establishment* (Cambridge: Harvard University Press, 1970), pp. 164-166.

<sup>38</sup> See, for example, David Boren and William S. Cohen, “Keep Two Intelligence Committees,” *New York Times*, August 17, 1987, at <https://www.nytimes.com/1987/08/17/opinion/keep-two-intelligence-committees.html>. For an example of opinion opposed to the creation of a joint intelligence committee subsequent to the 9/11 Commission



believe that the current structure of overlapping committee assignments for SSCI and HPSCI members with Foreign Relations/Foreign Affairs, Appropriations, Armed Services, and Judiciary enable members to develop expertise and assess intelligence programs in the context of their relation to the national security priorities and defense programs they support. Lastly, critics of a joint committee believe in the benefit of *competitive analysis* that the HPSCI and SSCI provide by virtue of their separate approaches to oversight.<sup>39</sup>

## Consolidate Authorizations and Appropriations

The second recommendation of the 9/11 Commission that may be germane to improving congressional oversight of intelligence was to give the HPSCI and SSCI both authorizations and appropriations authority.<sup>40</sup> Those who support this measure maintain that it would increase the power and influence of the congressional intelligence committees on par with their importance to national security. They also believe it would improve integration of disparate IC agencies and enhance accountability of intelligence programs and managers to Congress.<sup>41</sup> As the 9/11 Commission cochair, Representative Lee Hamilton, put it, “The budget is where you have power, and it’s where you can make an agency or a department responsive to your interests. And if you do not have budget power, you do not have sufficient clout to bring about transformation.”<sup>42</sup>

Currently, the HPSCI and SSCI have jurisdiction over authorizations of the National Intelligence Program (NIP). Only the HPSCI has authorizations authority over the Military Intelligence Program (MIP), however. Senate rules allow the SSCI to provide informal recommendations on the MIP authorizations to the Senate Armed Services Committee (SASC), which has authorization authority over the entire Department of Defense budget, including the MIP.<sup>43</sup> In addition, House and Senate Appropriations, rather than the congressional intelligence committees, have jurisdiction over intelligence appropriations. Transfer of intelligence appropriations authority from the HAC-D and SAC-D to the HPSCI and SSCI, some maintain, would strengthen their understanding of intelligence programs and influence over intelligence policy. It could also enable a dedicated focus on intelligence programs that is impractical currently due to the time and emphasis spent on defense appropriations. Supporters of shifting appropriation authority to the intelligence committees, from the Defense Subcommittees of the Appropriations Committees, claim the latter are unable to give significant attention to the intelligence budget, which represents approximately 11% of the annual national defense budget.<sup>44</sup>

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publishing its recommendations, see “Dems: Well, Maybe Not All the 9/11 Commission Recs,” *The Project on Government Oversight (POGO) Blog*, November 30, 2006, at [http://pogoblog.typepad.com/pogo/2006/11/dems\\_well\\_maybe.html](http://pogoblog.typepad.com/pogo/2006/11/dems_well_maybe.html).

<sup>39</sup> Ibid. One recent example of this competitive quality is the separate SSCI and HPSCI investigations into Russian interference in the 2016 presidential election. It is debatable whether differences in conclusions in the intelligence committees’ respective reports could be cited to support separate committees, as the HPSCI and SSCI are currently constituted, or to support a single joint intelligence committee.

<sup>40</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington D.C.: Government Printing Office, 2004), p. 420.

<sup>41</sup> CRS Report RL32659 *Consolidating Intelligence Appropriation and Authorization in a Single Committee: 9/11 Commission Recommendation and Alternatives*, by Sandy Streeter (out of print).

<sup>42</sup> Testimony of Rep. Lee Hamilton before the House Armed Services Committee, 108<sup>th</sup> Cong., 2nd sess., August 10, 2004, at <https://www.c-span.org/video/?183050-1/september-11-commission-report>.

<sup>43</sup> See Dan Elkins, *Managing Intelligence Resources*, 4<sup>th</sup> ed. (Dewey, AZ: DWE Press, 2014), pp. 8/3-8/6.

