

CONFRONTATION OR COLLABORATION?
CONGRESS AND THE INTELLIGENCE COMMUNITY



CONGRESSIONAL OVERSIGHT OF THE
INTELLIGENCE COMMUNITY

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CONGRESSIONAL OVERSIGHT OF THE INTELLIGENCE COMMUNITY

Congressional oversight refers to the responsibility of the legislative branch to monitor and indirectly supervise federal programs, agencies, and policies. This authority is rooted in the Constitution's "necessary and proper" clause and the "implied powers" of Congress. Oversight of the Intelligence Community is essential because of the critical importance of ensuring the nation's security, as well as checking the potential for abuse of power.

This memo provides a brief overview of congressional oversight of the Intelligence Community (IC).

Oversight Basics

Congress monitors and regulates intelligence programs and authorizes and appropriates funds. Today, the House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI) are the primary intelligence oversight bodies on Capitol Hill.

History

These congressional organizations emerged in the late 1970s, when the Church and Pike Committees investigated the CIA and other intelligence agencies in response to the Watergate scandal. Both committees found evidence of spying on American citizens, illegal wiretapping, and cover-ups. As a result, Senate Resolution 400 in 1976 and House Resolution 658 in 1977 established the intelligence committees to prevent future abuses of power and maintain ongoing and regular oversight of the IC.

Membership

The intelligence committees are just one of members' committee assignments. Unlike other committees, positions on the intelligence committees are select assignments made by the leadership on each side in the House and Senate. The 9/11 Commission recommended changes to the intelligence committee structure in the Senate, whereby four of the members would be 'dual-hatted' on the Appropriations, Armed Services, Foreign Relations, and Judiciary committees. Commissioners thought this was important to ensure that the SSCI members included lawmakers familiar with the issues and interests that each of those four committees covers.

- *House Permanent Select Committee on Intelligence (HPSCI)*: 22 members sit on the Committee, although this number has fluctuated in the past. This includes at least one member each from the House Appropriations, Armed Services, Judiciary, and Foreign Affairs Committees.
- *Senate Select Committee on Intelligence (SSCI)*: 15 Senators sit on this committee, although this number also has fluctuated in the past. By rule, the majority party has eight members on the committee, regardless of the number of seats held by the majority in overall Senate. One seat from both the majority and minority party are reserved for standing committee members from

Appropriations, Armed Services, Foreign Relations, and Judiciary. The Chairman and ranking member of the Armed Services Committees serve as ex officio members of the intelligence committees.

Jurisdiction

The congressional intelligence committees maintain jurisdiction over the activities of the 16 members of the IC.

- HPSCI has oversight over both of the programs that make up the intelligence budget, the National Intelligence Program (NIP) and the Military Intelligence Program (MIP). *
- SSCI has jurisdiction over the agencies funded by the NIP.

Shared vs. Competing Jurisdiction

In some cases, the congressional intelligence committees share jurisdiction of certain activities with other congressional committees.

- For example, HPSCI and SSCI share IC oversight with the House and Senate Armed Services Committees. The Senate Armed Services Committee (SASC) conducts oversight over the MIP in the Senate, while the House Armed Services Committee (HASC) shares oversight over the MIP with HPSCI.

In other cases, the congressional intelligence committees compete for jurisdiction over controversial issues that may fall within the purview of additional committees.

- For example, both the Judiciary and Intelligence Committees contend they each had oversight over the once-secret NSA warrantless surveillance program.

Executive and Legislative Give-and-Take

Congress's oversight responsibilities over the IC often overlap with the responsibilities and authorities of the executive branch. Given the natural competition that exists between the legislative and executive branches, this overlap creates tensions as both sides struggle to accomplish certain goals using their respective powers and authorities. Hence intelligence oversight can be one of the most challenging separation-of-powers issues in government.

Executive Branch

The White House sets the national security and foreign affairs agenda. Congress and the judicial branch have affirmed the executive branch's lead role for conducting national security affairs numerous times. Furthermore, the White House can limit congressional influence in the domain of national security and intelligence.

* as explained on p. 24

Access to Information: The White House has the power to control information classification, and even withhold access to information and operational details from certain members of Congress. In this way, the executive branch can directly control what Congress can or cannot see, indirectly influencing the legislative branch's overall ability to make decisions. Thus, despite members of the Intelligence Committees and their staffs holding appropriate security clearances, they may sometimes only have a limited view into specific intelligence activities.

Though the 1947 National Security Act states that Congress must be kept "fully informed" of significant intelligence activities, many Presidents have interpreted this clause to mean they only need to notify the "Gang of Eight" rather than the full membership of the congressional intelligence committees. The Gang of Eight consists of the Senate and House Majority and Minority Leaders, and the Chairs and ranking members of the House and Senate Intelligence Committees.

Veto Power: The President also has the power to veto any legislation that Congress passes. For example, President Bush's veto of the Intelligence Authorization Bill of 2009, which included language on coercive interrogation, indicates that this can be a very effective tool to control the ability of Congress to influence intelligence policy.

