



An Intelligence Monograph

**Sharing Secrets With
Lawmakers: Congress
as a User of Intelligence**

by L. Britt Snider



Central Intelligence Agency

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Sharing Secrets With Lawmakers: Congress as a User of Intelligence

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Introduction

The intelligence services of the United States, like their counterparts in most countries, exist principally to serve the needs of the executive authority. The US intelligence apparatus, however—unlike that of most countries—also makes a large part of its output available to the legislative branch.

It has not always been so. Before the mid-1970s, Congress was given relatively little intelligence, and access to it was limited. The Congressional investigations of US intelligence agencies in 1975-76 by the Church and Pike Committees fundamentally altered this situation. For the first time, voluminous amounts of intelligence were shared with the investigating committees. When permanent oversight committees were subsequently established in both Houses, the trend toward ever-increasing disclosure continued.

Ground rules to govern intelligence-sharing were agreed to shortly after the oversight committees began operations, but none were written down, and over time these understandings often gave way in the continuing tussle between the overseers and the overseen. Twenty years later, the system still operates without formal rules of the road.

In 1992, Congress amended the National Security Act of 1947 to spell out specific duties for the Director of Central Intelligence (DCI), among them the obligation to provide intelligence “where appropriate, to the Senate and House of Representatives and the committees thereof.” In enacting this language, however, Congress shed no light on what it regarded as an “appropriate” level of intelligence support for itself. Nor did the executive branch use the occasion to specify what it thought was “appropriate” to provide to Congress.

The absence of precision on this point did not slow the flow. Since 1992 the volume and scope of intelligence support provided to Congress have grown steadily. More Members and their staffs are aware of what intelligence can do for them and are availing themselves of it. Not only is most finished intelligence available; Members and staff are able to obtain briefings from intelligence agencies at the drop of a hat on virtually any subject they choose. Although the provision of such support has the potential for overwhelming the capabilities of the Intelligence Community to the detriment of its customers in the executive branch, neither side thus far has seen fit to set parameters for this support.

Indeed, serious problems appear to have been avoided, for the most part, because intelligence agencies have sought to accommodate Congressional requests in some manner. Congress, in turn, has generally demonstrated a willingness to protect the intelligence it has been given. While there have been bumps along the

Not only is most finished intelligence available; Members and staff are able to obtain briefings from intelligence agencies at the drop of a hat on virtually any subject they choose.

As intelligence-sharing with Congress has grown . . . so too have tensions between the Intelligence Community and the rest of the executive branch.

way, none has been cause for fundamentally altering the relationship. Nor have they led, for the most part, to internal changes by either side to prevent their recurrence. Intelligence producers and their Congressional consumers continue to muddle along from one episode to the next, accommodating where they can, bending where they must.

As intelligence-sharing with Congress has grown, however, so too have tensions between the Intelligence Community and the rest of the executive branch. Congress's increased access to intelligence often provides it with ammunition for challenging administration policies. By the same token, intelligence information may lend support to administration initiatives, causing executive officials to see intelligence agencies as allies in their political struggles with the Hill.

Although the changes in the political dynamic brought about by expanded intelligence-sharing are commonly acknowledged, relatively little has been done to structure intelligence support in a manner that would reduce tensions between the Intelligence Community and the rest of the executive branch while preserving the analytical independence and integrity of the Intelligence Community itself. Policymakers fear being accused of politicizing the intelligence process should they make any attempt to manage it. Intelligence producers shy away from policymakers who they know will be displeased by what they plan to say to Congress. As the demand for intelligence support increases, moreover, practical considerations further reduce opportunities for consultation.

Pitfalls also are apparent for Congress in this relationship. Members who succumb to the temptation to use intelligence to do political battle risk embarrassment, criticism, and even legal consequences. Members who rely on intelligence that subsequently proves wrong may be chagrined to find themselves on the wrong side of a politically significant vote.

Part I of this study describes in general terms how intelligence-sharing with Congress has developed since 1947. It does not try to analyze every significant interaction during this period, but rather seeks to identify the features that have characterized the relationship over time and to examine key milestones. It is *not* intended as an analysis of how Congress performed *oversight* of intelligence activities (including covert actions) during this period, although, as a practical matter, Congress's access to substantive intelligence has to a large degree been a function of its attitude toward oversight.

Part II contrasts Congress as a user of intelligence with consumers in the executive branch.

Part III describes how intelligence-sharing with Congress is carried out today.

Part IV assesses the effects of intelligence-sharing on the work of the legislative and executive branches—including the work of the Intelligence Community itself.

Part V discusses difficulties in the relationship for the Intelligence Community, for the rest of the executive branch, and for Congress itself.

Part VI contains the author's conclusions and recommendations as to how the relationship between the Intelligence Community and Congress might be made less contentious and more predictable and, at the same time, better satisfy the needs of both branches.

Much has been published about Congressional oversight of intelligence, but relatively little has been written about the meaning and impact of intelligence-sharing with Congress. While the historical analysis in Part I relies primarily on written sources (including an unpublished draft CIA History Staff study), the remainder of this monograph draws principally on interviews with more than 50 knowledgeable individuals, including present and former Members of Congress and their staffs, Intelligence Community officials, and executive branch officials outside the Intelligence Community. In the interest of encouraging candor, each of these interviews was conducted "off the record"; thus, in all but a few cases, the views attributed to individuals are not attributed by name.

This monograph is Unclassified in its entirety.



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I. How Intelligence-Sharing With Congress Has Evolved

1947 to 1974

The Early Years

The National Security Act of 1947 charged the Central Intelligence Agency with responsibility "to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the government . . ." ¹ While other intelligence agencies were authorized to produce and disseminate "departmental" intelligence, CIA was, for all practical purposes, the focal point for intelligence analysis at the national level.

Although the 1947 Act did not specifically identify Congress as a consumer of intelligence, CIA appears to have regarded Congress from the very beginning as a legitimate, albeit limited, user of the intelligence analysis it produced. Indeed, the CIA attorney who was principally involved in setting up the initial arrangements with Congress, Walter Pforzheimer, did not recall the issue of *whether* the CIA should share intelligence with the Congress ever having arisen. ²

From 1947 until 1966, Congressional requests were handled through a single Legislative Counsel in CIA's Office of the General Counsel. The Legislative Counsel reported directly to the DCI. (The Office of the General Counsel itself was initially part of the Agency's Directorate for Support.) Pforzheimer, the first Legislative Counsel, recalls that DCI Roscoe Hillenkoetter stopped him in a hallway after passage of the 1947 Act to say that he did not think he could afford to keep him on as Legislative Counsel because there would not be enough business between the CIA and Congress to justify a full-time attorney.

The position of Legislative Counsel endured, nonetheless, to ensure enactment of the Agency's annual funding request and to handle

the other aspects of the Agency's relations with Congress. During this period, handling Congressional relations largely meant satisfying the needs of the four Congressional committees that at the time provided oversight and funding for the CIA: the two armed services committees and the two appropriations committees in each House. Over time, each of these committees established small, handpicked subcommittees responsible for the CIA.

The "CIA Committees"

Typically, the relationship between the CIA and the four committees was dominated by the chairman of each full committee, who usually doubled as chairman of the CIA subcommittee. ³ For the most part, these chairmen were part of the "old guard" in their respective Houses—powerful Members who, by virtue of the Congressional seniority system, were able to retain their positions for lengthy periods of time.

During the 1950s and 1960s, Senator Richard Russell of Georgia was the dominant figure in the Senate where intelligence was concerned, regardless of what position he happened to occupy. Russell chaired the Senate Armed Services Committee (SASC) in 1951-53 and again in 1955-69. He also served as a member of the Appropriations Committee (SAC) for most of this period, and he chaired that committee in 1969-71—during which time he also chaired the CIA subcommittees of both the SAC and SASC. The SAC was chaired by only three Senators between 1947 and 1969—Styles Bridges, Kenneth McKellar, and Carl Hayden—with Hayden serving considerably longer than the others (1955-69).

A similar situation existed in the House of Representatives. The House Armed Services Committee (HASC) was controlled essentially

Although the 1947 Act did not specifically identify Congress as a consumer of intelligence, CIA appears to have regarded Congress from the very beginning as a legitimate user.

¹ Section 103 (c) of the National Security Act of 1947 (50 U.S.C. 103-3).

² Interview with Walter Pforzheimer, 15 October 1996

³ Not infrequently, these committees would choose not to publish the names of the Members who served on the CIA subcommittees

In general, [the committee] chairmen were strong supporters of intelligence and did not see a need for intrusive oversight by Congress.

by three chairmen (Carl Vinson, Mendel Rivers, and Edward Hebert) from 1947 until 1974. The House Appropriations Committee (HAC) also had three chairmen (John Tabor, Clarence Cannon, and George Mahon) during the same period, with Cannon serving the longest (in 1949-53 and 1955-64).