<sup>44</sup> See CRS Report R44381, *Intelligence Community Spending: Trends and Issues*, by Michael E. DeVine. See also Thomas H. Kean and Lee H. Hamilton, *Without Precedent: The Inside Story of the 9/11 Commission* (New York: Alfred A. Knopf, 2006). The authors cite the comments of two Senators on the SAC: “At one meeting, a senator said to

Those who oppose consolidating authorizations and appropriations in the HPSCI and SSCI (or under a joint intelligence committee) believe it is politically impractical, would create an artificial separation of intelligence programs from the defense programs they support, and would concentrate too much power with the HPSCI and SSCI.<sup>45</sup> Critics maintain that consolidation of authorizations and appropriations authority under the HPSCI and SSCI might actually weaken oversight by reducing the checks and balances within Congress that exist with broader jurisdiction over intelligence programs.<sup>46</sup> In addition, several recommendations that the 9/11 Commission believed would be more easily accomplished through a consolidation of authorizations and appropriations were later achieved without changing the rules.<sup>47</sup>

Although a fundamental departure from Congress's traditional appropriations process, the Senate did introduce a measure to consolidate intelligence authorizations and appropriations in S.Res. 164, during the 111<sup>th</sup> Congress.<sup>48</sup> This resolution, sponsored by Senators Russell Feingold of Wisconsin, John McCain of Arizona, and Richard Burr of North Carolina, would have transferred appropriations authority from the SAC to the SSCI.<sup>49</sup> The measure was introduced in the Senate but was not acted on following its referral to the Senate Committee on Rules and Administration.

## Establish Intelligence Appropriations Subcommittees

A less sweeping proposal than the 9/11 Commission's recommendation to consolidate appropriations and authorizations under the congressional intelligence committees would be to establish intelligence appropriations subcommittees of the House and Senate Appropriations Committees. This would change the current structure by transferring jurisdiction over intelligence programs from the Subcommittees on Defense of the House and Senate Appropriations Committees to newly constituted Subcommittees on Intelligence. The Senate came close, on October 9, 2004, to establishing an Appropriations Subcommittee on Intelligence with overwhelming approval of S.Res. 445. Section 402 of S.Res. 445 provided for a Subcommittee on Intelligence in the Senate that would "have jurisdiction over funding for intelligence matters."<sup>50</sup>

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[Representative] Lee [Hamilton], 'Do you know how much time we spent debating the budget of the intelligence community last year? Ten minutes!' Lee repeated that anecdote at another meeting a few days later. This time, a senator stood up and said, 'Lee, you're wrong! I was involved in the budget process last year. We spent five minutes on it.'" [p. 281]

<sup>45</sup> CRS Report RL32659 *Consolidating Intelligence Appropriation and Authorization in a Single Committee: 9/11 Commission Recommendation and Alternatives*, by Sandy Streeter (out of print).

<sup>46</sup> See L. Britt Snider, *The Agency and the Hill: CIA's Relationship with Congress, 1946-2004* (Washington, D.C.: CIA Center for the Study of Intelligence, 2008), pp. 274-275. See also, Jennifer Kibbe, "Congressional Oversight of Intelligence: Is the Solution Part of the Problem?" *Intelligence and National Security*, vol. 25, no. 1, March 2010.

<sup>47</sup> The 9/11 Commission maintained that consolidating authorizations and appropriations under the congressional intelligence committees would facilitate implementation of the commission's recommendations for establishing the position of the Director of National Intelligence (DNI) and the National Counterterrorism Center (NCTC). See Testimony of Rep. Lee H. Hamilton, *House Select Intelligence Committee Holds Hearing on September 11 Commission Report*, testimony before House Permanent Select Committee on Intelligence, Aug. 11, 2004.

<sup>48</sup> S.Res. 164, Amending Senate Resolution 400, 94<sup>th</sup> Congress, and Senate Resolution 445, 108<sup>th</sup> Congress, to improve congressional oversight of the intelligence activities of the United States, to provide a strong, stable, and capable congressional committee structure to provide the intelligence community appropriate oversight, support, and leadership, and to implement a key recommendation of the National Commission on Terrorist Attacks Upon the United States, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., (2009-2010), at <https://www.congress.gov/bill/111th-congress/senate-resolution/164/text?q=%7B%22search%22%3A%5B%22S.res.164%22%5D%7D&r=40>.