Direct Authority: Leaders of the IC are appointed by the President to their positions, and the White House has the authority to hire and fire them. While some of these positions – such as the CIA Director – require Senate confirmation, many do not. As a result, the President is able to appoint trusted advisors to key positions in the IC.

Legislative Branch

Although the Constitution gives the executive branch preeminence in dealing with intelligence matters, Article I nevertheless provides Congress with an important oversight role. However, Congressional oversight into intelligence issues is a complex task, requiring a sophisticated understanding of the issues.

- The floor debate for the FISA Amendments Act of 2008 provided a clear example of the difficulties Congress faces when trying to modify intelligence legislation. Members, for reasons of classification or technical complexity, did not share a common understanding of the law, let alone how it should be adjusted.

Authorization and Appropriation: Congress's most important source of leverage is the power to authorize programs and appropriate funds. During the authorization and appropriations process, Congress can signal its intelligence and policy priorities through both the allocation of funds and the inclusion of non budget-related clauses in the authorization and appropriations bills.

Nominations: Many of the IC's top leaders, including the Director of National Intelligence and the CIA Director, are nominated by the President and confirmed by the Senate. This sometimes grueling

process forces the White House to carefully select its nominees and provides an opportunity for Senate input on both the individuals and issues related to intelligence policy. In recent years, the Senate has withheld confirmation until the executive branch agreed to share additional information on key areas of congressional oversight of intelligence activities.

Congressional Hearings: Congress invites—and, in some cases, compels—high-ranking members of the executive branch to appear before Congress to ask them targeted questions intended to create more transparent and effective IC operations. As noted previously, however, the power of this tool depends in large part on Congress’s awareness of IC activities.

Investigations: Congress has responded to perceived intelligence abuses or failures by forming committees and mandating commissions to determine ‘what went wrong’ and how it might be corrected. In the 1970s, the Church and Pike Committees served this function. More recently, the SSCI conducted extensive investigations on prewar intelligence relating to Iraq.

Treaty Ratification: Treaty ratification is a constitutional power of the Senate. Although few treaties relate directly to intelligence matters, members of the SSCI can use the treaty ratification process to indirectly press related national security policy issues.

Government Accountability Office (GAO): The GAO is the investigative arm of Congress, particularly focused on budget-related issues. As a non-partisan, objective audit and evaluation agency, the GAO gives financial oversight capabilities to Congress. However, classification and security clearance hurdles set by the White House may limit the power of the GAO to investigate intelligence-related topics.

Post-9/11 Intelligence Oversight

The 9/11 Commission concluded that many aspects of congressional oversight of the IC were “dysfunctional.” The 9/11 Commission suggested several reforms they assessed would increase Congress’s oversight capabilities, including:

- Abolishing term limits for members of the intelligence committees so that they build their expertise to enhance their oversight abilities.
 - Congress implemented this recommendation in 2005.
- Combining the authorization and appropriation functions, thus limiting the number of lawmakers involved and further increasing the efficacy of congressional oversight.
 - Congress has not implemented this recommendation, although the House created an Appropriations Select Intelligence Oversight Panel in 2007. The Panel is comprised of 10 members from the House Appropriations Committee and 3 members from HPSCI. Its primary responsibilities are to review and assess budget requests from the IC and to make recommendations to the relevant Committees and Subcommittees.

INTELLIGENCE OVERSIGHT DEVELOPMENTS

1956 1956

President Dwight Eisenhower establishes the President's Foreign Intelligence Advisory Board (PFIAB), an independent body to counsel the White House on the "quality and adequacy" of intelligence collection, analysis, and operations.

MARCH 1976 1976

President Gerald Ford establishes the Intelligence Oversight Board to advise the President on the legality of proposed intelligence activities.

1940

1950

1960

1970

1947 1947

President Harry Truman signs the National Security Act, reorganizing the Intelligence Community and requiring that Congress be kept "fully informed" of intelligence activities.

1975 1975

A Senate Committee, headed by Senator Frank Church, investigates illegal activity on the part of the FBI, CIA, and NSA including the use of warrantless wiretaps against anti-war and civil rights leaders.

JUNE 1976 1976

The Senate establishes the Senate Select Committee on Intelligence (SSCI) following the conclusion of the Church Committee.

INTELLIGENCE OVERSIGHT

JULY 1977 1977
The House of Representatives establishes the House Permanent Select Committee on Intelligence (HPSCI).

1991 1991
Congress passes the Intelligence Authorization Act, which requires the President to inform Congress in writing of all covert actions undertaken by the CIA.

1980

1990

2000

2010

NOVEMBER 1986 1986
The Iran-Contra scandal becomes public.

JULY 2004 2004
The 9/11 Commission releases its public report, containing approximately 40 suggested reforms, including several to improve Congressional oversight of intelligence activities.

JANUARY 2007 2007
The House, responding to recommendations by the 9/11 Commission, establishes the House Appropriations Select Intelligence Oversight Panel to oversee the authorization and appropriation of funding for intelligence activities.

DEVELOPMENTS

SOURCES

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