In general, these chairmen were strong supporters of intelligence and did not see a need for intrusive oversight by Congress. Senator Russell typified this attitude in a 1956 letter written to the chairman of the Rules Committee, opposing a resolution offered by Senator Mike Mansfield to create a new joint committee on intelligence:

It is difficult for me to foresee that increased staff scrutiny of CIA operations would result in either substantial savings or a significant increase in available intelligence information . . . If there is one agency of the government in which we must take some matters on faith, without a constant examination of its methods and sources, I believe this agency is the CIA.⁴

His Republican colleague, Senator Leverett Saltonstall of Massachusetts, who chaired the SASC in 1953-55, expressed similar sentiments during the floor debate on the Mansfield proposal:

It is not a question of reluctance on the part of CIA officials to speak to us. Instead, it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a Member of Congress and as a citizen, would rather not have . . . ”⁵

⁴ Quoted in Smist Jr, Frank J, *Congress Oversees the United States Intelligence Community 1947-94*, second edition (Knoxville: University of Tennessee Press, 1994), p 6.

⁵ Quoted in Ranelagh, John, *The Rise and Decline of the CIA* (New York: Simon and Schuster, 1996)

Faced with the opposition of Senators Russell, Saltonstall, and Hayden, the Mansfield resolution was defeated by a 59 to 27 margin in April 1956.

From the outset, CIA adopted the policy that it would give the four committees any intelligence reports they might seek and would respond to their requests for briefings. In practice, as Saltonstall's comment suggests, few requests were received. The committees had no place to store intelligence information, and therefore nothing could be left with them. Members or staff who wanted to read intelligence analysis had to do so by having it brought to them or by visiting the CIA. The committees employed small staffs during this period (typically five to seven professionals to serve a full committee and its subcommittees), and not all of these staffers were cleared for access to intelligence.

CIA's formal appearances before "its committees" were relatively infrequent. One of the CIA officials involved in this period recalled, "[In] the early years, we practically had to beg them to hold hearings. Years would go by sometimes without any hearing at all being held on the Agency's budget."

The "CIA committees" would hold occasional oversight hearings as well as receive briefings on world events. For example, each of the four committees held hearings in 1950 on CIA's performance in predicting the outbreak of the Korean war. Later, DCI Walter Bedell Smith regularly briefed the committees on the progress of the war. In 1958 the CIA's Legislative Counsel reported a "stepped-up interchange between the Agency and Congress," citing a total of 23 briefings during the year to Congressional committees.⁶ In 1959, each committee received briefings from

⁶ Unpublished draft CIA History Staff study on relations with Congress

DCI Allen Dulles on Soviet strategic strength. In 1960 all four committees, plus the Senate Foreign Relations Committee (SFRC), held hearings on the Soviet shutdown of U-2 pilot Francis Gary Powers.

On the whole, however, CIA's appearances on the Hill, even before "its committees," were relatively rare. As late as 1968, for example, CIA records reflect only one briefing that year to the HASC, three to the HAC, and two each to the SASC and SAC. Attendance typically was limited to Members only, and often no record of the proceedings was kept. Sometimes, reportedly, no questions were asked at all.⁷

The amount of sensitive information imparted to the four committees during these briefings was minimal.⁸ For example, although DCI Dulles briefed the committees in 1959 on Soviet strategic capabilities, they were not told how information on these capabilities was principally being collected—that is, by U-2 flights over the Soviet Union. Indeed, they were not apprised of this until Francis Gary Powers was shot down a year later. When Dulles apologized for not having informed the committees earlier due to security concerns, most Members expressed understanding rather than anger. Nevertheless, Dulles was sensitized by the U-2 episode; he later directed that the CIA subcommittees be advised of the planning for the Bay of Pigs operation several months in advance of its execution in 1961 by CIA-trained Cuban exiles.⁹

Despite the substantial criticism levied against CIA by other committees and individual Members in the wake of the U-2 episode and the Bay of Pigs debacle, the "CIA committees" became more determined than ever to protect

their own power bases. In 1962, Senator J. William Fulbright, chairman of the SFRC, complained publicly that his committee needed access to intelligence in order to fulfill its responsibility to oversee foreign policy. He suggested that a joint committee on intelligence might help solve the problem. But Senator Russell remained staunchly opposed, even rejecting a compromise suggested by DCI Dulles that one or two members of the SFRC be allowed to sit with the CIA subcommittee.¹⁰ Efforts to resurrect the joint committee proposal were beaten back in the House in 1964 and in the Senate two years later, due to the efforts of the powerful leaders of the CIA committees.

In 1966, to soften the blow of having lost the Senate vote to create a joint committee, Senator Russell invited Senator Fulbright and several other Senators who had cosponsored the failed legislation to attend the meetings of the CIA subcommittee of the SASC. Senator Fulbright attended one or two such meetings, but he soon found they were not worth his time, complaining, "they (CIA) never reveal anything of significance."¹¹

Still, membership on the "CIA committees" carried a certain aura. Members had access to the secrets of the CIA and could, if they chose, cite such access to justify positions they were taking on particular issues—that is, "if you knew what I know, you would understand why I'm taking this position."

Relations With Other Congressional Committees

The chairmen of the "CIA committees" for the most part kept their colleagues on other committees at bay. As indicated above, efforts in the House and Senate to create joint

Senator Fulbright attended one or two meetings [of the Armed Services Committee's CIA subcommittee], but he soon found they were not worth his time, complaining, "they [CIA] never reveal anything of significance."

⁷ Ibid.

⁸ According to the unpublished draft CIA History Staff study, no records could be located at CIA that indicated these committees had been briefed on CIA's involvement in covert actions during the early 1950s.

⁹ Unpublished draft CIA History Staff study.

¹⁰ Ibid.

¹¹ Smist, pp. 6-7.

From 1947 until the mid-1960s, Congressional demands on CIA for substantive analysis were light.

committees on intelligence were repeatedly and decisively beaten back. Requests by other committees or individual Members for intelligence briefings normally had to be cleared with the House or Senate chairman concerned. CIA was advised, for example, that other Senate committees were not to be briefed unless Senator Russell approved, and all such briefings were to be limited to Members. Similarly, HAC chairman Cannon did not want CIA to share intelligence beyond his CIA subcommittee.¹²

In practice, however, CIA was permitted to provide substantive briefings to other committees so long as they did not include information on intelligence operations or funding. For some of these entities, notably the Joint Atomic Energy Committee (JAEC) and the Joint Economic Committee (JEC)—neither of which had budget, oversight, or legislative authority—CIA's analytical assistance was substantial.

Almost immediately after passage of the 1947 Act, for example, CIA began providing classified written reports on a semiannual basis to the JAEC on the Soviet atomic program. The committee occasionally held hearings to receive the DCI's testimony on this report. At this time, the JAEC maintained the only storage facility on Capitol Hill for classified information (located on the fourth floor of the Capitol). Former Legislative Counsel Pforzheimer also recalls, "they [the JAEC] were our only regular customer for many years. We received occasional requests from other committees [for substantive briefings] but they are hardly worth mentioning."

In late 1959, CIA also established a new and uncharacteristically open relationship with the JEC. DCI Dulles agreed to testify for the first time in public on the Agency's view of the Soviet economy. Beginning in 1960, CIA started contributing unclassified articles on

aspects of the Soviet economy to compilations of economic research periodically published by the JEC and known as the "Green Books," a practice that has continued to the present. In 1974, DCI William Colby reinstated the practice of providing annual testimony to the JEC on the Soviet economy; the committee subsequently published the testimony in sanitized form.¹³ There also were occasional briefings to the SFRC and the House Foreign Affairs Committee (HFAC) on matters pending before them, as well as scattered appearances by CIA officials before other committees.

On the whole, however, from 1947 until the mid-1960s, Congressional demands on CIA for substantive analysis were light. The flow was limited and hardly routine.

This began to change in the late 1960s as Congress grew more assertive in foreign policy and military affairs. Prompted in part by growing public mistrust toward the executive over its handling of the Vietnam war, Congress began to assert itself more forcefully on how the war was being prosecuted as well as on the arms control and defense initiatives of the Johnson and Nixon administrations. As a result, Congressional demands for intelligence increased.

In 1966, to handle an increasing level of involvement with Congress, DCI Richard Helms created a separate Office of Legislative Counsel with a staff of six. It was the first time the head of any US intelligence agency had seen fit to establish a separate office to handle Congressional relations.

Later, this office reported having handled 1,400 contacts with Members and/or staff during 1969. These included 60 substantive

¹³ The DCI's practice of appearing annually was continued by Colby's successors, George Bush and Stansfield Turner. DCI William Casey continued to provide annual testimony but sent subordinates to deliver it.

¹² Unpublished draft CIA History Staff study.

