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CHALLENGES REMAIN IN CONDUCTING ADEQUATE CONGRESSIONAL  
OVERSIGHT OF THE UNITED STATES INTELLIGENCE COMMUNITY

By

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A thesis submitted to the faculty of the University of Mississippi in partial fulfilment of  
the requirements of the Sally McDonnell Barksdale Honors College.

Oxford, MS

April 2, 2019

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## **Abstract**

Congress serves an important role in overseeing the United States Intelligence Community (IC) through its various legislative and oversight authorities granted within the United States system of governance. Given the necessary secrecy surrounding the IC's activities – often to protect sources, methods, operations, and personnel – Congress serves as one of the most significant representative bodies on behalf of the general public to ensure that the IC is operating within the United States' legal standards and is minimizing waste, fraud, and abuse. Despite being charged with this important task given its accessibility into the community, many have argued that congressional oversight of the IC has become increasingly inadequate. Attempting to balance Congress' need-to-know and the IC's need-to-protect continues to be a very difficult task, which can easily be abused by either side and can lead to ineffective oversight. This thesis examines the historical context of congressional oversight of the IC, documents the tools Congress typically utilizes to conduct its oversight mission, and finally identifies three important factors to adequate congressional oversight and uses such criteria as a framework to examine the ways in which congressional oversight of the IC can be challenged today.

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## **List of Abbreviations**

<b>CENTCOM</b>	United States Central Command
<b>CIA</b>	Central Intelligence Agency
<b>DHS</b>	Department of Homeland Security
<b>DIA</b>	Defense Intelligence Agency
<b>DNI</b>	Director of National Intelligence
<b>DOD</b>	Department of Defense
<b>DOS</b>	Department of State
<b>EITs</b>	Enhanced Interrogation Techniques
<b>FBI</b>	Federal Bureau of Investigation
<b>FISA</b>	Foreign Intelligence Surveillance Act
<b>GAO</b>	Government Accountability Office
<b>HASC</b>	House Armed Services Committee
<b>HPSCI</b>	House Permanent Select Committee on Intelligence
<b>IC</b>	Intelligence Community
<b>IG</b>	Inspector General
<b>ISF</b>	Iraqi Security Forces
<b>ISIL</b>	Islamic State of Iraq and the Levant
<b>MIP</b>	Military Intelligence Program
<b>NCTC</b>	National Counterterrorism Center
<b>NGA</b>	National Geospatial Intelligence Agency
<b>NIP</b>	National Intelligence Program
<b>NRO</b>	National Reconnaissance Office
<b>NSA</b>	National Security Agency
<b>NSC</b>	National Security Council
<b>ODNI</b>	Office of the Director of National Intelligence
<b>ONI</b>	Office of Naval Intelligence
<b>RDI</b>	Rendition, Detention, and Interrogation
<b>SASC</b>	Senate Armed Services Committee
<b>SCIF</b>	Sensitive Compartmented Information Facility
<b>SSCI</b>	Senate Select Committee on Intelligence
<b>TS/SCI</b>	Top Secret/Sensitive Compartmented Information
<b>USG</b>	United States Government



## Chapter 1: Introduction

### *Purpose and Research Question*

The United States Intelligence Community (IC), as well as its congressional overseers, have recently been placed into the spotlight more than ever before. From the investigation into the horrific events of September 11, 2001 by the 9/11 Commission to the now frequent public political spats over intelligence issues and failures, the IC and Congress' oversight of the community have come under intense scrutiny from the American public, pundits, and interest groups. As a result, the community that could once operate almost completely in the shadows now frequently publishes transparency reports, unclassified assessments, and declassified material in an effort to keep the trust of the public that affords it the power to operate.<sup>1</sup> However, in the United States system of governance this is not considered enough, and it is Congress' job to monitor the IC on behalf of American citizens.

As Congress' oversight role has become more important in the age of transparency, the public's opinion of the legislative branch's ability to adequately oversee the IC has come under question.<sup>2</sup> According to several national security experts and democracy advocates, "Oversight from the House of Representatives is in particular need of attention. In September 2016, 33 organizations across the political spectrum asked Speaker of the House Paul Ryan and Democratic Leader Nancy Pelosi to adopt reforms to modernize the House's intelligence oversight."<sup>3</sup> Recent events have even prompted

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<sup>1</sup> Brand, Rachel. "Transparency in the Intelligence Community." Lawfare. November 03, 2015. Accessed December 15, 2018. <https://www.lawfareblog.com/transparency-intelligence-community>.

<sup>2</sup> Easley, Cameron. "Poll: Voters Aren't Happy With GOP Oversight of Trump Administration." Morning Consult. June 21, 2017. Accessed December 15, 2018. <https://morningconsult.com/2017/06/21/poll-voters-arent-happy-gop-oversight-trump-administration/>.

<sup>3</sup> Lohaus, Phillip, Daniel Schuman, and Mandy Smithberger. "Improving Congress's Oversight of the Intelligence Community."

columnists to author pieces titled “Congressional Oversight of the Intelligence Community Is Broken” and “Congressional Oversight of Intelligence ‘Is a Joke.’”<sup>45</sup> Whether or not congressional oversight of the IC conducted behind closed doors is actually “a joke” or not, articles like these have encouraged many to believe it to be and has thus caused a significant problem.

A review of limited scholarly articles and opinion pieces offered by pundits on the topic suggests that Congress’ oversight of the IC is in fact broken. However, researchers have largely refrained from defining adequate congressional oversight of the IC and have largely failed to evaluate the function holistically. Therefore, this qualitative undergraduate thesis addresses the research question of “what is congressional oversight of the IC, what is adequate oversight in this context, and what challenges have there been to conducting adequate oversight?”

### *Organization and Approach*

In order to answer this question for a general audience, this thesis is formatted in a way that builds the average reader’s knowledge on the IC by exploring the history of the relationship between Congress and the United States intelligence apparatus, the current mandate for congressional oversight of the IC, and the methods of oversight most commonly used by Congress. As the abbreviation section highlights, the IC is a vast,

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TheHill. January 24, 2017. Accessed December 15, 2018. <https://thehill.com/blogs/congress-blog/politics/315956-improving-congress-oversight-of-the-intelligence-community>.

<sup>4</sup> Wheeler, Marcy. "Congressional Oversight of the Intelligence Community Is Broken." The New Republic. March 15, 2018. Accessed December 15, 2018. <https://newrepublic.com/article/147470/congressional-oversight-intelligence-community-broken>.

<sup>5</sup> Hentoff, Nat, and Cato.org. "Congressional Oversight of Intelligence 'Is a Joke'." Cato Institute. November 11, 2015. Accessed December 15, 2018. <https://www.cato.org/publications/commentary/congressional-oversight-intelligence-joke>.

complex, jargon-filled world. Its relationship with congressional overseers is not that much different.

The IC is a large and complex bureaucratic structure that many citizens outside of the national security sphere do not completely understand. Therefore, this thesis develops the reader's understanding of the IC and its oversight because Americans generally learn of the IC and its various organizations through incomplete news clips or from television pundits and politicians using the successes and failures of the community for political purposes. This thesis also briefly discusses the community, its components, its budget, and extraordinary size. It then explains how Congress became involved in the rigorous oversight practiced today through an evaluation of the key historical events that prompted Congress to reign in the agencies. Furthermore, this thesis explores the key legislative branch authorities to oversee the IC by largely drawing upon open sources from the IC, US law, and congressional documents to establish what the community is, what Congress' authorities are, and how Congress operates.

Also, this thesis explores the methods in which Congress exercises its oversight functions. This is done by discussing the venues for oversight, as well as the policy tools used by Congress to keep the executive branch and its agencies accountable. This section relies heavily on congressional documents and reports to demonstrate the structures and mechanisms of oversight. It shows the reader how the congressional committees designated with IC oversight authority are split up among the House and Senate, the two intelligence programs, and the various executive branch organizations. This section also highlights the mechanisms to congressional oversight by discussing generally how they are conducted while also sharing recent examples of the policy tools being used for IC

oversight today. Following the development of necessary foundational knowledge, this thesis lays out several important factors for adequate congressional oversight of the IC and evaluates current congressional practices against those factors through anecdotal case studies of various sizes on recent oversight actions.

It is important to note that this thesis focuses on issues that have mostly been litigated in the court of public opinion and within Congress and the IC. Many events have since occurred that have prompted the American public, security professionals, and political pundits to once again question the adequacy of congressional oversight of the IC – perhaps even more intensely. But those questions remain, the story of IC oversight in this new era continues, Congress’ involvement in the story increases daily, and limited speculative analysis on unfolding events is outside the scope of this thesis.

### *Methodology*

This thesis relies on unclassified open source articles, white papers, government reports, court opinions, information from government websites, and developed data. The unclassified open source articles are primarily used to establish a historical context for congressional oversight of the IC and to incorporate commentary of professionals who use the media to share their opinions on the matter. The historical context not only includes how oversight of the IC came about, but also the opinions of national leaders and commentators during periods of increased scrutiny on the IC and its congressional oversight.

References to white papers produced by interest groups and nonprofits are used to look beyond media commentary of those interested in the subject. The white papers

primarily serve as a key lens into the policy world's opinion on what congressional oversight should look like in the modern era and what has arguably fallen apart. Lastly, the white papers' suggestions for reform are helpful in determining which key factors are important to conducting adequate congressional oversight.

Government reports from the executive and legislative branches, established laws, court opinions, and government website data are highly relied upon as primary sources for this paper. Although it can seem nearly impossible to report upon congressional oversight with authority when one is not behind closed doors with lawmakers and staff, the disseminated public reports give key insights into the activities of the congressional committees, their staff and staff activities, and the makeup of their committees. It also shows, to an extent, what the committees have been focused on, how they complete their work, and the challenges they have faced when conducting oversight. The sources are useful for qualitative analysis and provide the most authoritative insight into the committees and the executive branch as the reports were provided directly by both.

## **Chapter 2: Background**

### *A Large, Secretive Bureaucracy*

The IC is one of the most powerful arms of the United States Government (USG) and the executive branch. Composed of 17 agencies, the respective IC organizations vary significantly in size, speciality, and granted authorities. According to the Office of the Director of National Intelligence (ODNI), the IC is composed of two independent organizations, operating outside the control of a federal department, consisting of the ODNI and the Central Intelligence Agency (CIA), eight Department of Defense (DOD) organizations consisting of the National Security Agency (NSA), Defense Intelligence Agency (DIA), the National Geospatial Intelligence Agency (NGA), the National Reconnaissance Office (NRO), and four military service branch intelligence components. The IC also includes seven elements from other USG departments and agencies consisting of the Department of Justice's Federal Bureau of Investigation (FBI) and Drug Enforcement Agency's Office of National Security Intelligence, the Department of Energy's Office of Intelligence and Counterintelligence, the Department of Homeland Security's (DHS) Office of Intelligence and Analysis and US Coast Guard Intelligence, the Department of State's (DOS) Bureau of Intelligence and Research, and the Department of Treasury's Office of Intelligence and Analysis.<sup>6</sup>

Collectively, the IC operates on a reported annual budget of approximately \$70.7 billion, of which its contents and line items are classified and unable to be shared with the public.<sup>7</sup> Additionally, intelligence organizations within non-IC designated departments,

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<sup>6</sup> ODNI. "Members of the IC." Office of the Director of National Intelligence. Accessed November 26, 2018. <https://www.dni.gov/index.php/what-we-do/members-of-the-ic>.