<sup>49</sup> In transferring appropriations authority from the SAC to the SSCI, S.Res. 164 would have struck §402 of S.Res. 445 that proposed a Subcommittee on Intelligence in the SAC. See note 47 below.

<sup>50</sup> S.Res. 445, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., (2003-2004), §402. Subcommittee Related to Intelligence Appropriations.



However, this measure was opposed by the Subcommittee on Defense, which would lose jurisdiction over the NIP, and has never been implemented.

In the House, H.R. 334 was introduced on January, 9, 2007, and referred to the Committee on Rules. H.R. 334 called for the establishment of a Subcommittee on Intelligence in the appropriations committees of both chambers.

In 2008, S.Res. 655, *To Improve Congressional Oversight of the Intelligence Activities of the United States*, was introduced in the Senate. S.Res. 655 would also have established a Subcommittee on Intelligence, but it never received a vote.<sup>51</sup> The resolution, like S.Res. 445, proposed the creation of a Subcommittee on Intelligence in the Senate Appropriations Committee. Its sponsors suggested it fulfilled the spirit of the 9/11 Commission's recommendation for consolidating appropriations and authorizations authority. No further action was taken on this measure.<sup>52</sup>

Critics of the current jurisdictions argue that the focus of the Defense Appropriations Subcommittee is the approximately 89% of the defense budget that is unrelated to intelligence.<sup>53</sup> Proponents of an appropriations subcommittee dedicated to the intelligence budget suggest that it is both more politically viable than consolidating appropriations and authorizations authority in the HPSCI and SSCI and would significantly improve congressional oversight by enabling appropriators to dedicate time to understanding intelligence programs and conducting budget analysis.<sup>54</sup>

Critics of this idea claim that it would complicate appropriations for intelligence systems that have defense applications or intelligence programs that provide significant support to combat forces. As with proposals for a joint intelligence committee, a Subcommittee on Intelligence would concentrate oversight of intelligence programs among a smaller group in Congress, thereby limiting perspective of programs that have a broad impact across the government.<sup>55</sup> They also note that it would be impractical to disentangle MIP from broader DOD programs that are supported by military intelligence. Others have observed that it has been very difficult to change long-standing congressional appropriations rules and organization.

## Establish a Stand-Alone Intelligence Appropriation

Originally—in 1947—the intelligence budget was placed within the appropriations for the Departments of State and Defense as a precaution against budget cuts, and revealing anything about the type of activity, agency, and total amount the government was investing in intelligence. Since 1952 the intelligence budget has been placed entirely within the defense appropriation under the belief that intelligence programs under the Department of State appropriation were

<sup>51</sup> See *Congressional Record*, September 11, 2008 (Senate), pp. S8416-S8417.

<sup>52</sup> H.R. 334, 110<sup>th</sup> Cong., 1<sup>st</sup> sess.: “(a) Establishment; Jurisdiction. The House of Representatives and the Senate shall each establish in the Committee on Appropriations of the House or Senate (as the case may be) a Subcommittee on Intelligence, which shall have jurisdiction over all activities of such Committee which relate to intelligence and intelligence-related activities of the United States Government.”

<sup>53</sup> See CRS Report R44381, *Intelligence Community Spending: Trends and Issues*, by Michael E. DeVine.

<sup>54</sup> See note 24 above.

<sup>55</sup> See, for example, *Letter of Senator Robert Byrd and Senator Thad Cochran to Senator Harry Reid and Senator Mitch McConnell*, April 5, 2008:

We strongly believe that consolidating authority over intelligence in a smaller group of Senators is precisely the wrong way to improve the Senate's oversight of intelligence. We do not understand how the creation of an Intelligence Subcommittee, led by members of the Intelligence Committee, would do anything but minimize the free exchange of ideas and hamper the debate which exists in the current system.

more difficult to shield from cuts.<sup>56</sup> Since 2007, however, following a recommendation of the 9/11 Commission, Congress has required the DNI to publish the NIP top line figure.<sup>57</sup> Former DNI James Clapper has suggested that because there is no longer a requirement to classify the intelligence budget total, there is no longer a barrier to establishing a stand-alone NIP appropriation separate from the defense appropriation.<sup>58</sup> This was also a recommendation of the 9/11 Commission.<sup>59</sup> It would entail separating the NIP from the DOD budget.