The large number of contacts and briefings in 1969 . . . [partly] reflected CIA's substantial involvement in the Congressional debate that year over funding the Safeguard ABM System.

briefings before individual Members and various committees, among them the SFRC, the JAEC, and the House Committee on Science and Astronautics.¹⁴ While the large number of contacts and briefings in 1969 stemmed to a great extent from growing Congressional involvement in national security affairs, it also reflected CIA's substantial involvement in the Congressional debate that year over funding the Safeguard Anti-Ballistic Missile (ABM) System.

CIA Involvement in the 1969 ABM Debate¹⁵

The SFRC held hearings in March 1969 on the Nixon administration's request to fund a new ABM system known as Safeguard. Testifying publicly on the need for such a system, Secretary of Defense Melvin Laird disclosed that the Soviet Union was developing a new missile, the SS-9, which, if deployed in sufficient numbers, could give Moscow a first-strike capability—that is, a capability to wipe out all US land-based missiles—within five years. This testimony was at odds with the conclusions reached in a National Intelligence Estimate (NIE) concerning the SS-9, prepared six months earlier, which had previously been briefed to the SFRC.

A few days after Laird's testimony, the conclusions of the NIE were leaked to the *New York Times*, and CIA found itself drawn into a contentious Congressional debate by those Senators who opposed funding the new ABM system. Senator Fulbright, who chaired the SFRC, requested CIA testimony on the ABM issue—including an assessment of the SS-9—as well as copies of all pertinent NIEs. CIA checked with Senator Russell, who approved CIA's briefing the contents of the NIEs but not handing over copies of them.¹⁶

In June, DCI Helms testified in closed session, at the side of Secretary Laird, regarding the Intelligence Community's assessment of the SS-9. While the partially declassified record of that hearing reflects an effort by Helms and Laird to close ranks on the issue, Senator Fulbright subsequently wrote to Laird expressing continued objection to Safeguard on the basis of the earlier NIE.¹⁷

In July, in preparation for the vote on funding Safeguard, the full Senate met in closed session to debate the issue, and CIA prepared a classified briefing paper for use by each Senator. On 6 August 1969 the Senate agreed by a narrow margin to fund the Safeguard system.

Growing Restlessness in the Early 1970s

In the following year, Congress became agitated by press leaks, attributed to administration officials, concerning possible expansion of the Soviet submarine base at Cienfuegos, Cuba. When the HASC asked to see the overhead reconnaissance photographs of the Soviet base, President Nixon's National Security Adviser, Henry Kissinger, put his foot down, saying he did not want anything on this subject shared with Congress. Helms, however, wanted to accommodate the HASC, one of CIA's oversight committees, and allowed the photographs to be shown to it. HASC chairman Mendel Rivers took the occasion to seek out Kissinger and tell him he would brook no interference with his committee's right to see intelligence.¹⁸

¹⁴ Unpublished draft CIA History Staff study

¹⁵ For an excellent case study of this episode, see Lundberg, Kirsten, *The SS-9 Controversy: Intelligence as a Political Football* (Cambridge: John F Kennedy School of Government, 1989)

¹⁶ Unpublished draft CIA History Staff study.

¹⁷ Kennedy School Case Study, pp 16-17

¹⁸ Unpublished draft CIA History Staff study.

Although . . . the Intelligence Community largely avoided being drawn into the Watergate affair, that debacle nonetheless had a profound effect on the willingness of Congress to defer to executive authority.

The number of CIA's appearances on the Hill reached a low point in 1971,¹⁹ in part because of Senator Russell's death that year. Relations between CIA and the Senate Foreign Relations Committee heated up in 1972 when the SFRC, as part of its inquiry into the Vietnam war, requested copies of all NIEs and Special National Intelligence Estimates (SNIEs) relating to Southeast Asia since 1945. CIA objected to the request but offered to provide briefings to the committee on issues of concern to it.

In reaction to CIA's perceived stonewalling, Senator John Sherman Cooper of Kentucky introduced a bill requiring that intelligence information and analysis be provided to Congress; he argued that Congress could not carry its constitutional responsibilities in the foreign policy area without such intelligence support. The SFRC held hearings on the proposal, and witnesses from the Nixon administration and the Intelligence Community testified in vigorous opposition. The bill died in committee.

President Nixon signed the SALT I treaty with the Soviet Union in May 1972. The treaty capped the total number of strategic weapons on both sides and provided a framework to govern future deployments of such weapons. It was ratified by the Senate later in the year by a wide margin. Congress had been kept well apprised of developments in the negotiation of the treaty since 1969 and had received an assessment from DCI Helms that the Intelligence Community would be able to verify compliance. But Congress was not given (nor did it request) the data to enable it to make its own independent assessment on the verification issue.

Once the SALT I treaty was signed, the administration clamped down on the flow of intelligence on this issue to the Hill. A high-level committee was established in the National Security Council to monitor Soviet compliance. At Dr. Kissinger's behest, all intelligence reporting on this subject was ordered channeled to this committee without further dissemination within the executive branch or to Congress. Ford administration officials later explained to the Pike Committee (see below) that Kissinger wanted to preserve the ability to raise troublesome issues with the Soviets directly rather than have them surface in the press or be exposed to Congress, thus limiting the administration's flexibility in dealing with such problems.²⁰

In time, however, Congress began to question why it was not receiving CIA assessments of possible treaty violations. In 1975 the Ford administration permitted CIA to give its first closed-session briefing to the SASC on Soviet compliance with SALT I.²¹

Congress grew increasingly restive in the early 1970s concerning the existing oversight arrangements for intelligence. Senator Russell's death in 1971 had removed the personification of the old system from the scene. During the same year, legislation was offered in both houses that would have required CIA to report on its overseas activities to the SFRC and HFAC. Although both bills were beaten back, they did represent a sense of growing dissatisfaction. CIA's Legislative Counsel advised DCI Helms that the "aging and harassed protectors and benefactors" of the Agency could not be expected to "hold the lines" much longer against increasingly aggressive Members with different outlooks and temperaments.²² In fact, when the chairmanship of the HASC subcommittee on

¹⁹ The unpublished draft CIA History Staff study indicated there were no briefings to the SASC during 1971 and only one each to the SAC and HASC.

²⁰ Ranelagh.

²¹ Ibid.

²² Unpublished draft CIA History Staff study.

[The Church Committee] attempted to evaluate the quality of NIEs and to determine whether the process of producing NIEs was free of analytic or political bias.

CIA became vacant in 1973, younger House members rebelled, demanding broader accountability for intelligence activities. They succeeded in having a younger, more assertive House Member—Lucien Nedzi of Michigan—named chairman of the subcommittee.

Although CIA and the rest of the Intelligence Community largely avoided being drawn into the Watergate affair, that debacle nonetheless had a profound effect on the willingness of Congress to defer to executive authority. Where Congress had previously acquiesced, it was now deeply skeptical, and the press fed this skepticism. Sensing that the time was ripe, reporters began to dig into US intelligence activities, producing a number of sensational exposes.

Among the revelations were reports in September 1973 of alleged CIA involvement in the military coup in which Chilean President Salvador Allende was overthrown and killed. DCI William Colby managed to turn aside a request for testimony from a House Foreign Affairs subcommittee in the fall of 1973, but the CIA subcommittee of the HASC took up the issue in April 1974, requiring that Colby describe CIA activities undertaken in 1970 with the intent of preventing Allende from assuming the presidency. The leakage to the *New York Times* of much of Colby's testimony sparked an outcry in Congress and among portions of the public, prompting various legislative proposals to restrict or terminate CIA's involvement in covert actions. One of these initiatives, the so-called Hughes-Ryan Amendment, was enacted into law; it required that future covert actions be approved by the President and reported to the armed services, appropriations, and foreign affairs committees of Congress.²³

²³ Enacted as Section 662 of the Foreign Assistance Act (22 U S C 2422)

The Senate Government Operations Committee began hearings in October 1974 on a new proposal to create a separate oversight committee for intelligence. Deliberations on this proposal were overtaken in December 1974 when the *New York Times* ran another front page story, this time charging that the CIA had conducted "a massive, illegal domestic intelligence operation . . . against the antiwar movement and other dissident groups in the United States" in violation of its statutory charter.²⁴ The Ford administration reacted by creating a special commission led by Vice President Rockefeller to look into the charges. This action did not preclude Congress, however, from establishing separate investigative bodies.

The Church and Pike Committees (1975-76)

The Senate acted first in January 1975 by creating a special investigating committee led by Senator Frank Church of Idaho. The House followed suit a month later, establishing a separate investigating committee under Representative Nedzi. It subsequently came to light, however, that Nedzi had previously been advised of certain alleged misdeeds by the CIA when he was chairman of the HASC subcommittee and had done nothing about them. Nedzi resigned amidst the furor, and a new chairman, Otis Pike of New York, was appointed in July 1975.