<sup>7</sup> Miles, Anne. "Intelligence Community Spending: Trends and Issues." November 8, 2016. Accessed September 6, 2017. Intelligence Community Spending: Trends and Issues

such as DHS and the Department of Treasury, also use departmental funding outside of the aforementioned budget figure, which makes the total amount of USG intelligence spending even larger, according to the Congressional Research Service.<sup>8</sup> In an open society that upholds the values transparency and democracy, oversight of the IC in the United States can be very contentious. However, there is a demonstrated need for oversight to prevent the waste, fraud, and abuse that can plague any and every government organization, especially given the magnitude of and secrecy around the budget and mere operations of IC organizations.

The public and interest groups are limited in their ability to conduct oversight of the IC unlike other USG organizations given the classified nature of the IC's work. This alone makes responsible oversight incredibly important as citizens generally pass this fundamental democratic duty onto a trusted few in the legislative branch. The delegation of this duty, in addition to the often dramatized portrayal of intelligence in popular culture, often creates the public perception that the IC works in an unregulated space without any oversight or limitation.<sup>9</sup> When the public is granted a rare glimpse into the workings of the IC, it is typically through the media following a partisan spat, national tragedy, or damaging unauthorized disclosure. Therefore, citizens must rely on internal IC oversight bodies and external oversight conducted by their elected representatives and its cleared staff to keep the IC accountable to following the law and responsibly spending its allotted tax money.

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<sup>8</sup> United States. Congressional Research Service. *Intelligence Community Spending: Trends and Issues*. By Michael E. DeVine. June 18, 2018. <https://fas.org/sgp/crs/intel/R44381.pdf>.

<sup>9</sup> "Accountability and Oversight." Government Publishing Office. Accessed November 26, 2018. <https://www.gpo.gov/fdsys/pkg/GPO-INTELLIGENCE/html/int018.html>.

Leaders of the intelligence agencies have long agreed, despite some portrayal to the contrary, that external oversight of the IC is essential in a country that champions democratic values. For example, then director of the CIA Leon Panetta said in 2009, “In our democracy, effective congressional oversight of intelligence is important... I recognize that there will always be tension in oversight relationships, but there are also shared responsibilities.”<sup>10</sup> Furthermore, NSA Director Paul Nakasone wrote in his “Questionnaire for Completion by Presidential Nominees” to become NSA director in 2018 that he “is responsible for informing Congress on Agency activities and, when necessary, must make himself available to answer questions and provide testimony at the request of Congress.”<sup>11</sup> However, oversight of this community, which prioritizes the protection of its sources, methods, operations, and personnel, can be complicated and cumbersome, as suggested by Panetta.

### *The Historical Context for Congressional Oversight*

Efforts for congressional oversight of the United States’ intelligence apparatus began long before the late 1970s when oversight of the IC became paramount following infamous allegations of various abuses of power. While sustained, comprehensive oversight was not achieved until the 1970s, Members of Congress did indeed attempt to reign in the executive branch before then. Congress’ role in United States intelligence activities actually began during the Revolutionary War, where the Second Continental Congress established the Committee of Secret Correspondence. Serving as the once

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<sup>10</sup> Panetta, Leon. “Congress and the CIA: Time to Let Go of the Past, Move Forward.” The Washington Post. August 02, 2009. Accessed November 26, 2018. <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/31/AR2009073102607.html>.

<sup>11</sup> *Senate Committee on Intelligence Questionnaire for Completion by Presidential Nominees* (2018) (testimony of Lt. Gen. Paul M. Nakasone).



developing country's first "intelligence agency," the committee "employed secret agents abroad, conducted covert operations, devised codes and ciphers, funded propaganda activities, acquired foreign publications for use in analysis, established a courier system, and developed a maritime capability apart from that of the navy."<sup>12</sup> These powers and operations morphed as the decades passed following the war into a solely executive branch practice as governance in the United States solidified and the executive branch bureaucracy was formed. According to CIA, "It was not until after World War II and enactment of the National Security Act of 1947 that the Congress again tried to oversee US intelligence activities." The National Security Act of 1947 most notably created DOD, CIA, and the National Security Council (NSC). Even then, congressional knowledge of the intelligence activities conducted by the USG remained scarce, but the implications of the passing of the National Security Act of 1947 were large and still serve an important role in guiding intelligence activities today.<sup>13</sup> The CIA reports that, "Congressional historians refer to it [this period of time] as an 'era of trust' or as the 'period of benign neglect.' As the 1970s approached, however, ominous clouds started to appear"<sup>14</sup>

Following the explosive revelations of presidential and intelligence agency abuse during the Watergate scandal, Seymour Hersh of the *New York Times* began to ring the alarm bells to even larger systemic abuses by the CIA and other USG intelligence organizations. Hersh once wrote in a front page *New York Times* article, "The Central Intelligence Agency, directly violating its charter, conducted a massive, illegal domestic

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<sup>12</sup> Fishel, Edwin. "Military Intelligence - Revolution to First World War." U.S. History. Accessed November 22, 2017. <http://www.u-s-history.com/pages/h1694.html>.

<sup>13</sup> "The National Security Act of 1947." Center for Security Policy. January 26, 2007. Accessed November 26, 2018. <https://www.centerforsecuritypolicy.org/2007/01/26/the-national-security-act-of-1947-2/>.

<sup>14</sup> Fishel, "Military Intelligence - Revolution to First World War."

intelligence operation during the Nixon Administration against the antiwar movement and other dissident groups in the United States, according to well-placed Government sources.”<sup>15</sup> Allegations of rampant misconduct, including the Pentagon allegedly spying on the NSC, were propagated throughout his piece. Declassified documents from the CIA, known as the “family jewels,” confirm that the Agency did engage in and internally document a number of questionable activities during that period of time. One declassified document indicates CIA had possibly violated the National Security Act of 1947 by conducting internal security functions as it allegedly spied on two newsmen who commonly reported on leaked classified information.<sup>16</sup> The declassified Family Jewels documents revealed, “It was determined that during the period they received data from 13 newsmen, 12 of whom were identified; 12 Senators and 6 members of Congress, all identified; 21 Congressional staff members, of whom 11 were identified...”<sup>17</sup> Such activities levied against Members of Congress and other citizens on US soil prompted extensive congressional inquiries and legislative action that began to shape congressional oversight of the IC that is well established today.

Following these revelations, Congress’ first action to curtail the power of the CIA and other offending intelligence organizations was to pass the Hughes-Ryan Amendment to the Foreign Assistance Act of 1961, which according to DOS, “The CIA was authorized to spend appropriated funds on covert actions only after the President had signed a ‘finding’ and informed Congress that the proposed operation was important to

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<sup>15</sup> Hersch, Seymour. "Huge CIA operation reported in US against antiwar forces, other dissidents in Nixon years." *New York Times*, December 22, 1974. Accessed November 22, 2017.  
[https://static01.nyt.com/packages/pdf/politics/19741222\\_hersh.pdf](https://static01.nyt.com/packages/pdf/politics/19741222_hersh.pdf).

<sup>16</sup> "The Family Jewels." Electronic Reading Room. Accessed November 26, 2018.  
<https://www.cia.gov/library/readingroom/collection/family-jewels>.

<sup>17</sup> "Family Jewels." Howard Osborn to Executive Secretary, CIA Management Committee. May 16, 1973. Washington D.C. 21.

national security, expanding Congressional oversight and control of the CIA.”<sup>18</sup> While this amendment was instrumental in expanding Congress’ role in overseeing intelligence activities, the ultimate establishment of the Church and Pike Committees laid the foundation for extensive day-to-day oversight of the IC seen today.

The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (Church Committee) and the initial House Select Committee on Intelligence (Pike Committee) were formed in early 1975 to investigate past IC abuses and subsequently morphed into a more permanent oversight function of Congress. The Pike Committee was one of the first instances in which intelligence agencies, such as the CIA, “faced hostile Congressional committees bent on the exposure of abuses by intelligence agencies and on major reforms.” Congress was no longer willing to blindly support intelligence activities.<sup>19</sup> Furthermore, CIA reports that the Church Committee conducted more than 126 formal hearings, initiated 800 interviews, and released 14 volumes of documents.”<sup>20</sup> Noting the significant change in Congress’ oversight role of the IC, CIA writes, “With the creation of the Church Committee, Congress exercised its legal authority to gain access to Agency documents and personnel, and the Agency fully cooperated.”<sup>21</sup> Following the release of the final Church Committee report, the United States Senate passed Resolution 400, which permanently established the Senate Select Committee on Intelligence (SSCI) and the House passed Resolution 658, which

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<sup>18</sup> Bureau of Public Affairs. "Note on U.S. Covert Actions." Office of the Historian. Accessed November 22, 2017. <https://history.state.gov/historicaldocuments/frus1977-80v18/notes>.

<sup>19</sup> Haines, Gerald. "The Pike Committee Investigations and the CIA." Central Intelligence Agency. June 27, 2008. Accessed November 22, 2017. [https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/winter98\\_99/art07.html](https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/winter98_99/art07.html).

<sup>20</sup> "The CIA and Congress: Creation of the SSCI." Central Intelligence Agency. April 30, 2013. Accessed November 22, 2017. <https://www.cia.gov/news-information/featured-story-archive/2011-featured-story-archive/the-cia-and-congress-creation-of-the-ssci.html>.

<sup>21</sup> *Ibid.*

permanently established the House Permanent Select Committee on Intelligence (HPSCI). The discovery of and congressional response to the abuses conducted by CIA and other existing components of the IC at the time play an instrumental role in the need for congressional oversight and the seriousness in which the legislative branch takes its duties. The “era of trust” was over and will likely never return.

*The Authority for Congress to Oversee the Intelligence Community*

Several legal and legislative mechanisms give the United States Congress authority to oversee the work of the IC today. According to the Final Report of the House of Representatives Select Committee on the Events Surrounding the 2012 Terrorist Attacks in Benghazi, “Congress’ authority to oversee and investigate the Executive Branch is a necessary component of legislative powers and to maintain the constitutional balance of powers between the branches.”<sup>22</sup> Such authority is routinely exercised, but Congress most notably wields its power in instances of national crisis and scandal, such as the various congressional investigations into the terrorist attacks on the United States diplomatic outpost and annex in Benghazi, the congressional review of the CIA’s Enhanced Interrogation Techniques (EITs), or the establishment of a the 9/11 Commission to evaluate the terrorist attacks that permanently changed the United States’ national security posture following a growth in radical violent extremism that the USG was initially ill equipped to combat.

While notable events and mishaps have expanded Congress’ public oversight role, the Supreme Court has held that such power traditionally exists within the legislative

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<sup>22</sup> U.S. Congress. Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi,. *Final Report of the Select Committee on the Events Surrounding the 2012 Terrorist Attack in Benghazi, House Report 114-848, December 7, 2016, 114-2.* 114th Cong., 2d sess. Cong. Rept. 114–848. S.I: S.n., 2017. 354.

branch and can be exercised for a multitude of purposes and reasons. For example, *McGrain v. Daugherty* held in 1927 that, “The power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function.”<sup>23</sup> Furthermore, while *Watkins v. United States* has held that while there are limits to the Legislative Branch’s oversight capabilities, “The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.”<sup>24</sup> These Supreme Court cases, in conjunction with the implied constitutional powers of Congress, lay the foundation for the rise of congressional oversight over the IC and serve as ammunition for Congress to continue its oversight functions of the executive branch today.