Advocates of this measure believe it would facilitate long-term planning for intelligence programs, information technology (IT), and Intelligence, Surveillance and Reconnaissance (ISR) platforms, and provide a better means for the IC and Congress to oversee budget execution.<sup>60</sup> Critics believe that this is effectively already the case with the inclusion of the NIP as a separate title in the Defense Appropriations Act. They also note that although the top line figure of the NIP (and MIP) are now unclassified, most of the intelligence budget is not, which would make any floor action on a separate intelligence appropriations bill difficult.<sup>61</sup> Some within the IC believe that ensconcing intelligence programs within the annual DOD appropriation has allowed the IC budget to grow exponentially without much notice, offering programs greater protection from cuts. An independent intelligence appropriation might result in greater focus on programs that otherwise escape much scrutiny.<sup>62</sup>

## Provide Dedicated Intelligence Staff to HPSCI Members

As has been previously noted, the Senate, in S.Res. 445 (108<sup>th</sup> Congress), amended S.Res. 400—Senate rules governing the oversight of intelligence—in an effort to improve the oversight process, develop expertise, and promote bipartisanship. Among these proposed changes was to provide funding for a professional staff member to be assigned to each member of the SSCI as the member’s “designated representative” on the committee.<sup>63</sup> This measure was implemented to enable SSCI members to have their priorities better represented in the work of the committee.

<sup>56</sup> See L. Britt Snider, *The Agency and the Hill: CIA’s Relationship with Congress, 1946-2004*, (Washington DC: CIA Center for the Study of Intelligence, 2008), pp. 163-164.

<sup>57</sup> §601(a) of P.L. 110-53 (codified at 50 U.S.C. §3306(b)). The Intelligence Authorization Act (IAA) of 2010 (P.L. 111-259) further amended §601 to require the President to publicly disclose the amount requested for the NIP for the next fiscal year “at the time the President submits to Congress the budget.” In 2010, the Secretary of Defense voluntarily began disclosing annually the total figure for the MIP. The 9/11 Commission recommended public disclosure of both the NIP budget total and the budget totals of its component agencies. See *Final Report of the National Commission on Terrorist Attacks upon the United States* (Washington D.C.: Government Printing Office, 2004), p. 416.

<sup>58</sup> During his confirmation hearing on his nomination to be DNI, James Clapper indicated his preference for a separate intelligence appropriation: “I would support ... taking the National Intelligence Program out of the DOD budget since the reason, the original reason for having it embedded in the department’s budget was for classification purposes. Well, if it’s going to be publicly revealed. That purpose goes away.” [See Hearing of the Senate Select Committee on Intelligence, *Director of National Intelligence Nomination Hearing*, July 20, 2010, at <https://www.c-span.org/video/?294635-1/director-national-intelligence-nomination-hearing>. See also, James R. Clapper, *Facts and Fears: Hard Truths from a Life in Intelligence* (New York: Viking Press, 2018), p. 139.]

<sup>59</sup> See citation 22.

<sup>60</sup> CRS Report R42061 *The Intelligence Appropriations Process: Issues for Congress*, by Richard A. Best, Jr., p. 12 (out of print).

<sup>61</sup> *Ibid.* p. 13.

<sup>62</sup> See L. Britt Snider, *The Agency and the Hill: CIA’s Relationship with Congress, 1949-2004* (Washington D.C.: CIA Center for the Study of Intelligence), pp. 188-189.

<sup>63</sup> S.Res. 445, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess. (2003-2004), §201.

Those who advocate for further reform of congressional oversight of intelligence, especially those who believe committees have suffered from a shortage of experienced staff, have suggested this as a feasible next step for the HPSCI with no obvious disadvantages other than the additional funding it would require.