The Church Committee initially focused its attention on allegations that intelligence agencies had engaged in assassination plots, collected information on the political activities of American citizens, withheld information from

²⁴ Hersh, Seymour, "Huge CIA Operation Reported in U.S Against Antiwar Forces," *New York Times*, 22 December 1974, p 1

The draft [Pike Committee] report was extremely critical of the Intelligence Community's performance in each of the episodes examined by the committee.

the Warren Commission, and conducted "dirty tricks" aimed at discrediting and harassing US individuals and groups. The committee's final report, however—issued in May 1976—addressed a much broader agenda, looking at the role of the DCI and the operation of the Intelligence Community generally. Among other things, the report specifically attempted to evaluate the quality of NIEs and to determine whether the process used for producing NIEs was free of analytic or political bias. In addition, it addressed the problem of retaining qualified analysts.²⁵

The Church Committee report also discussed the provision of intelligence to Congress. It pointed out that the National Intelligence Daily (NID) had often been shown to the SFRC and the SASC but that NIEs had not been provided. It noted, however, that in the preceding year CIA had begun publishing a daily "Intelligence Checklist," specifically tailored to what the Agency perceived were the substantive needs of Congress. The committee concluded with a strong plea for better, more consistent intelligence support:

With the resurgence of an active Congressional role in the foreign and national security policymaking process comes the need for members to receive high-quality, reliable, and timely information on which to base Congressional decisions and actions. Access to the best available intelligence product should be insisted upon by the legislative branch. Precisely what kinds of intelligence the Congress requires to better perform its constitutional responsibilities remains to be worked out between the two branches of

government, but the Select Committee believes that the need for information and the right to it [are] clear.²⁶

The Pike Committee chose a different tack from that taken by its Senate counterpart. The Pike group focused on the performance of the Intelligence Community in warning of international crises during the preceding 10 years: the 1968 Tet offensive in South Vietnam, the 1968 Soviet invasion of Czechoslovakia, the 1972 declarations of martial law in the Philippines and South Korea, the 1973 war in the Middle East, the 1974 coup in Portugal, the 1974 nuclear explosion in India, and the 1974 Cyprus crisis.

The committee subpoenaed intelligence analysis on each of these topics and proceeded to hold public hearings on most of them. After classified information was disclosed at one of these hearings, President Ford halted the flow of information to the committee altogether until a process could be agreed upon for deciding what information would and would not be made public.

The Pike Committee also explored the earlier clampdown by the Nixon administration on reporting evidence of SALT I violations to the Hill and within the executive branch. (See preceding subsection of this study.) Although the Pike Committee appeared motivated more by a desire to attack Dr. Kissinger personally than by a concern for Congressional prerogatives, it did establish that a clampdown had occurred. Kissinger admitted to having delayed the flow of intelligence on Soviet compliance with SALT I for as long as two months. The committee ascertained that some had been withheld for as long as six months.²⁷

²⁵ See Church Committee's Final Report, Book I, pp. 257-277.

²⁶ Ibid , p 277.

²⁷ For a description of this episode, see Smist, pp 201-202.

The final report of the Pike Committee was never officially published. A draft was leaked to newsman Daniel Schorr and printed in the *Village Voice* newspaper before the security review of the document had been completed. In reaction to this unauthorized disclosure, the House of Representatives voted to block publication of the report altogether and to disband the committee. Not surprisingly, the draft report was extremely critical of the performance of the Intelligence Community in each of the episodes examined by the committee. Notable among its recommendations was a proposal that all NIEs be sent to the appropriate committees of Congress.²⁸

Although the Pike Committee's report was not officially approved and the Church Committee report only touched on the provision of intelligence to Congress, it was clear that the old way of doing business with Congress would no longer suffice. Oversight would no longer be limited to a few senior Members in each body, nor would they control the flow of intelligence to the rest of Congress. Blind deference to the executive where intelligence matters were concerned would no longer be acceptable.

The SSCI and HPSCI: The Early Years (1976-80)

In May 1976, shortly after the Church Committee issued its final report, the Senate adopted one of the Committee's main recommendations by creating a permanent oversight committee, the Select Committee on Intelligence (SSCI). The resolution creating the committee contained, among other things, nonbinding "sense of the Senate" language that department and agency heads should keep the SSCI "fully and currently informed with respect to intelligence activities" carried out by their respective department or agency.²⁹

²⁸ See Pike Committee Report, pp 259-260

²⁹ Sec 11(a) of S.Res 400, 94th Congress

Senator Daniel Inouye of Hawaii was named chairman, heading a committee of 17 Members and 50 staff (including 14 holdovers from the Church Committee staff).

Events moved more slowly in the House of Representatives, which had been left with a sour taste from its experience with the Pike Committee. CIA began providing Speaker Tip O'Neill daily intelligence briefings in 1977, but, without a committee to turn to, the Speaker had no vehicle for dealing with them. In June 1977 the Senate passed the first intelligence authorization bill developed by the SSCI, but in the absence of a counterpart committee in the House the measure was never enacted.³⁰ At the urging of President Carter and new DCI Stansfield Turner, O'Neill moved to create a counterpart to the SSCI. The House, taking great care to distance itself from the record of the Pike Committee, voted to create a Permanent Select Committee on Intelligence (HPSCI) in July 1977. The new committee, with 12 Members and a 20-person staff, was chaired by Congressman Edward Boland of Massachusetts.

The resolutions establishing oversight committees contained language allowing these new entities to adopt procedures governing access by other committees, and by individual Members, to classified information held by the oversight committee. Both oversight committees were structured to ensure that some of their Members also served on other committees with jurisdiction in the national security area—such as the foreign relations or armed services committees—in order to provide a bridge to (and avoid conflict with) these committees.

Initially, the creation of the two intelligence committees—with broad charters to oversee intelligence agencies and operating under stringent security requirements—tended to

³⁰ Smist, pp. 214-215.

Intelligence agencies began to regard the oversight committees as "their" committees, and other Congressional committees . . . looked to the oversight committees as having the predominant role [concerning intelligence].

To this day, there are no written agreements governing access by the oversight committees to intelligence information.

diminish the contacts between the Intelligence Community and the "nonoversight" committees of the Congress. Intelligence agencies began to regard the oversight committees as "their" committees, and other Congressional committees, in turn, looked to the oversight committees as having the predominant role where intelligence was concerned. In 1977, DCI Turner noted this phenomenon and directed his staff to make a point of expanding CIA's substantive briefings beyond the oversight committees. He specifically rejected a suggestion, however, that the CIA develop special unclassified publications for Congress on topics of current interest.³¹

Both oversight committees were conscious of the need to develop an atmosphere of trust between themselves and the agencies they were to oversee if oversight was to work. Unlike other Congressional committees, the intelligence committees were completely dependent upon information provided by intelligence agencies to carry out their functions.

For their part, the intelligence agencies geared up to do business with the new structure. The Office of the Legislative Counsel at CIA expanded to a staff of 32.³² The National Security Agency (NSA) and the Defense Intelligence Agency (DIA) established offices to deal with the new committees, and smaller agencies designated liaison officers. According to several people interviewed for this study, NSA's new Director, Admiral Bobby Ray Inman, instituted an arrangement for passing sensitive SIGINT and "monographs" on SIGINT activities to the staff directors of the two oversight committees, with the proviso that storage and handling of such information would be strictly limited to the leaders and staff directors of each committee.³³

³¹ Unpublished draft CIA History Staff study

³² Ibid

In 1976, representatives of CIA met with senior SSCI staffers to discuss access for the committee to CIA information. A CIA memorandum on the meeting indicates verbal agreement was reached that CIA would deliver the NID each day to the committee but that it would not be stored there. 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. The committee would not have access to the *President's Daily Brief* or other reporting tailored to high-level officials, nor would it receive "raw" (that is, unevaluated), single-source intelligence reports. Finally, CIA indicated its intent to protect the identity of its clandestine sources from the committee staff.³⁴

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.³⁵

Both sides acknowledge that these arrangements never amounted to more than informal understandings. Indeed, to this day, there are no written agreements governing access by the oversight committees to intelligence information.

A Deepening Relationship

An executive order issued by the Carter administration in 1978 instructed the intelligence agencies to keep the two

³³ This practice did not extend beyond Admiral Inman's tenure as NSA Director

³⁴ Unpublished draft CIA History Staff study.

³⁵ Ibid

committees “fully and currently informed” of their activities; this wording was carried over from the nonbinding language in the Senate resolution creating the SSCI. The order also directed the DCI to “facilitate the use of national foreign intelligence products by the Congress in a secure manner.”³⁶ For the first time, a President had imposed specific obligations on intelligence agencies regarding their support of Congress.

Later, as part of the Intelligence Oversight Act of 1980, the “fully and currently informed” language was enacted into law.³⁷ Although this language was intended to create an obligation to provide information for oversight purposes as opposed to providing substantive enlightenment for the Congress, for the intelligence committees this was a distinction without a difference. The committees asserted a need for access to substantive intelligence in order to oversee the Intelligence Community’s performance.