Despite Congress being charged with effectively overseeing the IC because of its accessibility into the community, many have argued that congressional oversight of the IC has become increasingly challenged primarily because of politicalization and a lack of resources, among many other concerns. Because of the importance of congressional oversight of all USG institutions, but most importantly of the government’s secretariate organizations beyond the direct reach of its citizens, it is imperative that proper oversight be carried out and that elected leaders work through possible challenges.

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<sup>23</sup> *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

<sup>24</sup> *Watkins v. United States*, 354 U.S. 178, 187 (1957).

### Chapter 3: Congressional Oversight Functions Today

#### *The Committee Conundrum*

Congressional oversight of the IC today is multifaceted and decentralized given the differing and competing jurisdictions of congressional committees and their complicated arrangements. As noted in the previous chapter, HPSCI and SSCI have primary oversight jurisdiction over the IC. However, the committees have differing jurisdictions depending on the budgetary designation of the IC agency or activity they intend to conduct oversight on. The ODNI publicly reports that IC agencies and/or programs are either designated as members of the National Intelligence Program (NIP) or the Military Intelligence Program (MIP) within the classified intelligence budget. The ODNI publicly defines the NIP as, “all programs, projects and activities of the intelligence community as well as any other intelligence community programs designated jointly by the Director of National Intelligence (DNI) and the head of department or agency, or the DNI and the President.”<sup>25</sup> Furthermore, the ODNI publically describes the MIP as, “intelligence activities conducted by the military departments and agencies in the Department of Defense that support tactical U.S. military operations.”<sup>26</sup> These distinctions are important in determining which committee oversees the activities of the diverse and multi-departmental community.

Committee jurisdiction over IC agencies differs in the House and the Senate. According to *Confrontation or Collaboration: Congress and the Intelligence Community*, while HPSCI conducts oversight over the NIP and the MIP, as defined in the IC budget,

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<sup>25</sup> ODNI. "U.S. Intelligence Community Budget." Office of the Director of National Intelligence. Accessed November 22, 2017. <https://www.dni.gov/index.php/what-we-do/ic-budget>.

<sup>26</sup> *Ibid.*

SSCI only has jurisdiction over organizations funded by the NIP.<sup>27</sup> This prompts the Senate Armed Services Committee (SASC) to conduct oversight over the MIP, which can include DIA, NRO, NGA, the Office of Naval Intelligence, and other military service intelligence organizations. This is not the case in the House, however. HPSCI and the House Armed Services Committee (HASC) share oversight duties over the MIP.

Furthermore, other congressional committees often claim jurisdiction over activities concerning the IC. For example, the House Committee on Homeland Security and the Senate Committee on Homeland Security and Governmental Affairs often claim oversight responsibilities over the DHS Office of Intelligence and Analysis, the FBI, and the National Counterterrorism Center (NCTC) when evaluating issues pertaining to homeland security.<sup>28</sup> Furthermore, the House and Senate committees on intelligence and the judiciary contend they have oversight over the NSA's activities and the Foreign Intelligence Surveillance Act (FISA).<sup>29</sup> Finally, the House and Senate Appropriations Committees have authority of appropriating the IC budget, which adds another layer of congressional oversight and jurisdictional battles. These shared and competing jurisdictions make congressional oversight decentralized, with converging and differing oversight interests. Furthermore, decentralized oversight can make it more difficult to coordinate oversight activities amongst the committees, which can subsequently lead to missed oversight opportunities.

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<sup>27</sup> Rosenbach, Eric, and Aki Peritz. *Confrontation or Collaboration? Congress and the Intelligence Community*. Publication. John F. Kennedy School of Government, Harvard University. Cambridge, MA, 2009. 19.

<sup>28</sup> *Threats to the Homeland*, U.S. Senate Committee on Homeland Security and Governmental Affairs. (2017) (testimony of Elaine C. Duke, Christopher A. Wray, Nicholas J. Rasmussen).

<sup>29</sup> *The FISA Amendments Act: Reauthorizing America's Vital National Security Authority and Protecting Privacy and Civil Liberties*, U.S Senate Committee on the Judiciary Cong. (2017) (testimony of Stuart J. Evans, Carl Ghattas, Bradley Brooker, Paul F. Morris, Matthew G. Olsen, Adam I. Klein, Elizabeth Goitein, Elisebeth B. Collins).

### *Current Committee Mechanisms for Oversight*

Despite the decentralized committee oversight structure over the IC, the mechanisms in which these congressional committees, primarily HPSCI and SSCI, conduct their oversight duties are relatively standardized. Congress typically conducts its oversight authorities of the IC through legislation, investigations, hearings, briefings, and roundtables. Furthermore, it has significant leverage over the executive branch by controlling the authorizations and appropriations for the IC, and by having the power to confirm the president's nominees to top posts within the community.

Legislation serves as Congress' key oversight function and can actually exact change within the IC. The most powerful piece of legislation Congress crafts is the annual Intelligence Authorization Act, which first authorizes and then funds the agencies in question. According to the Congressional Research Service, "Annual intelligence authorization acts were first passed in 1978 after the establishment of the two congressional intelligence committees... These acts provided specific authorizations of intelligence activities and were accompanied by reports that provided detailed guidance to the nation's intelligence agencies."<sup>30</sup> While complete authorization is critical, as it provides Congress the opportunity to shape national security policy and intelligence priorities, Congress failed to pass substantial authorization from FY2005 to FY2010 as it nominated to pass vague authorizations to extend current authorities.<sup>31</sup>

While the executive branch establishes the national security and foreign affairs priorities for the country and executes those directives through its agencies, the annual intelligence authorization legislation gives Congress a seat at the table to voice its desired

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<sup>30</sup> Erwin, Marshall. "Intelligence Authorization Legislation: Status and Challenges."

Congressional Research Service. March 25, 2013. Accessed November 22, 2017. <https://fas.org/sgp/crs/intel/R40240.pdf>.

<sup>31</sup> *Ibid.*



direction for the community. For example, in response to the revelations of extensive electronic surveillance conducted by the USG, derived from the damaging unauthorized disclosure of classified information by a NSA contractor, Congress “reformed the authorities of the Federal Government to require the production of certain business records, conduct electronic surveillance, use pen registers and trap and trace devices, and use other forms of information gathering for foreign intelligence, counterterrorism, and criminal purposes.”<sup>32</sup>

Additionally, Congress has worked to make the IC more transparent by legislating requirements to share information and declassify documents of public interest. For example, HPSCI reported “in response to Section 313 of the Intelligence Authorization Act for Fiscal Year 2014, the CIA declassified and posted on its website 103 documents recovered during the May 2, 2011, raid that killed Usama bin Laden... The Committee directed the declassification review so the material could to serve the public interest and help demystify bin Laden and al-Qaeda without compromising national security.”<sup>33</sup> Unlike other oversight activities, which serve as ways to acquire information from the IC, these legislative measures can limit the operational power of the IC and compel it to act in accordance with congressional directives by reforming the law.

Investigations also serve as a crucial component of Congress’ oversight role over the IC. These investigations are either conducted by the congressional committees or the Government Accountability Office (GAO) – the formal investigative arm of Congress. The most notable congressional investigations include the Russian intrusion into the 2016

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<sup>32</sup> U.S. Cong. House. House Permanent Select Committee on Intelligence (HPSCI). *Report on the Activity of the House Permanent Select Committee on Intelligence for the One Hundred Fourteenth Congress*. 114th Cong., 2d sess. Rept. 114–881. Washington D.C. 4.

<sup>33</sup> *Ibid.*

election; HPSCI, SSCI, and a select committee's review of the terrorist attacks in Benghazi; HPSCI's "Review of the Unauthorized Disclosures of Former National Security Contractor Edward Snowden;" The Senate Report on Pre-War Intelligence on Iraq; the SSCI "Study on CIA Detention and Interrogation Program;" and the "National Commission on Terrorist Attacks Upon the United States." These notable investigations, often long and complex, provide Congress unique opportunities to examine witnesses, pour through a multitude of documents requested from the the executive branch, and gain an understanding of the circumstances that prompted administration officials or career employees to make the decisions they have made.

While the most notable investigations occur after a large mishap, several congressional investigations occur as a matter of routine oversight. For example, HPSCI and HASC created a Joint Task Force during the 114th Congress to investigate a whistleblower claim that, "[The United States Central Command] (CENTCOM) had manipulated intelligence to present an unduly positive outlook on CENTCOM efforts to train the Iraqi Security Forces (ISF) and combat the self-proclaimed Islamic State of Iraq and the Levant (ISIL)."<sup>34</sup> While this issue has not been widely covered by the media, the committees utilized their authorities to shed light on the alleged deviation of analytical practices. In doing so, Congress brought attention to possible problematic aspects of the IC, which then could prompt corrective action by the executive branch or Congress through legislation.

In contrast to investigations sparked by instances of mishaps and national crises, Congress typically utilizes hearings, briefings, and roundtables to execute its regular and

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<sup>34</sup> HPSCI, "Report on the Activity of the House Permanent Select Committee on Intelligence for the One Hundred Fourteenth Congress," 10.

sustained oversight functions of the IC. While hearings and briefings are used to acquire testimony and background information during an investigation, they are most often used in providing day-to-day oversight. SSCI's report on its activities during the 114th Congress, stating "the Committee fulfilled its many other oversight responsibilities through regularly interacting with IC senior leaders, conducting numerous hearings and briefings, traveling abroad with Member and staff delegations, and visiting domestic IC facilities."<sup>35</sup> In doing so, the Committee held hearings on regional issues, such as Syria/Iraq, Afghanistan, and Russia. Furthermore, it evaluated agency specific issues such as DIA's Defense Clandestine Service and the FBI's role in battling terrorists' use of encryption technologies. During the same time period, HPSCI reported that it conducted numerous classified hearing and briefings covering issues related to "Russia, Iran, China, North Korea, Afghanistan, Syria, Iraq, weapons of mass destruction, cyber threats and attacks..."<sup>36</sup> These hearings and briefings typically allow for the Members of Congress and Senators to ask employees of the IC questions pertaining to their activities and the threats that face the United States.

A review of the Congressional Record indicates that a vast majority of the hearings HPSCI and SSCI have conducted have been classified and closed to the public. During the 114th Congress, of SSCI's 40 hearings only four of those were conducted at the open, unclassified level. During the 113th Congress, SSCI conducted 108 hearings (six serving as nominee confirmation hearings) with only eight conducted at the open, unclassified level. Finally, SSCI conducted 72 hearings, seven of which were open during

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<sup>35</sup> U.S. Cong. Senate. Senate Select Committee on Intelligence. *Report on the Select Committee on Intelligence United States Senate Covering the Period January 6 2015 to January 2 2017*. By SSCI. 115th Cong., 1st sess. Rept. 115-13. Washington D.C. 1-3.