## Abolish Term Limits for HPSCI Members

Although the Senate, with S.Res. 445 (108<sup>th</sup> Congress), abolished term limits for members of the SSCI, following the recommendation of the 9/11 Commission, the HPSCI's rules continue to limit members' terms to eight years. Term limits were intended to prevent members from becoming too close to the agencies they oversee. Critics, however, have noted the effect term limits have had in undercutting the experience among committee members that is necessary for effective oversight. Intelligence collection and analysis, organization, and process has no public interest group or pool of expertise to draw upon. Expertise comes only through exposure to the IC, either within IC agencies themselves or through service on the committee.

## Conclusion

There are two main, discernible perspectives on whether reform of congressional oversight of the IC is necessary. The first emphasizes the importance of the tradition of bipartisanship among members of the congressional intelligence committees as the single greatest determinant of effective oversight. Therefore, the selection of intelligence committee members and the issues that drive their agendas influence the tone and the effectiveness of the committees' relationship with the IC. The second perspective places greater emphasis upon the organization and jurisdiction of pertinent committees—the intelligence, armed services, and appropriations committees in particular—and their established relationships with each other.

One scholar observed that change to congressional oversight of intelligence is especially difficult due to *inertia* (the resistance within organizations to change), *turf* (the unwillingness of congressional committees to surrender jurisdiction or reorganize), and *politics* (partisanship that makes efforts to establish common ground more difficult). She further noted that “History does suggest that there are game-changing junctures.... And in those game-changing junctures, what makes the difference is leadership of individuals, either members of Congress or the President, and engaging with a public to force change on a change-resistant system.”<sup>64</sup>

Another observer noted a historical, oscillating pattern that

... is rather desultory police patrolling by members of Congress for most of the time.... Not as energetic as one would like, until there is what I call “a shock to the system,” and by that I mean a scandal of some kind ... or a terrible intelligence failure such as what preceded the 9/11 events. And when you have this “shock,” then suddenly lawmakers become very energetic.... They go and conduct the investigation; and this has happened five times: It happened with the Church Committee; it happened with the Iran/Contra scandal; it happened with the Aldrich Ames counterintelligence case; it happened with the 9/11 mistakes that occurred; it happened with the wrong hypothesis about the WMDs in Iraq....

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<sup>64</sup> Testimony of Dr. Amy Zegart, *Hearing Before the Select Committee on Intelligence of the United States Senate on Oversight of Intelligence Activities*, 110th Cong., 1<sup>st</sup> sess., November 13, 2007, at <https://www.gpo.gov/fdsys/pkg/CHRG-110shrg48096/html/CHRG-110shrg48096.htm>.

What concerns me is what happens in between these fires, and how we can avoid these fires in the first place.<sup>65</sup>

Critics characterize this change as “*tinkering*,” an approach against which the 9/11 Commission warned.<sup>66</sup> Others view the cumulative change as enabling—eventually—functional and politically pragmatic oversight of intelligence. Aside from what more might be done, a potential overarching question for Congress to frame the discussion is as follows: Could additional changes to the rules governing congressional oversight of intelligence enable Congress to more effectively fund programs, influence policy, and legislate improvements in intelligence standards, organization, and process that would make the country safer?

## Potential Questions for Congress

- Is current congressional oversight of the IC “dysfunctional,” as the 9/11 Commission alleged in 2004? What criteria would so indicate?
- Could oversight of intelligence be further improved such that the IC would, as a result, be more effective in support of national security? Would enhancements in oversight enable Congress to measure the IC’s effectiveness more effectively?
- To what extent have oversight reform measures been effective in promoting (1) an apolitical IC; (2) committee experience; (3) committee capacity to handle workload; and/or (4) relations with the IC?
- Is the JCAE model an appropriate analogy for consideration of a joint congressional intelligence committee, as some have maintained?
- Should Congress hire additional professional staff to serve on the select intelligence committees?
- Would parallel intelligence structures in each chamber be conducive to improved oversight? Should the HPSCI abolish term limits and adopt the model of ensuring the majority party not exceed the minority party’s representation by more than one?
- Would a consolidation of authorizations and appropriations authority in the congressional intelligence committees consolidate too much authority or enhance congressional oversight?

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<sup>65</sup> Loch Johnson, *Intelligence Oversight*, C-SPAN, May 28, 2015, at <https://www.c-span.org/video/?c4544969/government-accountability>.

<sup>66</sup> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington D.C.: Government Printing Office, 2004), p. 420.

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