In 1977 both committees created subcommittees to deal with issues related to intelligence analysis and production. These subcommittees undertook a number of comprehensive inquiries during the late 1970s. The SSCI evaluated the so-called “A-Team, B-Team” process for assessing the CIA’s position on Soviet strategic capabilities and produced a number of recommendations for improving the NIE process. The SSCI also evaluated the integrity of the analytic process used to produce NIEs on Soviet oil production.

The HPSCI, for its part, conducted a far-reaching inquiry into the Intelligence Community’s performance in predicting crises. When the Shah of Iran’s regime fell apart in the

late 1970s, the Committee shifted its focus to that country. In 1979 it undertook a study of the Community’s performance in warning of China’s invasion of Vietnam. At around this time, the HPSCI also produced a study of the NIE system as it related to indications and warning of hostilities, recommending creation of a new National Intelligence Officer for Warning. CIA subsequently adopted this recommendation.

Each of these studies was done in the name of oversight and involved access to substantial amounts of intelligence analysis. For the inquiry into the Shah’s fall from power, for example, CIA provided its entire production on the subject to the HPSCI.³⁸

A few months before the signing of the SALT II treaty in June 1979, the SSCI launched an extensive inquiry into the ability of the Intelligence Community to verify the treaty. The committee made a request, unprecedented in its scope, for detailed information on all intelligence collection capabilities available to monitor treaty compliance. In the end, the committee received what it asked for, albeit with certain handling restrictions. Even today, the SSCI staffers involved in that inquiry regard it as a watershed in terms of the committee’s access to intelligence. The committee previously had not been permitted to receive and store highly sensitive information.

Ultimately, the SSCI produced a brief, unclassified report of its findings for the Senate as a whole, as well as a detailed classified report that was made available to Senators on request. Although consideration of the SALT II treaty was halted at President Carter’s request in December 1979 because of the Soviet invasion of Afghanistan, the SSCI’s work on

In 1977 both committees created subcommittees to deal with issues related to intelligence analysis and production. . . . The HPSCI conducted a far-reaching inquiry into the Intelligence Community’s performance in predicting crises.

³⁶ Sec 1-601(c) of Executive Order 12036, 24 January 1978. The same language was included in section 1.5 (s) of Executive Order 12333, issued 4 December 1981, which is still in effect.

³⁷ See Title IV of the Intelligence Authorization Act for Fiscal Year 1981 (50 U.S.C. 501[a] [1]).

³⁸ Unpublished draft CIA History Staff study

The trend toward ever-greater sharing of intelligence continued through the 1980s.

the treaty contrasted sharply with the manner in which SALT I had been handled seven years before when the SSCI did not exist.

By 1980 it was clear that the relationship between Congress and the Intelligence Community had fundamentally changed. As indicated above, the obligation of intelligence agencies to keep the oversight committees "fully and currently informed" had been established by law. A general obligation to "facilitate the use" of intelligence products by Congress had been established by executive order.

Not surprisingly, CIA records reflect a major upsurge in the information going to Congress during the last half of the 1970s. In 1975, before the oversight committees were established, the Agency gave 188 substantive briefings on the Hill and furnished 204 classified intelligence products (excluding the NID). In 1979 the number of substantive briefings had risen to 420 and the number of classified intelligence products to approximately 1,800.³⁹

Principally through its oversight committees, Congress thus had become a major consumer of intelligence and had won access to information of unprecedented scope and sensitivity. The intelligence oversight committees had supplanted the armed services and foreign relations committees as the principal repositories for substantive intelligence and had, for the most part, established themselves as responsible partners who could be entrusted to protect sensitive information.

Intelligence-Sharing in the 1980s

The trend toward ever-greater sharing of intelligence continued through the 1980s, despite both sides' preoccupation with covert

actions undertaken during the Reagan administration, especially the so-called Iran-Contra affair.

When William Casey became DCI in 1981, he sought to play down the importance of the Agency's relationship with its Congressional overseers. He combined the Office of Legislative Counsel with the Office of Public Affairs, renaming the new entity the Legislative Liaison Division. The chief of the division was a career officer from the Directorate of Operations, who was perceived by Members and staff alike as being less than forthcoming.

Even so, the oversight committees continued to receive most of the finished intelligence produced by the Intelligence Community and could call upon analytic elements within the Community—in particular, CIA, DIA, NSA, and the State Department's Bureau of Intelligence and Research (INR)—for briefings and other types of substantive support. In the early 1980s the oversight committees began receiving copies of NIEs, which they previously had been allowed to read but could not store. This development, in turn, led the committees occasionally to seek—and obtain—access to "raw" intelligence to verify judgments presented in the NIEs. Increasingly preoccupied with the CIA's covert action program in Nicaragua, the committees also sought and received access to "raw" intelligence on that country in order to learn what impact the CIA's program was having. When identities of sources became relevant to committee investigations of alleged malfeasance, the CIA occasionally even made exceptions to its policy against revealing them.

After the Iran-Contra affair exploded in the fall of 1986, thousands of additional CIA documents were turned over to Congress, initially to the intelligence committees themselves and later to the special

³⁹ Unpublished draft CIA History Staff study.

As a result of the SSCI's work, aspects of the [INF] Treaty relating to on-site inspections had to be renegotiated.



Then Deputy Director Robert Gates appearing before the Senate Select Committee on Intelligence in the mid-1980s.

investigating committees appointed in each House. The Iran-Contra problem consumed the CIA and Congress for more than a year.

In late 1986, after the disclosure of arms sales to Iran, CIA took a noticeably more forthcoming position on support to Congress. The Legislative Liaison Division was once again given a separate identity and renamed the Office of Congressional Affairs, and a new director with a background in intelligence analysis was appointed. One of his first initiatives was an attempt to institute weekly intelligence briefings for each of the oversight committees to keep them abreast of world developments. The HPSCI agreed to such briefings, but attendance soon fell off and the briefings were discontinued; the SSCI was too busy to schedule them at all. Even so, a marked increase occurred in the number of substantive briefings requested by both oversight and nonoversight committees during the mid-to-late 1980s, prompted largely by the changes taking place in the Soviet Union.

In 1987 the Senate leadership, in response to SSCI recommendations, established an Office of Senate Security to serve as a secure repository for classified documents sent to Senate committees other than the SSCI; this office also was to serve as a central point for processing security clearances for Senate staff. A similar initiative was considered by the House of Representatives but was not implemented.

Also in 1987, the SSCI undertook another in-depth examination of an arms control treaty—the INF Treaty. The result was a 350-page classified report on the Intelligence Community's ability to monitor this treaty. As a result of the SSCI's work, aspects of the treaty relating to on-site inspections had to be renegotiated. In the end, the SSCI's work played a major role in the Senate's "advice and consent" on ratification.

“Politicization” took on a new meaning for the managers and overseers of intelligence agencies . . . [as] an evil to be avoided at all costs.

The level of analytical support furnished to Congress as a whole continued to be high. In 1988, CIA’s Office of Congressional Affairs reported that more than 1,000 substantive intelligence briefings had been provided to Members, committees, and staffs during the year. More than 4,000 classified publications had been sent to the Hill, and Members and staff had made more than 100 visits to CIA facilities abroad.⁴⁰

Developments in the 1990s

The cataclysmic events on the world stage between 1989 and 1991—the fall of Communist governments in Eastern Europe, the breakup of the former Soviet Union, the Persian Gulf war, and the collapse of Communism in Russia itself—produced heavy demands on the Intelligence Community to provide information to Congress. Requests became particularly intense in the runup to the Gulf war when President Bush asked Congress to approve the commitment of US military forces in the Gulf (discussed in part V of this study).

In 1991 the confirmation hearings of Robert Gates to be Director of Central Intelligence provided the first-ever public setting for a Congressional examination of intelligence analysis. The principal issue explored by the SSCI was whether CIA analysis had been distorted or slanted for political purposes during Casey’s tenure as DCI and Gates’ years as DDI and DDCl. After a long and wrenching inquiry into more than 20 disputed cases, the committee recommended approval of Gates’ nomination and the full Senate concurred.

But the Gates hearings left an indelible imprint on the Intelligence Community, Congress, and the rest of the executive branch. While the production of objective, unbiased analysis had

long been a precept of intelligence analysts, “politicization” took on new meaning for the managers and overseers of intelligence agencies, who were profoundly sensitized by the Gates hearings that “politicizing” intelligence was an evil to be avoided at all costs.

In the year following Gates’ confirmation, both intelligence committees considered new legislation offered by their respective chairmen (Senator David Boren and Congressman Dave McCurdy, both of Oklahoma) to reform the Intelligence Community. While the more radical elements of these proposals fell by the wayside, in October 1992 Congress did enact—with the acquiescence of the executive branch—a major restatement of the duties and authorities of the DCI vis-a-vis the rest of the Intelligence Community.⁴¹ Among other things, the legislation spelled out the DCI’s responsibility to provide substantive intelligence that was “timely, objective, independent of political considerations, and based upon all sources available to the Intelligence Community” to customers in the executive branch, and “*where appropriate*, to the Senate and House of Representatives and the committees thereof” (italics added).⁴² This was the first time that the requirement to provide intelligence to Congress had been expressly stated in law.