<sup>36</sup> HPSCI, "Report on the Activity of the House Permanent Select Committee on Intelligence for the One Hundred Fourteenth Congress," 11.

the 112th Congress. To the contrary, HPSCI conducted far less routine oversight activities during the 114th, 113th, 112th Congresses. An evaluation of the Congressional Record also indicates that HPSCI conducted 25 hearings, 79 briefings, 17 roundtable discussions, and 12 business meetings during the 114th Congress.<sup>37</sup> The oversight activities were scheduled regularly throughout the months in session, with only four hearings being open to the public.<sup>38</sup> The open hearings generally consisted of the annual Worldwide Threats Hearing, where IC leaders testify to Congress on the major threats facing the United States every year. These trends have remained consistent over the past several years.

While the amount and types of congressional IC oversight activities have grown, there is still a large disparity between intelligence committees and non-intelligence committees. According to Amy Zegart, author of *Eyes on the Spies: Congress and the United States Intelligence Community*, from 1985 to 2005, HPSCI and SSCI had conducted “far fewer hearings than other committees.”<sup>39</sup> On average, HPSI held 24 hearings a year while the Committee on Foreign Relations and several others held over 100.<sup>40</sup> Since 9/11, the amount of intelligence-related hearings has increased, but it still lags behind other congressional committees. This is likely explained because most of the intelligence committees’ business is conducted in a closed setting, which requires the use of Sensitive Compartmented Information Facilities (SCIFs). Unlike other oversight topics, the secrecy regarding intelligence matters significantly diminishes the amount of

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<sup>37</sup> Crouch, Alexander. Review of Congressional Oversight Data. October 2017. Raw data. Washington DC.

<sup>38</sup> HPSCI, “*Report on the Activity of the House Permanent Select Committee on Intelligence for the One Hundred Fourteenth Congress*,” 16

<sup>39</sup> Zegart, Amy. YouTube. November 12, 2012. Accessed November 22, 2017.  
<https://www.youtube.com/watch?v=c8uucOSYDsU>.

<sup>40</sup> Zegart, Youtube.

outside lobbying pressure or interest group involvement on issues of concern for the intelligence committees. The insulation from individuals and groups outside of the national security community creates an entirely different dynamic than the other, more open congressional committees.

Finally, the United States Senate uses its oversight authorities through its responsibility to confirm the president's nominees for top leadership positions within the IC. While nominees are typically confirmed, the Senate can delay hearings in an attempt to leverage more authority and access into the IC. Confirmation hearings also allow senators the opportunity to address controversial issues with the nominees and score political points over the executive branch. For example, former CIA Director John Brennan's confirmation hearing was held up shortly after the release of the SSCI report on CIA use of EITs. This placed Brennan in a difficult position, as he was to disavow the former controversial activities for the sake of political expediency while also remaining supportive of the workforce he was about to lead. Senators, including Rand Paul (R-KY) also used a filibuster to delay the nomination in an attempt to pressure the Obama administration to discontinue the practice of using kinetic strikes against United States citizens abroad.<sup>41</sup> Furthermore, SSCI used the confirmation of Porter Goss in 2004 to "amplify their concerns over fatal intelligence failures under this [George W. Bush] administration,"<sup>42</sup> and ultimately blocked the confirmation of former Acting General Counsel of the CIA John Rizzo in 2007 over his involvement in the authorization of the

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<sup>41</sup> Shane, Scott. "CIA's Harsh Interrogations Pose Hurdles for John Brennan." *The New York Times*. March 06, 2013. Accessed November 23, 2017. <http://www.nytimes.com/2013/03/07/us/politics/cias-harsh-interrogations-pose-hurdles-for-john-brennan.html>.

<sup>42</sup> Seelye, Katharine. "Democrats Don't Plan to Block Confirmation of C.I.A. Nominee." *The New York Times*. August 11, 2004. Accessed November 23, 2017. <http://www.nytimes.com/2004/08/12/us/threats-responses-nominee-democrats-don-t-plan-block-confirmation-cia-nominee.html>.

EIT program.<sup>43</sup> Mr. Rizzo continued to serve in an acting capacity until the end of the Bush administration.

While Congress has the aforementioned tools to check the power of the executive branch and exact oversight over the IC, the lack of staffing, lack of transparency, and poor organizational structure of the congressional oversight apparatus has prompted “few [to] have full confidence in the ability of the House Intelligence Committee to perform properly.”<sup>44</sup>

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<sup>43</sup> Mazzetti, Mark. "Nominee for C.I.A. Counsel Withdraws." The New York Times. September 25, 2007. Accessed November 23, 2017. <http://www.nytimes.com/2007/09/26/washington/26rizzo.html>.

<sup>44</sup> Lohaus, "Improving Congress's oversight of the intelligence community."

## **Chapter 4: Understanding the Challenges to Adequate Oversight**

### *Factors for Adequate Oversight*

Adequate congressional oversight of the IC arguably requires an unwavering commitment to information sharing and safeguarding between the executive and legislative branches of government, a commitment to nonpartisanship when evaluating IC shortcomings and other matters of concern, and updated and well-resourced committee structures that appropriately centralize oversight activities. These important factors for adequate IC oversight have been crafted following a review of white papers, policy proposals, and other open sources drafted by interested parties on the subject. Each key factor will be further detailed below. The bottom line, however, is that when evaluating current congressional oversight practices of the IC against these important factors, the oversight reviewed below demonstrates that challenges still remain.

While many citizens, interests groups, and government accountability watchdogs make demands for adequate oversight of the IC, they often fail to provide a clear and consistent vision for what adequate oversight can look like. This often clouds the discourse on the issue. This thesis looks to provide clarity to the discussion by highlighting important factors of IC oversight and provides an explanation of the importance of each factor. Finally, this section will ultimately evaluate prominent cases of congressional oversight against the developed framework to identify areas in which challenges to adequate congressional oversight of the IC persist.

### ***Information Sharing***

*Adequate congressional oversight of the IC arguably requires an unwavering commitment to information sharing and safeguarding between the executive and legislative branches of government.* While the sharing of information between the two

branches occurs on a daily basis for routine oversight, publicly known breakdowns of cross-branch information sharing and safeguarding highlighted below have occurred during highly contentious, public, and political oversight activities, which has prompted concern among interested parties and citizens, alike.<sup>45</sup> This section does not look to generalize cross-branch information sharing practices as a whole given the fact that most oversight of the IC occurs in a classified setting, which can limit an accurate assessment. However, this section does point to the known breakdowns that have led the public to believe oversight challenges exist. As many politicians say, public perception is reality to a large extent.

Sharing information between the branches of government, and within Congress, is essential for the legislative institution to perform adequate oversight of the IC. Congress utilizes information from the executive branch to retrace the IC's steps, become current on intelligence issues, and understand workforce dynamics and communication. A "commitment to information sharing and safeguarding" constitutes an ease in access, in which the legislative branch is not stonewalled or denied access to information in order to *prevent* oversight. Most importantly, it requires all individuals with access to classified information to honor their oaths and agreements to protect classified information at all costs, no matter the political utility of such information. According to Standard Form 312, the standard non-disclosure agreement that must be signed in order to be read into access to classified information, a signee indicates, "I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government," and,

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<sup>45</sup> Williams, Katie Bo. "Intel Agencies Reject Request for House Committee Briefing, Citing Larger Probe." TheHill. December 15, 2016. Accessed December 04, 2018. <https://thehill.com/policy/national-security/310495-intel-head-ic-agencies-refused-to-brief-committee-on-russian-hacking>.



“I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of information or last granting me a security clearance that such disclosure is permitted.”<sup>46</sup>

It is imperative that all individuals entrusted with classified information, no matter the branch of government they serve within, protect that information. However, instances of poor information safeguarding have also challenged the ability for oversight to be conducted and the trust the IC places in congress to protect its information.

Complaints regarding information sharing within the IC oversight context have often been two-fold: concern for when Congress does not receive the necessary information and documents required to conduct oversight from the executive branch, and concern for when non-intelligence committee congressional members fail to receive information they desire from the intelligence committees – typically during times in which there is increased media and public scrutiny on an intelligence activity. There is no black-and-white answer with regard to how much and when information should be shared given the multitude of circumstances that congressional overseers and the IC face; however, without the *appropriate* flow of information consistent with legally mandated congressional notification requirements, adequate oversight is impossible to achieve.

As noted above, the rules and guidelines for sharing sensitive intelligence information between the branches of government are dependent on legal interpretation and circumstance. This has challenged congressional oversight of IC activities in the past.

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<sup>46</sup> "Classified Information Nondisclosure Agreement." August 17, 2017. Accessed December 04, 2018. <https://www.gsa.gov/forms-library/classified-information-nondisclosure-agreement-0>.

For example, the executive branch technically has the power to withhold information from Congress, determine the classification of such information, and exact stringent access controls through executive privilege and classification rules.<sup>47</sup> Executive Order 10501 states, “classified defense information shall not be disseminated outside the executive branch except under conditions and through channels authorized by the head of the disseminating department or agency, even though the person or agency to which dissemination of such information is proposed to be made may have been solely or partly responsible for its production.”<sup>48</sup> This executive order has served as guidance to executive agencies that furnish classified material since 1953 and gives the executive branch the power to withhold information from the Congress, the courts, and the public. This can arguably be problematic to Congress’ oversight duties because, in addition to witnesses Congress has the authority to compel, it relies heavily on requested classified information to conduct its investigations and exercise day-to-day oversight activities of the IC. Utilizing its various authorities to safeguard classified information, the IC is often concerned about the protection of sources, methods, personnel, and operations, which can hinder timely congressional oversight. Attempting to balance Congress’ need-to-know and the IC’s need-to-protect continues to be a very difficult task, which can easily be abused by either side and can lead to ineffective oversight. When such abuses occur publically, interested groups and citizens begin to lose faith in Congress’ ability to conduct fair oversight and the executive branch’s commitment to participating. It can also cause further skepticism in the IC’s efforts to operate in good faith.

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<sup>47</sup> Houston, Lawrence. "Executive Privilege in the Field of Intelligence." Central Intelligence Agency. August 03, 2011. Accessed November 23, 2017. [https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol2no4/html/v02i4a07p\\_0001.htm](https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol2no4/html/v02i4a07p_0001.htm).

<sup>48</sup> Exec. Order No. 10501, 3 C.F.R. (1953).

Legislation dictates that Congress must have access to such information and be informed of all intelligence activities. According to the Center for American Progress, “Congress must have access to information about executive branch activities if it is to carry out its constitutional responsibilities to make laws, appropriate funds, conduct oversight, and confirm agency officials.”<sup>49</sup> Furthermore, Congress codified its access to intelligence activities in Section 501 of the National Security Act of 1947, stating, “The President shall ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity as required by this title.” Additionally, it requires the IC to “furnish the congressional intelligence committees any information or material concerning intelligence activities.”<sup>50</sup> As one can see, both branches of government have created mechanisms to which they can both control and access information, and according to the CIA, historical precedents have favored the executive branch’s authorities to control classified information.<sup>51</sup> Both branches of government have crafted different definitions of what constitutes “fully and currently informed” and “information or material” depending on the issue at hand, which can complicate information sharing between the two.

### *Cases of Ineffective Information Sharing*

Several instances of public breakdowns in cross-branch information sharing have caused concern among interest groups and citizens regarding the adequateness of

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<sup>49</sup> Martin, Kate. "Congressional Access to Classified National Security Information." Center for American Progress. March 2007. Accessed November 22, 2017. [https://cdn.americanprogress.org/wp-content/uploads/issues/2007/03/pdf/congressional\\_oversight\\_report.pdf](https://cdn.americanprogress.org/wp-content/uploads/issues/2007/03/pdf/congressional_oversight_report.pdf).

<sup>50</sup> ODNI. "Ref Book - 1947 National Security Act." Office of the Director of National Security. Accessed November 23, 2017. <https://www.dni.gov/index.php/ic-legal-reference-book/national-security-act-of-1947>.

<sup>51</sup> Houston, “Executive Privilege.”

congressional oversight of the IC. A review of several high profile cases suggests that challenged oversight often occurs when there is a belief that legitimate information sharing and safeguarding authorities are being used to evade oversight, whether or not this is actually being done.

Committee staff and media reporting suggest that issues with information sharing arguably hindered the ability of the House of Representatives Select Committee on the Events Surrounding the 2012 Terrorist Attacks in Benghazi (hereinafter referred to as the “Benghazi Committee”) to conduct its oversight investigation in a timely manner. The challenged experience of the select committee was seemingly not unique, and an evaluation of other public and contested investigations has revealed similar beliefs that challenges remain in sharing information. CIA itself acknowledges that sometimes the IC’s role in providing information to the legislative branch can be poorly perceived by congressional overseers by noting, “In principle, intelligence agencies acknowledge an obligation to keep pertinent policymakers apprised of the intelligence analysis being shared with Congress in order to give them time to prepare for and deal with the consequences that are likely to follow. In practice, however, many policymakers find that the performance of intelligence agencies falls woefully short on this score.”<sup>52</sup>

According to the Benghazi Committee’s final report, which dedicated multiple sections to highlight the Committee’s challenges in receiving information from the executive branch, the Obama administration attempted to stonewall their investigation. For example, the report suggests, “The Defense Department was initially cooperative but

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<sup>52</sup> "How Intelligence-Sharing With Congress Has Evolved." Central Intelligence Agency. July 07, 2008. Accessed December 04, 2018. <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/sharing-secrets-with-lawmakers-congress-as-a-user-of-intelligence/1.htm#ft34>.

this cooperation dissipated during the course of the Committee's investigation culminating in a factually deficient letter from a political appointee deliberately mischaracterizing efforts to obtain access to witnesses."<sup>53</sup> Furthermore, the report noted that the Benghazi Committee believed that CIA placed severe limitations on how the Committee could access documents, in addition to delaying their release for several months. The report notes, "The CIA, however, would only allow four Committee staff to review these records during normal business hours at CIA Headquarters in McLean, Virginia. These restrictions unnecessarily limited the Committee's access to the materials and significantly and unnecessarily increased the time needed to review the documents... the CIA would not allow Committee staff to retain notes made while reviewing these documents, or even take notes back to Committee offices to discuss with Committee members."<sup>54</sup>

Declassified congressional reports and media reporting suggest these restrictions have been a common practice for IC agencies when briefing congress on sensitive topics for some time. Furthermore, these access controls are similar to the CIA's restrictions placed on SSCI's oversight of and subsequent investigation into the Rendition, Detention, and Interrogation (RDI) program. According to the declassified SSCI executive summary on the RDI program investigation, "On September 6, 2006, when the CIA provided its first and only briefing to the full Committee on the CIA program prior to the vote on the Military Commissions Act, Committee staff access was limited to the two Committee staff directors. In May 2007, shortly after the CIA allowed additional Committee staff to

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<sup>53</sup> Benghazi Committee, "Final Report," 375.

<sup>54</sup> Benghazi Committee, "Final Report," 380.

be briefed on the program...”<sup>55</sup> During the period of oversight of the RDI program, these experiences by Congress subsequently prompted SSCI to approve “legislation requiring CIA reports on renditions and plans for the disposition of high-value CIA detainees, as well as requesting expanded Committee staff access to the program beyond the Committee staff directors.”<sup>56</sup> Public CIA articles suggest the practice of limiting access to congressional officials is not new nor unique to these cases. According to *How Intelligence Sharing with Congress has Evolved*,

“The committee would be furnished copies of certain finished intelligence reports at the Secret level, but more sensitive intelligence, classified at the Top Secret Codeword level, would be read at CIA headquarters and would not be stored at the committee. NIEs could be reviewed as needed, but the committee would not retain copies... Similar arrangements were worked out in 1977 with the senior staff of the HPSCI. CIA records reflect agreement that access to especially sensitive intelligence would be limited to the two staff directors, the chief counsel, and the chairman of the HPSCI.”<sup>57</sup>

The protection of sources and methods is vital to the IC, but some congressional officials had been concerned that committee staff cleared at the Top Secret/Sensitive Compartmented Information (TS/SCI) level still had significant access restrictions to the documents. This complaint, that the “CIA is unwilling or unable to submit itself to honest and transparent oversight by the Congress,” suggested to the public that CIA was

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<sup>55</sup> U.S. Cong. Senate. Senate Select Committee on Intelligence Minority. *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*. 113th Cong., 2d sess. Rept. 149. 149th ed. Vol. 160. Washington D.C., 2014. 11. *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*. 149th ed. Vol. 160. Washington D.C., 2014. 436.

<sup>56</sup> U.S. Cong. *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 442.

<sup>57</sup> "How Intelligence-Sharing With Congress Has Evolved," 2018.

possibly attempting to restrict the Committee's ability to conduct oversight, which prompted both concerned parties and congressional officials to decry the adequacy of congressional oversight of the IC.<sup>5859</sup>

Despite having requisite clearances, an IC employee or congressional staffer's access to sensitive programs and information is often limited as those programs have a small number of billets. While the chairman and ranking member of an oversight committee may have a greater ease of access to such information, the strict compartmentalization of information is often similar across the more junior levels of staff, which can be misunderstood by Congress. In response to the congressional complaints of executive branch stonewalling, CIA responded sharply to the contrary. In its formal response to the SSCI's report, then-director of the CIA John Brennan responded, "Regarding the Study's claim that the Agency resisted internal and external oversight and deliberately misrepresented the program to Congress; the Executive Branch, the media, and the American people, the factual record maintained by the Agency does not support such conclusions."<sup>60</sup> The declassified response also noted,

"We disagree with the study's conclusion that the Agency actively impeded Congressional oversight of the CIA detention and interrogation program. We believe the record demonstrates that CIA leaders made a good faith effort to keep oversight committee *leaders* fully briefed on the program within the strict limits on access that had been set by the White House. Within these parameters Agency

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<sup>58</sup> Herszenhorn, David. "House Benghazi Report Finds No New Evidence of Wrongdoing by Hillary Clinton." The New York Times. June 28, 2016. Accessed December 04, 2018. <https://www.nytimes.com/2016/06/29/us/politics/hillary-clinton-benghazi.html>.

<sup>59</sup> U.S. Cong. *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 509.

<sup>60</sup> "CIA Comments on the Select Senate Committee on Intelligence Report on the Rendition, Detention, and Interrogation Program." John O. Brennan to Dianne Feinstein. June 27, 2013. In Central Intelligence Agency. June 27, 2013. [https://www.cia.gov/library/reports/CIAAs\\_June2013\\_Response\\_to\\_the\\_SSCI\\_Study\\_on\\_the\\_Former\\_Detention\\_and\\_Interrigation\\_Program.pdf](https://www.cia.gov/library/reports/CIAAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrigation_Program.pdf). 4.

records indicate a fairly consistent engagement with Congressional oversight in the period prior to the public acknowledgment of the program.”<sup>61</sup>

As previously discussed and as obviously highlighted in the examples above, the conflicting nature of the various and often competing authorities granted to both the executive and legislative branches to acquire, control, and access classified information originating in the executive branch can make it challenging to conduct adequate congressional oversight. This challenge occurs because a gap in the interpretation of these authorities can create the space for both branches of government to battle for access, which can cause various actors to spin the battle for access to cast various perceptions of the process. Most times, as demonstrated by the various congressional committees’ reports, it is to suggest that there is nefarious intent to avoid congressional oversight (whether or not that is true), which creates challenges.

In addition to executive vs. legislative branch information sharing issues, some believe that information sharing within Congress is also problematic and can lead to inadequate oversight of the IC. This concern arises from instances in which non-intelligence committee Members of Congress, without a valid need-to-know, fail to receive sensitive classified information they desire. This thesis utilizes the word “desire” as opposed to “need” because in certain cases it is generally understood that congressional members without IC oversight responsibilities should be limited in their access to classified defense and intelligence information when such information has little importance on the Member’s ability to exercise their legislative duties. In fact, according to HPSCI’s own committee rules of the 115th Congress, “Members of the Committee and

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<sup>61</sup> “CIA Comments on the Select Senate Committee on Intelligence Report on the Rendition, Detention, and Interrogation Program,” 35.



the Committee Staff shall not discuss either the substance or procedure of the work of the Committee with any person not a member of the Committee or the Committee Staff... either during the person's tenure as a member of the Committee, or of the Committee Staff, or at any time thereafter, except as directed by the Committee in accordance with the Rules of the House and these rules."<sup>62</sup>

However, several interested parties in effective congressional oversight of the IC disagree. According to the libertarian advocacy group Freedomworks, "news stories recount how requests for information by members of Congress on pending legislative matters did not receive a committee [HPSCI] response for more than six weeks," and "As a constitutional matter, members of Congress have the right to access these documents."<sup>63</sup> Despite the concerns, this thesis assesses that in Congress' necessary interest of attempting to safeguard committee and classified information, this complaint fails to hold as much weight as complaints regarding cross-branch information sharing given the lack of evidence to support overall congressional oversight is hindered by a lack of information sharing within Congress.

Aside from the mostly unfounded complaint that Congress makes its own oversight more difficult by restricting access to sensitive information within its own institution, the second and arguably most important portion of ensuring adequate congressional oversight with regards to information sharing is the safeguarding of such classified information.<sup>64</sup> When sensitive information leaks or spills into unauthorized

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<sup>62</sup> U.S. Cong. House. House Permanent Select Committee on Intelligence. *House of Representatives*. By HPSCI. 115 Cong., 2d sess. H. Doc. Rules of Procedure. [https://intelligence.house.gov/uploadedfiles/hpsci\\_rules\\_of\\_procedure\\_-\\_115th\\_congress.pdf](https://intelligence.house.gov/uploadedfiles/hpsci_rules_of_procedure_-_115th_congress.pdf). 9.

<sup>63</sup> FreedomWorks. "Strengthening Congressional Oversight of the Intelligence Community." Electronic Frontier Foundation. September 13, 2016. Accessed November 22, 2017. [https://www.eff.org/files/2016/09/13/strengthening\\_congressional\\_oversight\\_of\\_the\\_ic\\_white\\_paper\\_sept\\_2016.pdf](https://www.eff.org/files/2016/09/13/strengthening_congressional_oversight_of_the_ic_white_paper_sept_2016.pdf).