Unfortunately, the legislative history of the bill provided no elaboration of Congress’s intent with respect to this aspect of the DCI’s responsibilities. Although the qualifying phrase “where appropriate” cried out for clarification,

⁴⁰ Unpublished draft CIA History Staff study

⁴¹ See Title VII of the Intelligence Authorization Act for Fiscal Year 1993

⁴² Section 103 of the National Security Act of 1947, as amended

the language sailed through without debate by the Congress and without formal comment by the executive branch.⁴³

In the first year of the Clinton administration, Congressional votes on sending US troops to Haiti and on legislation to implement the North American Free Trade Agreement (NAFTA) generated increased Congressional demands for intelligence briefings on these subjects.

Early in 1994 a 30-year employee of the CIA's Directorate of Operations, Aldrich Ames, and his wife Rosario were arrested for espionage on behalf of the Soviet Union and later Russia. Ames's activities had gone undetected for almost nine years and had resulted in the death or imprisonment of virtually all of the CIA's Soviet agents in the mid-1980s. After Ames pled guilty in May 1994, the CIA's

⁴³ Permitting myself a personal note here, as author of this language and principal coordinator of the legislation, I was advised by representatives of the executive branch that they did not see this language as anything more than a codification of the existing practice, and, so long as some type of qualifying language was present, they would not object to it. Indeed, they preferred not to tackle the thorny issues involved in specifying what support would, from the executive standpoint, be "appropriate"

Inspector General and both intelligence committees initiated extensive inquiries into the case.

In the public's mind, what emerged from these inquiries in the fall of 1994 was a picture of an agency whose professionalism was suspect and whose employees seemed to be unaccountable for their deficiencies. Senator Daniel Patrick Moynihan of New York introduced legislation to do away with CIA entirely; other legislators called for a reexamination of the Agency's missions and functions. Fairly or not, other intelligence agencies were also tarred by the case.

Paradoxically, perhaps, the demand for intelligence by the Congress did not diminish. The impression of several Congressional staffers interviewed for this study was that, after the Ames debacle, CIA and other intelligence agencies were more intent than ever on restoring their image by proving themselves responsive. When new Republican majorities came into power at the beginning of the 104th Congress, both Houses found an Intelligence Community ready and willing to support their needs.

II. What Distinguishes Congress as a Consumer of Intelligence?

Congressional Responsibilities

The Constitution assigns functions to Congress that are clearly facilitated by access to intelligence. Among other responsibilities, Congress must provide “advice and consent” on treaties with other governments, approve the appointment of ambassadors, declare war, regulate interstate and foreign commerce, and raise and support the armed forces. It also must appropriate the funds necessary for the conduct of the government’s business, including support for US military deployments abroad, development and fielding of weapons systems, provision of financial assistance to other governments, and defense of the United States from threats outside its borders. The legislative power itself can be used to mandate or curtail defense and foreign policy initiatives by the executive.

Clearly, the information collected and analyzed by intelligence agencies can have a bearing on the conduct of these responsibilities. But intelligence agencies are part of the executive branch, created by law and executive order principally to serve that branch in the execution of its responsibilities. Moreover, a great deal of information about “things foreign” is available to Congress without resort to intelligence agencies. For example, it has its own highly capable research arm—the Congressional Research Service of the Library of Congress—to provide information and analysis using publicly available sources.

Still, US intelligence agencies often develop information pertinent to Congressional responsibilities that is not found in publicly available sources. Although the flow of this information to Congress has varied over time, it appears that the Intelligence Community, if not the executive branch itself, has—at least since 1947—accepted as a matter of principle the right of Congress to have information that bears upon its constitutional functions, albeit under sometimes controlled and limited conditions.

Some observers suggest that the executive branch provides intelligence to the Congress out of “comity”—that is, the executive recognizes that it controls information needed by another branch of government to perform its functions, and therefore provides it. Others regard the 1980 law requiring that the executive branch keep the intelligence committees “fully and currently informed of intelligence activities,” and the 1992 law requiring the DCI to provide intelligence support to Congress “where appropriate,” as legislative mandates to share intelligence.

Neither the constitutional responsibilities of Congress nor the two statutory mandates cited above, however, have been interpreted by the executive to require that *all* intelligence be turned over to the Congress, nor has Congress historically sought such access. As one intelligence official put it: “None of our customers has a right to all of the intelligence that is produced, not even the Congress. We will give it to them in due course if they need it. But they cannot see everything that is produced. The President has the right, if not the responsibility, to control it.”

No case has reached US courts that involved a refusal by the executive to turn over intelligence information requested by Congress for the performance of its functions, whether pursuant to the Constitution or a statute. Thus the courts have never addressed the boundaries between the executive and legislative branches where Congressional access to intelligence is concerned.

In addition to the functions specified in the Constitution, the Congress carries out other duties implicit in these constitutional roles, which are also cited as justification for access to intelligence. The most significant of these functions is oversight, which entails keeping track of how appropriated funds are spent and whether the activities of the executive branch

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As more Members have become accustomed to receiving intelligence, their first reaction [to a breaking story] is increasingly: "What does the Community have on this?"

are consistent with the law.⁴⁴ The committees of Congress expressly charged with oversight of US intelligence activities—the SSCI and the HPSCI—assert in principle the right of unrestricted access to intelligence information, including all substantive analysis, in order to perform their oversight function. The statute establishing this right of access recognizes no exceptions.⁴⁵ In practice, however, the oversight committees have not sought access to *all* intelligence information.

Members also say they need access to intelligence to serve their constituents. Where constituents are concerned about a specific foreign threat—for example, narcotics smuggling, illegal immigration, or terrorism against Americans—or about the actions of a foreign government (such as denial of a contract to a local US firm), Members of Congress assert a right to know what the government knows, including pertinent intelligence—even if they cannot pass it along to their constituents—in order to be able to advise and counsel them properly.

Finally, Members of Congress as public figures and officeholders simply need to be able to comment knowledgeably with respect to international developments, whether to the news media, to foreign visitors, or to foreign officials whom they meet in the United States or abroad.⁴⁶ Members are frequently asked for their reactions, perhaps even as a story is breaking or before the reliability of a press report is established. Naturally, they do not wish to appear ill informed. As more Members

have become accustomed to receiving intelligence, their first reaction is increasingly: "What does the Community have on this?" In this regard, they are not different from policymakers in the executive branch. In many other respects, they are quite dissimilar.

Comparing Congressional With Executive Consumers

Few Members of Congress have expertise in national security matters at the time they are elected. To the extent that they acquire such expertise, it usually comes from service on a committee or committees with jurisdiction in the area or, occasionally, because a Member takes a personal interest in an issue. Most consumers in the executive branch, by contrast, have been selected for their positions precisely because of their expertise in some aspect of national security affairs.

Members' time is necessarily spread across the gamut of public affairs, from local to national to international. It is not unusual for a Member to start the day meeting with constituents who want a federal job for their child, then listen to a group of lobbyists who want favorable tax treatment for their trucking union, testify at a hearing on the AIDS epidemic, go to the floor to cast a vote on sending troops to country X, and return to meet with the ambassador of country Y. Mixed in may be meetings with their respective party organizations, speeches on the floor and before various private groups, media interviews, and fundraising activities.

Intelligence consumers in the executive branch typically have well-defined areas of responsibility within the national security arena—some broader than others. Although their schedules may be as busy as those of Members of Congress, there is usually a clearer focus to them.

⁴⁴ The courts have recognized oversight of the executive branch by Congress as a function implied in its constitutional responsibilities. See *McGrain v. Daugherty* 273 US 135 (1927), *Watkins v. United States* 354 US 178 (1957).

⁴⁵ Section 502-2 of the National Security Act of 1947.

⁴⁶ Some interviewed for this article would distinguish between the House and Senate in this regard, with most Senators being seen as "public figures" whose comments were sought on foreign affairs, whereas only a small percentage of Representatives fell in this category.

Throughout the day, Members of Congress are bombarded with information: press clips and notes assembled by their staffs, staff briefings, hearings, conversations with their colleagues, phone calls from constituents, and so forth. Every Member's office monitors what is transpiring on the floor. One person interviewed for this article likened Members to "360-degree phased-array radars, constantly whirling, picking up blips of information here and there on their screens."

Policymakers in the executive branch are equally as likely to be bombarded with information, but on a more confined range of topics and by a smaller, less diverse group of interlocutors. They also are more apt to distinguish between the sources of the information coming to them and are more likely to challenge them.