<sup>64</sup> Office of the Press Secretary. "Fact Sheet: Safeguarding the U.S. Government's Classified Information and Networks." National

hands, it damages national security and hinders fair oversight. Despite the importance of safeguarding information, Members of Congress (who typically do not have any national security experience prior to their term) and their staff reportedly have a poor track record of keeping sensitive information secret, according to media reporting.<sup>65</sup> For example, during the Bush administration, officials often became frustrated with Congress after repeated leaks to the press occurred following various classified briefings on the War on Terror. In one instance, President Bush himself publicly said, “If you receive a briefing of classified information, you have a responsibility... And some members did not accept that responsibility...”<sup>66</sup>

These incidents prompted the administration to promote the “Gang of Eight” policy, where only the majority and minority leaders of HPSCI, SSCI, House, and Senate leadership are briefed on sensitive intelligence information. This practice largely remains today given the importance of appropriate information sharing and safeguarding. In other instances, congressional leaks have resulted in the reluctance of IC organizations to conduct certain briefings and have created a culture in which IC witnesses hold back information in fear of its compromise.<sup>67</sup> One former intelligence official personally noted during the production of this thesis, “Congress nowadays leaks like a sieve. Nothing scares intelligence professionals more than having Congress leak sensitive information about sources, methods, and operations.”

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Archives and Records Administration. October 07, 2011. Accessed December 04, 2018. <https://obamawhitehouse.archives.gov/the-press-office/2011/10/07/fact-sheet-safeguarding-us-governments-classified-information-and-network>.

<sup>65</sup> Zapotosky, Matt, Shane Harris, Lynh Bui, and Karoun Demirjian. "In Charging Senate Staffer and Seizing Reporter's Records, Justice Dept. Ignites Debate over Leak Crackdown." *The Washington Post*. June 08, 2018. Accessed December 04, 2018. [https://www.washingtonpost.com/world/national-security/in-charging-senate-staffer-and-seizing-reporters-records-justice-dept-ignites-debate-over-leak-crackdown/2018/06/08/6967e630-6b36-11e8-bf8c-f9ed2e672adf\\_story.html?noredirect=on](https://www.washingtonpost.com/world/national-security/in-charging-senate-staffer-and-seizing-reporters-records-justice-dept-ignites-debate-over-leak-crackdown/2018/06/08/6967e630-6b36-11e8-bf8c-f9ed2e672adf_story.html?noredirect=on).

<sup>66</sup> Carter, Yang. "Bush, Congress Call Truce Over Leaks." *ABC News*. Accessed November 23, 2017. <http://abcnews.go.com/Politics/story?id=121300&page=1>.

<sup>67</sup> CSPAN. "IC IG McCullough." *C-SPAN.org*. July 08, 2016. <https://www.c-span.org/video/?c4609766/lynch-mccullough-whistleblowers>.

### ***Nonpartisanship while Conducting Oversight***

*Adequate congressional oversight of the IC arguably requires a commitment to nonpartisanship when evaluating IC shortcomings and other matters of concern.* Just as intelligence analysis conducted by the IC should be nonpartisan, so should the oversight conducted by Congress of the IC's shortcomings and intelligence failures. A commitment to nonpartisanship largely consists of evaluating issues within the IC in a timely, constructive, and fair manner so that improvements are made to better ensure the United States' national security. While national security has often been a bipartisan issue, the political divisiveness felt within the country today continues to encroach upon intelligence oversight. Often times, political parties use congressional committees to take aim at the executive branch led by the opposing party, which can detract from fair oversight and distract the committees from necessary work.

The issue of politicization within the realm of intelligence oversight is not new; however, it has become more evident throughout the past few years, and its negative effects continue to challenge Congress' role in overseeing the IC. Both the perception and the final product of Congress' oversight investigations have become challenged in the United States' hyperpartisan environment. In several cases, Congress has most notably politicized its oversight of the IC by using partisan studies or investigations into possible shortcomings to confirm unfounded and/or preconceived conclusions, and by claiming ignorance when unfavorable news regarding the IC breaks to the public. Congressional oversight becomes political when the IC is used as a political "football" or "punching bag" to score political points against the opposing party instead of addressing issues for improvement.

### *Cases of Congressional Partisanship*

Aside from the information sharing factors discussed, one of the most prominent cases of oversight that many believed to be politicized, and caused major divisions between the executive and legislative branches of government, occurred from 2009 to 2014 while SSCI conducted its “Committee Study of the Central Intelligence Agency's Detention and Interrogation Program.” In the wake of the 9/11 attacks on the United States, CIA set out to destroy al-Qaeda and prevent further attacks through various methods, including through its RDI program. This program was used to acquire intelligence from captured of al-Qaeda leaders, including Abu Zubaydah and Abd al-Rahim al-Nashiri, through EITs.<sup>68</sup> These enemy combatants were subject to waterboarding, sleep deprivation, and other legally approved interrogation techniques.<sup>69</sup> As details regarding the program began to leak and the existence of the program become publicly known following its execution, many individuals in the media and Congress began to express outrage.

Similar to Congress’ response to the disclosure of several FISA-authorized surveillance programs in 2013, some members of Congress reportedly experienced selective memory about being previously informed of the program as they expressed their outrage. According to *The New York Times*, “long before ‘waterboarding’ entered the public discourse, the CIA gave key legislative overseers about 30 private briefings, some of which included descriptions of that technique and other harsh interrogation methods.” In addition, the publication reported, “No objections were raised. Instead, at least two lawmakers in the room asked the CIA to push harder.” This selective congressional

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<sup>68</sup> “CIA Comments on the Select Senate Committee on Intelligence Report on the Rendition, Detention, and Interrogation Program,” 3.

<sup>69</sup> *Ibid.*

memory eventually fueled a SSCI study led by Senator Dianne Feinstein, which prompted a harsh CIA rebuttal and a diminished relationship between the Committee and CIA. SSCI's study on the CIA's detention and interrogation program delegitimized the Committee's ability to conduct fair oversight over the CIA and further damaged the trust needed for it to conduct adequate oversight of the rest of the IC.

The study arguably erred in that it sought to confirm preconceived political notions of the detention and interrogation program, which an unbiased evaluation may have dispelled, while presenting itself as an official historical accounting of the RDI program. In announcing the initiation of the Committee's study, Senator Feinstein stated, "the purpose [of the study] is to review the program and to shape detention and interrogation policies in the future."<sup>70</sup> Feinstein's promise to "shape" future policy after she had previously stated she believed waterboarding was indeed torture and that "torture is a black mark against the United States," led many in the IC and CIA to believe the study's conclusions would be biased against the organization and its activities before the study even officially commenced. Furthermore the SSCI minority reported in its response to the study, "With respect to the standard of objectivity, we were disappointed to find that the updated Study still contains evidence of strongly held biases... We found that those biases led to faulty analysis, serious inaccuracies, and misrepresentations of fact in the Study." According to former CIA Director John Brennan, "the Study was not objective" and served as "a prosecutor's brief written with an eye toward finding problems."<sup>71</sup> A culmination of these errors and biases delegitimized SSCI's work from the

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<sup>70</sup> "Feinstein, Bond Announce Intelligence Committee Review of CIA Detention and Interrogation Program." Press Releases. March 05, 2009. Accessed November 22, 2017. <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=d882ff87-5056-8059-763f-e15d555d5f89>.

<sup>71</sup> Shane, "CIA."

very beginning as it appeared to use this study to confirm preconceived wrongdoing, as opposed to evaluating if wrongdoing had actually occurred. This overt politicization opened the door for more issues to arise out of the inquiry and led many to argue that there are significant challenges that remain to conducting adequate congressional oversight of the IC.

According to experts, the study relied on poor analytical tradecraft in order to mischaracterize the evidence to fit the preconceived notion the SSCI majority was looking to validate. The breakdown in analytical tradecraft opened the door for fierce criticism. For example, the SSCI minority reported, “the Study states that a review by the CIA Inspector General (IG) ‘uncovered that additional unauthorized techniques were used against’ a detainee, but the Inspector General report actually said it ‘heard allegations’ of the use of unauthorized techniques and said, for all of the instances, the allegations were disputed or too ambiguous to reach any authoritative determination about the facts.”<sup>72</sup> Furthermore, others argued the SSCI study often relied on rhetorical maneuvering to misrepresent the facts. The official study assesses the RDI program was ineffective in producing intelligence, citing, “seven of the 39 CIA detainees known to have been subjected to the CIA’s EITs produced no intelligence while in CIA custody.”<sup>73</sup> Although framed as a negative, simple math indicates that 82% of the detainees did produce intelligence; however, acknowledging that would not be conducive to fitting the report’s preconceived conclusions that the program was ineffective.

Furthermore, CIA and the SSCI minority report that the study excluded information that dispelled its leaders’ preconceived notions and utilized absolute

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<sup>72</sup> U.S. Cong. “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program,” 11.

<sup>73</sup> U.S. Cong. “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program,” 9.

language that misled readers. For example, the study commonly used phrases such as "no connection," "no indication," "played no role," or "these representations were inaccurate," while attempting to disprove the substance of CIA cable reports, but the minority writes, "Our review of the documentary record often found valid counter-examples that disproved such absolute claim."<sup>74</sup> The demonstrated poor analytical methodology and misrepresentation of facts demonstrated to many that SSCI attempted to skew its findings to fit its preconceived political conclusions and effect policy change following incomplete and unfair oversight of an IC organization.

In addition to seeking to confirm preconceived political notions, many argue that the SSCI's study was poorly structured and executed, which allowed the IC, the SSCI minority, and some members of the media to publically question its investigative process and objectivity. This case serves as an example where Congress, itself, casted doubt to the general public on its ability conduct adequate oversight of the IC. According to Amy Zegart, "The Senate report is a Greek tragedy: full of noble motives and tragic flaws. Seeking to write the definitive account of Bush-era interrogation and detention policies, the report's process errors and substantive weaknesses have diminished its impact considerably." One of the most reported egregious errors of the SSCI report, which took five years to complete, was that it consisted solely of a review of six million documents. Zegart writes, "Feinstein's investigation relied exclusively on written documents. But documents reveal only so much. Often the more important information – ideas, intentions, relationships, conversations – rests in heads, not files. Interviews also force investigators to confront their own assumptions and weaknesses which can sharpen their

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<sup>74</sup> U.S. Cong "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program," 14.

evidence and analysis.”<sup>75</sup> Former CIA leaders indicated they had never been interviewed by the Committee. According to Jose Rodriguez, former Director of CIA’s National Clandestine Service, “I don’t know what the committee thinks it found in the files, but I know what I saw in real time: a program that provided critical information about the operations and leadership of al-Qaeda.”<sup>76</sup> Finally the SSCI minority reported, “Without interviews, the Study was essentially limited to a cold document review with more questions likely raised than answered.”<sup>77</sup> By selling the report as a comprehensive historical document of the RDI program without interviewing key witnesses who could provide the appropriate context regarding decision making at the time, SSCI conducted poor oversight and paid a public price for it.

As a result of failing to remain impartial and mishandling the investigative process, the IC and its former officials were able to rebut SSCI’s study prior to the release of the declassified executive summary. The IC and its former officials involved in the program crafted a fierce public relations campaign to bring issue to the problematic elements of the study. In one instance, former CIA officials launched a Twitter hashtag and website titled “CIASavedLives” to counter the study’s narrative and raise public support for the RDI program in the context of impending attacks on the U.S. following 9/11.<sup>78</sup> According to former CIA Spokesman Bill Harlow, “With the website we’ll be able to put out newly declassified documents, documents that were previously released

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<sup>75</sup> Zegart, Amy. “SSCI Study of the CIA’s Detention and Interrogation Program: A Flawed Report.” Lawfare. December 11, 2015. Accessed November 23, 2017. <https://www.lawfareblog.com/ssci-study-cias-detention-and-interrogation-program-flawed-report>.

<sup>76</sup> Rodriguez, Jose. “I ran the CIA interrogation program. No matter what the Senate report says, I know it worked.” The Washington Post. April 04, 2014. Accessed November 23, 2017. [https://www.washingtonpost.com/opinions/i-ran-the-cia-interrogation-program-no-matter-what-the-senate-report-says-i-know-it-worked/2014/04/04/69dd4fae-bc23-11e3-96ae-f2c36d2b1245\\_story.html?utm\\_term=.be8de54c86e7](https://www.washingtonpost.com/opinions/i-ran-the-cia-interrogation-program-no-matter-what-the-senate-report-says-i-know-it-worked/2014/04/04/69dd4fae-bc23-11e3-96ae-f2c36d2b1245_story.html?utm_term=.be8de54c86e7).

<sup>77</sup> U.S. Cong “*Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program*,” 37.

<sup>78</sup> Hudson, John. “Exclusive: Former Spies Launch ‘CIASavedLives.com’ to Combat Torture Report.” Foreign Policy. December 08, 2014. Accessed November 23, 2017. <http://foreignpolicy.com/2014/12/08/exclusive-former-spies-launch-ciasavedlives-com-to-combat-torture-report/>.



but not well read, and host a repository for op-eds and media appearances by various officials... We have plans to correct the record as we see it and help the people whose names are being dragged through the mud.”<sup>79</sup> In failing to remain bipartisan and apolitical from the beginning, and by clearly establishing the motive to “shape” or change previous policy that the Chairperson had vehemently disagreed with, congressional oversight on the issue became biased in the eyes of the IC and the public. This allowed for individuals to discredit the Committee’s work at every turn and led to completely inadequate oversight because the focus shifted to the shortcomings of the study as opposed to the possible shortcomings of the CIA. In totality, the Committee’s study and its flawed process damaged relationships with the CIA and demoralized the agency’s workforce that had operated in silence to prevent future attacks.

In addition to SSCI’s RDI program study debacle, Congress significantly hindered its own ability to conduct adequate oversight by largely claiming ignorance following the exposure of FISA-authorized surveillance activities following an unauthorized disclosure of classified information by an NSA contractor. According to media reporting, Members of Congress had been privately briefed about intelligence activities without objection, but responded with dismay and anger in the public sphere given the political winds of the time. According to David Ignatius, “[Congressional oversight] was intended to set clear limits for intelligence activities and then provide bipartisan political support for the operatives who do the dirty work. Instead, the process has allowed practices that are later viewed as abuses -- and then, once the news leaks, it has encouraged a feeding frenzy of recrimination against the intelligence agencies.”<sup>80</sup>

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<sup>79</sup> *Ibid.*

<sup>80</sup> Ignatius, David. "Intelligence Oversight In Free Fall." The Washington Post. December 13, 2007. Accessed

Operating in this regard arguably delegitimizes the work of the oversight committees and hampers the trust between the IC and Congress. The degradation of mutual trust between Congress and the IC agencies makes oversight more difficult because agencies and career employees become more reluctant to share information that may result in unauthorized disclosures from congress and/or them being burned later for political purposes. Congressional oversight over the IC has fallen victim to this phenomenon twice over the past several years: NSA surveillance and CIA EITs.

Following the unauthorized disclosure of classified information by a NSA contractor, oversight on the IC's use of FISA to conduct legal surveillance on US and non-US persons became a political firestorm. US citizens, the international community, and Members of Congress responded with anger and concern over the programs they knew little about. In the case of Congress, many members who expressed outrage and claimed ignorance had several opportunities to become familiar with the FISA authorities utilized and various intelligence activities conducted under those authorities. For example, Senators Ron Wyden (D-OR) and Mark Udall (D-CO) became Congress' most outspoken critics of the NSA programs, with Wyden stating, "When the American people find out how their government has secretly interpreted the Patriot Act they will be stunned and they will be angry."<sup>81</sup> However, *The New York Times* later reported, "that in December 2009 and February 2011 the Justice Department and intelligence agencies provided a classified document to Congress describing the surveillance efforts in detail."<sup>82</sup> Media reporting suggests the IC provided many opportunities for Congress to

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November 23, 2017. <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/12/AR2007121202260.html>.

<sup>81</sup> Reitman, Janet. "Q&A: Senator Ron Wyden on NSA Surveillance and Government Transparency." *Rolling Stone*. August 15, 2013. Accessed November 23, 2017. <http://www.rollingstone.com/politics/news/q-a-senator-ron-wyden-on-nsa-surveillance-and-government-transparency-20130815>.

<sup>82</sup> Weisman, Jonathan, and David Sanger. "White House Plays Down Data Program." *The New York Times*. June 08,

raise objections and discuss the intelligence activities executed under FISA; however, according to Senator Dick Durbin (D-IL) that was not enough because there is a “distinction between the holding of such briefings and the informed consent of Congress. Very few lawmakers avail themselves of such briefings.”<sup>83</sup> The politicalization of FISA surveillance by Members of Congress likely did more harm than good for national security and in instilling trust to the public that Congress was conducting adequate congressional oversight of the IC.

Instead of becoming fully acquainted with the IC operations, several Members of Congress decided to join the criticism with faulty information, which further demonized an already battered NSA and IC at that point. According to Amy Zegart, employees within the IC have depended on Congress to serve as “ambassadors” for their work given the secrecy around the nature of their positions, operations, and livelihood. As previously explored, everyday Americans do not have access to the IC and its work, but their elected representatives in Congress generally do by virtue of their elected positions. By falling into the political trap and further stirring up controversy following the media frenzy focused on the unauthorized NSA disclosures, many Members of Congress politicized the FISA issue and contributed to the demonization of the IC that greatly diminished the public’s trust in the community. This method of “oversight” demonstrates that challenges remain in conducting adequate oversight of the IC because this method fails to address the real issues at hand and promotes more distrust with the public when Congress could have corrected the record.

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2013. Accessed November 23, 2017. <http://www.nytimes.com/2013/06/09/us/politics/officials-say-congress-was-fully-briefed-on-surveillance.html>.

<sup>83</sup> *Ibid.*

Lastly and most recently, politicalization has also arguably hindered Congress' ability to conduct adequate intelligence oversight and investigation into the Russian interference in the 2016 national election. According to a declassified Intelligence Community Assessment on the nefarious Russian activity, "Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the United States presidential election. Russia's goals were to undermine public faith in the United States democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump."<sup>84</sup> The release of this declassified assessment, as well as the wall-to-wall news coverage, contributed to a rapid growth in public interest and the obvious desire for both HPSCI and SSCI to investigate further. Making matters worse, public opinion on the Russian interference was mostly delineated by political party affiliation, which has made it difficult for national leaders to remain nonpartisan when evaluating the issue.

Despite the Senate and House intelligence committees' similar charge to investigate Russian meddling, the two investigations have been viewed quite differently by the public, media pundits, and former security professionals due to the stark difference in how the two investigations have been handled. For example, HPSCI released its full report on the issue in April 2018, following a large degree of criticism for several actions taken by committee leaders during its investigation. Such activities and criticism largely casted a shadow of doubt over the report's independence, findings, and HPSCI's overall ability to conduct oversight in a nonpartisan way. Adam Schiff (D-CA), then-ranking

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<sup>84</sup> Office of the Director of National Intelligence. National Intelligence Council. *Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident Attribution*. January 06, 2017. [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf).

member of the House committee, said, “Republicans chose not to seriously investigate — or even see, when in plain sight...”<sup>85</sup>

In addition to criticism over the actions of committee leaders, some have criticized the Republican majority for using its final report to make political attacks against the past administration on its use of FISA instead of focusing more on the actions of the Russian government.<sup>86</sup> Such partisanship led to several government watchdogs, such as the Project on Government Oversight, to call for the removal of a few HPSCI committee members, stating that such members “have starkly demonstrated an inability to fulfill their constitutional oversight obligations on the Committee or to maintain public trust in their findings and recommendations.”<sup>87</sup> As seen in the case of SSCI’s RDI investigation, partisan disputes over what should be nonpartisan investigations largely diminish the public’s trust in the findings and diminish Congress’ ability to conduct adequate oversight

In contrast to HPSCI’s investigation into Russian interference, SSCI’s investigation has received much less criticism given its ability to operate in a mostly bipartisan fashion, thus far. For example, one media outlet even titled an article, “The Senate’s *grown-ups* in the Trump-Russia probe *follow facts, not politics*,” to highlight the contrast in committee investigations on this particular issue.<sup>88</sup> In an initial report, SSCI confirmed the analysis of the IC in a bipartisan fashion, with Vice Chairman of SSCI,

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<sup>85</sup> Memoli, Mike. "House Intelligence Committee Releases Final Report on Russia Probe." NBCNews.com. Accessed February 11, 2019. <https://www.nbcnews.com/politics/congress/house-intelligence-committee-releases-full-report-russia-investigation-n869656>.

<sup>86</sup> *Ibid.*

<sup>87</sup> Brian, Daniel. "POGO Calls for Removal of House Intelligence Committee Members After Vote to Release Memo." Project On Government Oversight. Accessed February 11, 2019. <https://www.pogo.org/letter/2018/02/pogo-calls-for-removal-of-house-intelligence-committee-members-after-vote-to-release-memo/>.

<sup>88</sup> Kolesnik, Kris. "The Senate's Grown-ups in the Trump-Russia Probe Follow Facts, Not Politics." TheHill. July 06, 2018. Accessed February 11, 2019. <https://thehill.com/opinion/white-house/395804-the-senates-grown-ups-in-the-trump-russia-probe-follow-facts-not-politics>.

Mark Warner (D-VA), stating, “As numerous intelligence and national security officials in the Trump administration have since unanimously re-affirmed, the (Intelligence Community Assessment’s) findings were accurate and on point.”<sup>89</sup> Interestingly, both the republican Chairman and democrat Vice Chairman of SSCI have appeared together on panels and interviews to discuss their bipartisan investigation into Russian interference with the public, which is rare in modern intelligence oversight investigations.<sup>90</sup> While SSCI’s investigations are ongoing, the notable transparency and bipartisanship is striking and will more likely than not lead to more public trust in its inquiries and findings should the demonstrated dynamic continue.

### ***Updated and Well Resourced Committee Structures***

*Adequate congressional oversight of the IC requires updated and well-resourced committee structures that appropriately centralize oversight activities.* Centralization of oversight activities allows for committees with jurisdiction over the IC and its components to effectively and efficiently perform its oversight functions. This can be done by giving appropriate committees, such as ones covering intelligence, appropriations, and the judiciary autonomy to address issues across the IC, regardless of department or budgetary program. Issues of oversight uniformity exist between the House and the Senate, and the overall committee structure of Congress creates turf battles between committees that often lead to redundant oversight. Separately, given the large size of the IC and its multi-billion dollar budget, it is important for oversight committees

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<sup>89</sup> Hosenball, Mark. "Senate Panel Backs Intelligence Agencies on Russia-Trump Conclusions." Reuters. July 03, 2018. Accessed February 11, 2019. <https://www.reuters.com/article/us-usa-trump-russia-cyber/senate-panel-backs-intelligence-agencies-on-russia-trump-conclusions-idUSKBN1JT2YB>.