The needs of policymakers for intelligence also tend to be more regular and action oriented. They use intelligence to make daily decisions: to vote at a meeting, to determine the direction of their program, to decide on the next step in the dialogue with a foreign counterpart, or to respond to a crisis. Within their respective areas of responsibility, policymakers are constantly updating their databases, factoring in pertinent day-to-day developments disclosed in intelligence reporting. If they are policymakers who make good use of intelligence, they are engaged in a constant dialogue with intelligence producers, refining their requirements for information.

Members of Congress, on the other hand, rarely have the time to keep abreast of day-to-day developments. Votes that might be influenced by intelligence reporting do not come down the Congressional pike with much regularity. While some committee staffers and a few individual Members may attempt to keep up with the daily intelligence reporting on particular topics, the needs of most Members are likely to be episodic and reactive. As one intelligence official put it: "They are observers,

rather than customers in the usual sense. They get energized once in a while but, for the most part, we don't have the same ongoing dialogue with them that we have with customers [in the executive branch]."

On the other hand, another intelligence official noted, "there are times—usually when crises occur—when [Congress's] appetite [for intelligence] is insatiable. It's during these times that they just about overwhelm us." Members' appetites invariably grow when they are faced with a vote on a national security issue that is politically controversial, such as whether to send US military forces into a hostile situation. Such votes sometimes arise on the spur of the moment—for example, when an amendment is offered unexpectedly on the floor—but more often they occur with sufficient advance notice that Members who want to educate themselves are able to do so. It is on such occasions that intelligence agencies are usually called upon for their information and expertise. As one intelligence official noted: "Over the last five or six years, the Hill has developed a far greater appreciation of intelligence, of what intelligence sources and methods can do for you. There has been a quantum leap, for example, in what Congress now expects to know before a vote to commit US military forces abroad."

Another important distinction is the milieu in which each branch operates. Policymakers in the national security arena are accustomed to operating in a secure environment when dealing with classified information, whereas most Members of Congress are not. Members who serve on committees with responsibilities in national security matters ordinarily come to appreciate the rules governing the disclosure of intelligence and why they are important. But Members who have not served on these committees often lack such understanding. One analyst interviewed for this study described a briefing he had provided to a particular Member of Congress who had no

One person interviewed for this article likened Members to "360-degree phased-array radars, constantly whirling, picking up blips of information here and there on their screens."

If briefings do not lend support to Members' own positions, one analyst noted, "they are apt to bash you over the head for it."

background in national security. At the end of the briefing, the Member told the analyst that "the American people need to know what you have just told me." When the analyst reminded the Member that the briefing was classified, she replied, "Well, I'm declassifying it." [In this case, staff was able to restrain the Member from disclosing the intelligence.]

Far from living in an environment where information is tightly controlled, Congress does most of its business in public. It is, first and foremost, a political institution. Members constantly seek opportunities to get themselves and their positions before the public. Moreover, they are constantly sifting through the information that reaches them to find ammunition for use in their political battles. At hearings or briefings, their questions frequently are aimed at eliciting information that supports a position they have taken or plan to take, at times straining to the point where the connection with the substance of the hearing or briefing is totally lost to the witness. Indeed, if briefings do not lend support to Members' preordained positions, as one analyst noted, "they are apt to bash you over the head for it."

If a Member becomes aware that the executive branch possesses intelligence that undermines the administration's position on a particular issue or lends credence to the Member's own position, he or she will be especially anxious to have it. And once in hand, the stronger the implications of such information for their position, the greater will be the temptation to use it. "The public," the Member will contend, "has a right to know."

Policymakers also are looking for ammunition to use in their bureaucratic struggles, but these are not ordinarily played out in public view. Occasions arise when the executive branch decides to disclose intelligence to the public (either officially or unofficially) in order to make its case to Congress. However, the ability that the executive once had to make selective use

of intelligence with Congress has been substantially eroded by the independent access that the legislative branch now has.

For policymakers, intelligence information usually forms but one element—and perhaps not the most important one—in their decisionmaking process. US capabilities, diplomatic considerations, domestic implications, and public sentiment all will be factored in and may indicate a course of action different from that indicated by the intelligence reporting.

Congress, on the other hand, is usually more inclined to give credence to intelligence reporting and to attach less significance to other factors. As one policymaker put it, "Congress regards intelligence as plaster of paris, while we regard it as clay." Intelligence is viewed as untainted by political bias and therefore as more reliable than the information provided by policymakers, who are seen as touting the administration's political line. As one observer in the executive branch ruefully noted, "The good news is, Congress takes intelligence very seriously. The bad news is, Congress takes intelligence very seriously."

How the Intelligence Community Relates to Congress as a Consumer

By most accounts, intelligence agencies have come to regard substantive support to Congress as an important part of their mission. As one CIA analyst explained, "Until recent years, we did not see our mission as helping Congress make decisions. There were no coherent objectives which governed our relationship with the Hill beyond the protection of the DO's [Directorate of Operations's] equities . . . Most people in the Agency now have come to appreciate Congress as a partner, that Congress has important roles to perform, and it's silly for us not to help them execute those roles."

Others are not so sanguine. As one intelligence official noted, "intelligence agencies pay lipservice to enlightening Congress on substantive topics, but what really motivates them are the oversight and funding responsibilities of the intelligence committees. They want to show what they can do in order to get funding for their programs." Several analysts interviewed for this article conceded as much.

Whatever may motivate intelligence agencies, they do not relate to Congress in the same way they relate to consumers in the executive branch. For one thing, intelligence officials worry more about what Congress will do with the intelligence it is given than they do about what policymakers do with it. While most acknowledge that Congress has a good track record on protection of classified information, they also recognize that they will have very little control once the intelligence is imparted. One intelligence official said, "Wittingly or not, this affects what analysts say on the Hill and how they say it. They are more guarded." Such hesitancy will be especially apparent when the audience for a briefing has a track record of making political use of intelligence information. "The tendency," said one intelligence official, "will be to be a little less forward-leaning."

The Intelligence Community also does not involve Congress in the same way as other consumers in setting requirements and priorities for collection and analysis. In the executive branch, a formal process exists whereby consumers are consulted about their requirements and priorities for intelligence collection. These are translated into detailed collection guidance for the Intelligence Community as a whole. Beyond this formal process, executive branch consumers are frequently consulted as part of the ongoing process for tasking collection assets.

Congressional consumers, on the other hand, are not consulted as part of this process. Nor are they consulted about potential topics for

intelligence analysis, such as NIEs. Moreover, while the DCI is charged with evaluating the utility of intelligence to consumers within the government, this role has never been seen as extending to the utility of intelligence to Congress.

Many interviewed for this study pointed out, however, that whether or not the needs of Congress are formally considered in setting requirements and priorities for collection or analysis, Congress can obtain "whatever it wants whenever it wants it" from the Intelligence Community. Indeed, some in the executive branch believe Congress's needs receive preferential treatment from the Intelligence Community over those of consumers in the executive. As one executive official noted: "The Community will not accept requirements from us unless they come from an Assistant Secretary. Whereas where Congress is concerned, they will do whatever any staffer says he or she wants them to do—whatever it takes . . . For Congress, the Intelligence Community is the candy store that's always open."

Others contend that it would be impractical in any case to attempt to integrate Congressional needs into the process used to identify and satisfy the needs of executive branch consumers. Congressional needs are, for the most part, impossible to predict in advance, and no process exists within Congress for producing an agreed-upon set of requirements for collection and analysis. Many in the executive branch suspect that, if such a process were to be attempted, it would be "your worst nightmare," driven by Congressional staff rather than Members and overwhelming the capabilities that now exist to support the needs of the executive branch.

Notably, the Congressional staffers interviewed for this article did not disagree. While some pointed out that there were events on the Congressional calendar requiring

While most [intelligence officials] acknowledge that Congress has a good track record on protection of classified information, they also recognize that they will have very little control once the intelligence is imparted.

intelligence support that could be anticipated, such as votes on "most favored nation" treatment for China or arms control treaties, they also acknowledged that most intelligence was provided in response to events and developments that could not readily be predicted. So long as they could continue to

get what they need when they needed it, they were content to rely on intelligence that was produced for use by executive branch consumers and leave themselves out of the requirements and priorities process.

III. How Intelligence-Sharing Works at Present

There are no written rules, agreed to by both branches, governing what intelligence will be shared with the Hill or how it will be handled. The current system is entirely the product of experience, shaped by the needs and concerns of both branches over the last 20 years. While some aspects of current practice appear to have achieved the status of mutually accepted "policy," few represent hard-and-fast rules. "Policy" will give way when it has to.

In General

All Members of Congress have access to intelligence by virtue of their elected positions. They do not receive security clearances *per se*.

Congressional staffers who require access to intelligence in connection with their official duties receive security clearances based on background investigations conducted by the FBI. They are not required to take polygraphs. As a general rule, only committee staffers receive clearances; those in Members' personal offices do not.