<sup>90</sup> War on the Rocks. "Horns of a Dilemma: Keynote Conversation on the SSCI Investigation Into Russian Active Measures." War on the Rocks. December 28, 2018. Accessed February 11, 2019. <https://warontherocks.com/2018/12/horns-of-a-dilemma-keynote-conversation-on-the-ssci-investigation-into-russian-active-measures/>.

to have the appropriate resources to adequately conduct its oversight function on behalf of the American people.

Congressional oversight over the IC is decentralized in the House and the Senate, which has led to challenged oversight. A large disparity between the two intelligence committees has been their jurisdictions over IC issues. While HPSCI has jurisdiction over the NIP and MIP, SSCI is tasked with overseeing the NIP while SASC oversees the MIP. With regards to SSCI's authorities,

“The term ‘intelligence activities’ is defined, however, to exclude ‘tactical foreign military intelligence serving no national policy making function.’ The practical effect of these definitions is... to leave defense intelligence activities other than solely tactical activities to shared jurisdiction between the intelligence and armed services committees; and to leave tactical military intelligence within the sole jurisdiction of the Committee on Armed Services.”<sup>91</sup>

While SSCI does take into account intelligence activities conducted by DOD elements, it is often in agreement with SASC. This has become problematic as the IC, which consists of over seven executive level departments, has become more cohesive in its work. Many issues that HPSCI and SSCI evaluate involve both NIP and MIP components across all departments of government. By having to settle which committee is authorized to conduct specific types of oversight, the Senate has created a system where there are more bureaucratic layers to push through, as opposed to focusing solely on performing oversight.

### *Cases of Challenges*

Given the size of the IC and its inclusion of organizations from at least seven executive-level departments, oversight is scattered across Congress. Shared committee jurisdiction over the IC has led to challenges in adequate oversight because the current

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<sup>91</sup> U.S. Cong. Senate. Senate Select Committee on Intelligence. *Legislative Oversight of Intelligence Activities: The U.S. Experience*. 103rd Cong., 2d sess. Rept. 103-88. Washington D.C., 1994. 11.

system does not encourage a single committee to take leadership over a respective issue needing oversight. According to Elaine Halchin of the Congressional Research Service,

“Most of the jurisdiction of the current Intelligence Committees is shared. The select committees hold exclusive authorizing and legislative powers only for the CIA, the DNI (as it had over the now-defunct Director of Central Intelligence), and the National Foreign Intelligence Program. This leaves the intelligence components in the Departments of Defense, Homeland Security, Justice, and Treasury, among other agencies, and intelligence-related programs to be shared with appropriate standing committees.”<sup>92</sup>

For example, the House Committee on Homeland Security has primary jurisdiction over the Department of Homeland Security, but can also exact oversight over the FBI and NCTC when their duties affect relevant homeland security issues. NCTC, as an ODNI element, typically interacts with the intelligence committees and the FBI typically interacts with the judiciary committees. In essence, all three committees could attempt to enact differing legislation or conduct separate investigations on a specific issue within a committee’s respective jurisdiction because of the failure to delineate specific oversight roles of the committees. The current system also systemically discourages certain committees to build institutional expertise on oversight issues that are commonly shared between jurisdictions as it can be a continuous political battle to claim jurisdiction. For example, another committee could take the lead if the issue were to reappear down the road if it were more politically feasible that time around. Additionally, institutional expertise can be hard to develop in the House because of limited staffing opportunities and term limits on committees. According to *LegBranch.org*, the average HPSCI staffer is only on the committee for less than four years – hardly enough time to develop deep-rooted institutional knowledge of the IC and Congress’ oversight role.

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<sup>92</sup> Halchin, L. Elaine, and Frederick Kaiser. "Congressional Oversight of Intelligence: Current Structure and Alternatives." Congressional Research Service. May 14, 2012. Accessed November 23, 2017. <https://fas.org/sgp/crs/intel/RL32525.pdf>.



The decentralized committee oversight system can also cause overlap in oversight on large matters of concern. Such overlap in oversight can be extremely burdensome on IC organizations as they work to respond to similar requests from multiple committees and costly to the American public. This was most recently seen as HPSCI, SSCI, and the Select Committee on Benghazi investigated the 2011 attack on a US diplomatic outpost. Each committee filed detailed reports, which all had similar findings. According to Fred Eckert of *Politico*, “Each committee can deal with part of the puzzle. Some committees have overlapping jurisdiction, which means uncertainty over which part of the incomplete puzzle they look at.”<sup>93</sup> Because of the committee structure, multiple long investigations looking at different aspects of the same conflict had to be conducted, which is ineffective. One thorough investigation by a single committee with complete jurisdiction to evaluate the entire incident could have reduced redundancy and unified its findings.

In addition to burdensome committee structures, the congressional committees that primarily oversee the IC face a lack of resources that can significantly challenge their ability to oversee a community with 17 agencies, hundreds of facilities, hundreds of thousands of employees, and billions of dollars allocated to its budget. According to a review of congressional committee reports, HPSCI has traditionally had less than forty staff members per pay period split between the majority and minority.<sup>94</sup> Additionally, committee majority and minority caucuses often operate separately from each other, which further diminishes the staffing delineation. According to HPSCI’s report on its activities for October 2018, the majority had 24 paid staff members while the minority

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<sup>93</sup> Eckert, Fred. “On Benghazi, crazy or plain stupid?” *POLITICO*. June 16, 2013. Accessed November 23, 2017. <https://www.politico.com/story/2013/06/house-approach-on-benghazi-crazy-or-plain-stupid-092870>.

<sup>94</sup> U.S. Congress. House. House Permanent Select Committee on Intelligence. *House Committee on Administration*. By Devin Nunes. 115 Cong., 2d sess. H. Rept. February 15, 2015. [https://cha.house.gov/sites/republicans.cha.house.gov/files/10\\_18\\_Intelligence\\_Redacted.pdf](https://cha.house.gov/sites/republicans.cha.house.gov/files/10_18_Intelligence_Redacted.pdf).

only had 11 paid staff members.<sup>95</sup> For reference, the DIA alone (only one member of the IC) employs over 16,000 individuals.<sup>96</sup> *LegBranch.com* reports that the committee had a high of 39 staffers in 2006 and a low of 26 staffers in 2015.<sup>97</sup> With regards to SSCI, *LegBranch.com* reports the committee has approximately 35 staffers employed – a similar trend to HPSCI.<sup>98</sup>

Additionally, travel demands can also reduce the amount of staff in the office on any given day. During the month of October 2018, one committee staff member identified as a “policy advisor” traveled to Virginia, Florida, Texas, and Asia for up to one week at a time throughout the month.<sup>99</sup> Similar public travel schedules of other staffers suggests that the committee is widely understaffed and under resourced as staff members must focus a significant amount of their time on the road to conduct oversight, away from their offices in the Capitol Building.

House and Senate committees also operate differently with regards to the usage of personal staff members to assist members in their sensitive committee duties. Unlike the Senate where a personal staffer to a senator assigned to an intelligence committee is eligible to apply for a security clearance in order to better advise the senator, the House of Representatives has no such policy. According to the Brookings Institution, “HPSCI members cannot avail themselves of the full measure of advice from their personal office

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<sup>95</sup> U.S. Congress. House. House Permanent Select Committee on Intelligence. *House Committee on Administration*. By Devin Nunes. 115 Cong., 2d sess. H. Rept. November 16, 2018. [https://cha.house.gov/sites/republicans.cha.house.gov/files/10\\_18\\_Intelligence\\_Redacted.pdf](https://cha.house.gov/sites/republicans.cha.house.gov/files/10_18_Intelligence_Redacted.pdf).

<sup>96</sup> DIA. "Frequently Asked Questions." Defense Intelligence Agency. Accessed December 04, 2018. <http://www.dia.mil/About/FAQs/>.

<sup>97</sup> LegBranch Team. "Committee Sheet: House Permanent Select Committee on Intelligence." LegBranch. November 14, 2018. Accessed December 04, 2018. <https://www.legbranch.org/2018-1-8-committee-sheet-house-permanent-select-committee-on-intelligence/>.

<sup>98</sup> LegBranch Team. "Committee Sheet: Senate Select Committee on Intelligence." LegBranch. November 14, 2018. Accessed December 04, 2018. <https://www.legbranch.org/2018-6-18-committee-sheet-senate-select-committee-on-intelligence/>.

<sup>99</sup> LegBranch Team. "Committee Sheet: Senate Select Committee on Intelligence."

staff, as personal staff lack sufficient security clearances. Moreover, committee staff—who are already too few in number—are chosen solely by the chair and ranking member, and are bound by loyalty to leadership.”<sup>100</sup> This further reduces the amount of staff that can work on oversight issues and can severely limit HPSCI’s capacity.

Finally, the intelligence committees also have a minimal budget compared to the organizations within the IC it is tasked to oversee. According to congressional documents, HPSCI has operated on a monthly budget less than \$500,000, with over \$400,000 being spent towards staff salaries. This resource constraint also plays into limited secure office space and access to SCIFs within the Capitol Complex, which are necessary for the intelligence committees to perform their oversight duties in a way that safeguards information to the high standards of the IC.

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<sup>100</sup> Burgat, Casey, and Daniel Schuman. "The Cautionary Tale of the House Intelligence Committee's Recent Failures." Brookings.edu. April 04, 2018. Accessed December 04, 2018. <https://www.brookings.edu/blog/fixgov/2018/04/04/the-cautionary-tale-of-the-house-intelligence-committees-recent-failures/>.

## **Chapter 5: Concluding Thoughts**

Our Nation's security is only as strong as its oversight. We value transparency, we trust that our institutions will operate in good faith, and we rely upon our elected representatives to adequately peek behind the curtain to ensure that our government is operating efficiently and legally. There is no question, however, that oversight is a two-way street. Congress and the IC must both be committed to it, and when either side breaks that commitment our trust in government diminishes. Furthermore, the inherent partisanship infused in this system of oversight only muddies the water and dissipates objective fact needed to ensure we are safe and that our government is accountable.

National security and its oversight has generally been a bipartisan venture, but we are at risk when it becomes inadequate, underfunded, and politicized. As noted throughout this paper, adequate congressional oversight of the IC arguably requires an unwavering commitment to information sharing and safeguarding between the executive and legislative branches of government, a commitment to nonpartisanship when evaluating IC shortcomings and other matters of concern, and updated, well-resourced committee structures that appropriately centralize oversight activities.

Thankfully, there are opportunities to address the highlighted challenges facing congressional oversight of the IC, and there are indeed people who recognize its importance and are committed to ensuring that congressional oversight gets back on track. Whether its creating a unified joint intelligence oversight structure, further empowering IC inspectors general, or increasing funding, resources, and staffing to oversight committees (among many proposed options), there are certainly solutions on the table that should be strongly considered as the nature of the threats facing our Nation

diversify and intensify, and the political climate continues to tear at the core of Congress' essential functions.

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