Classified intelligence reports⁴⁷ are routinely provided only to the committees that have responsibilities in the national security area.⁴⁸ Members of these committees receive preference from the Intelligence Community in satisfying their requests on an individual basis. Among the national security committees, the intelligence committees and their Members are accorded preferential treatment, as discussed below.

⁴⁷ More than 30 Congressional committees have electronic access to an unclassified computer service, FBIS Online, operated by the Foreign Broadcast Information Service of the CIA, which provides access to foreign media and other information derived from publicly available sources.

⁴⁸ These include the Senate Appropriations Committee, the Senate Foreign Relations Committee, the Senate Armed Services Committee, the Senate Select Committee on Intelligence, the House Appropriations Committee, the House International Relations Committee, the House National Security Committee, and the House Permanent Select Committee on Intelligence.

The leadership in each chamber—the Majority and Minority Leaders of the Senate and the Speaker and Minority Leader of the House of Representatives—are *ex officio* members of their respective intelligence committees and have access to intelligence held by the committees. Typically, a member of each leader's staff serves as liaison to the intelligence committee, keeping up with the committee's activities and serving as a conduit for information to his or her boss. Each of these Congressional leaders also has staff responsible for national security issues who can make independent requests to the Intelligence Community for support—which may include briefings and/or written analysis. While Congressional leaders rarely have time to get involved in intelligence matters themselves, there are exceptions. Speaker Newt Gingrich, for example, has made a point of scheduling regular meetings with the DCI to cover substantive as well as operational matters.

Committees that do not have national security responsibilities and individual Members who do not serve on national security committees may request intelligence support but are typically given a lower priority. Intelligence agencies do, nevertheless, try to accommodate them in some fashion, usually by providing briefings. On occasion, typically in connection with a vote in either House on a national security issue, the Intelligence Community will be asked to provide briefings that are open to the entire body. These are ordinarily arranged at the request of the leadership in either House and are held in a secure briefing room on the fourth floor of the Capitol.

The two intelligence committees are the repositories of most intelligence shared with Congress. Their offices and hearing rooms are physically located in "vaulted" areas that meet the DCI's standards for storage and discussion of information relating to intelligence sources

While the intelligence committees receive the lion's share of intelligence provided to Congress, the trend over the last two years has been toward expansion of the amount going to the [other] "national security" committees.

and methods. They are guarded around the clock by the Capitol Hill police. Visitors must be cleared into these areas and escorted while inside.

The other "national security" committees, by contrast, have offices that are not secure and that are open to the public. In the Senate the Office of Security serves as the storage repository for SCI material made available to the SASC, SFRC, and SAC. In the House, individual committees (the HNSC, HIRC, and HAC) have small repositories for storing SCI material. Typically, the senior staff of these committees, and/or staffers with responsibility for issues to which intelligence may relate, are cleared for intelligence information.

The 104th Congress saw a marked increase in interactions with these committees, especially with the HNSC, HIRC, SASC, and SFRC.⁴⁹ Some of the people interviewed attributed this increase to the fact that the new Republican majorities on these committees were anxious to find a source of information with which to challenge the incumbent Democratic administration. Others pointed to the fact that certain staffers on these committees had served in previous Republican administrations and were more attuned to what they could obtain from intelligence agencies. In any event, while the intelligence committees continue to receive the lion's share of intelligence provided to Congress, the trend over the last two years has been toward expansion of the amount going to the "national security" committees other than the intelligence committees.

Access to Finished Intelligence

The intelligence committees today receive hard copies of most finished intelligence published by the Intelligence Community for

general circulation. What is given to one chamber's intelligence committee is given to the other.

When new publications are created or new analytic "art forms" are developed for general circulation, they usually are made available sooner or later to the intelligence committees, either because someone on one of the committees hears of them or because someone in an intelligence agency realizes that the intelligence committees should be included on the distribution list. There is no systematic process, however, for deciding which publications should and which should not go to the two intelligence committees.

Intelligence agencies also make no effort to screen the publications provided for content; if the publications are on the list to go to the committees, they go. At present, these publications include current intelligence, notably the *National Intelligence Daily* (NID) and DIA's *Military Intelligence Digest* (MID), as well as estimative intelligence, including all NIEs. In 1995 approximately 5,000 such publications were delivered to each of the intelligence committees.

In addition, both intelligence committees in 1996 installed computer terminals linking them to an Intelligence Community network (PolicyNet) that provides electronic access to most finished intelligence and, in some cases, to intelligence reports that are not provided in hard copy—for example, certain analysis done by the Bureau of Intelligence and Research at the State Department. Daily digests of NSA SIGINT reporting—"single-source reports," referred to as "product" by NSA—also are available via PolicyNet. The committees expect to link up in the near future to another Intelligence Community computer network that will provide electronic access to an even broader range of reporting.

⁴⁹ From statistics compiled by CIA's Office of Congressional Affairs.

Although the NID and MID are read regularly by staff of the national security committees, Members rarely take the time to do so.

By contrast, the other “national security” committees receive copies of the NID and the MID but must request copies of other finished intelligence (including NIEs) from lists that are regularly provided by the principal production agencies (CIA and DIA). These lists are keyed to the particular jurisdiction and level of clearance of each committee. At this juncture, none of these committees has electronic access to intelligence reporting.

Committees with responsibilities outside the national security area do not receive intelligence publications at all, nor are they given lists of such publications from which to choose. If such committees request intelligence support, it is ordinarily provided to them through briefings rather than in the form of classified documents.

Use of finished intelligence provided to the Hill—either in hard copy or by electronic means—appears limited. Although the NID and MID are read regularly by staff of the national security committees; Members rarely take the time to do so. If they are informed at all, it usually occurs when staffers brief them or show them items of interest.

Most of the finished intelligence furnished to the two oversight committees is, in fact, read by no one, and only occasionally does that which is read prompt a followup. Staffers of the oversight committees will, at the direction of Members or on their own initiative, follow the intelligence reporting on topics known to be of interest to Members. When Members have questions or crises occur, the availability of the previous reporting also gives the staff a means to quickly check the Community’s performance. Staffers sometimes also consult previous reporting to prepare a Member for a foreign trip or a meeting with a foreign dignitary. Generally speaking, though, Members and staff say they are too busy to read the voluminous number of intelligence reports that come in each day. As one staffer

conceded, “I cannot, in good conscience, recommend to my Member that it is worth his time to come in here and read this stuff. Frankly, it is not even worth my time.”

Staffers of the other national security committees also concede that they may or may not read the intelligence publications they request, depending upon circumstances at the time the requested publication arrives.

Finished intelligence that is not published for general circulation is not routinely shared with Congress. For example, the Hill does not receive copies of the *President’s Daily Brief* (PDB), prepared daily by CIA. Nor does it receive copies of the daily intelligence summaries prepared for the Secretary of State, the Secretary of Defense, or the Chairman of the Joint Chiefs of Staff. Moreover, it does not receive “memo dissems” prepared by CIA for use by White House principals on various topics or tailored materials requested by top-level officials during their daily briefings. Occasionally, as part of an oversight investigation, intelligence committee staffers are shown portions of such tailored reporting—including the PDB—but regular access has not been accorded.

Intelligence officials distinguish this type of publication—tailored to the needs of the President and other high-level officials—from other finished intelligence that has a more general circulation. Tailored analysis is keyed to the needs and interests of the officials concerned: their contacts with foreign counterparts, the reactions of those counterparts to what the US officials have said, events on their schedules, and particular interests they have voiced. This analysis is so tied to the functioning of the executive branch, said one official, that distribution to Congress would be “inappropriate.”

What intelligence is assimilated by Congress comes principally through briefings, which are provided by one intelligence agency or another virtually every day when Congress is in session.

The Members and staff interviewed for this study generally acquiesced in this arrangement. Most believed that Congressional needs were satisfied by access to finished intelligence intended for general circulation, particularly the NID, and that access to intelligence reporting tailored for high-level officials in the executive branch would not substantially improve their knowledge base. While access to this analysis might satisfy their curiosity, they did not see it as worth the “pitched battle” that pressing for routine access would inevitably trigger.

Congress also does not routinely see “raw” intelligence—unevaluated intelligence reporting, usually from a single source. The intelligence committees, however, occasionally receive “nonstandard” distributions of single-source intelligence on matters in which they have expressed a particular interest, such as satellite imagery of suspected mass grave sites in Bosnia. They also are occasionally granted access to “raw” intelligence for purposes of carrying out an oversight investigation.

Intelligence officials note that, as a practical matter, the volume of “raw” intelligence is such that the intelligence committees would be incapable of storing it. They also justify the current policy on security grounds—the need to avoid jeopardizing sensitive source information—as well as on the grounds that it would be “dangerous” to give Congress unevaluated, single-source reporting that has not been placed in context by analysts who have “all-source” access. As one official noted, “It’s bad enough that policymakers get this stuff and run with it. Can you imagine what would happen if we gave it to Congress?”

Intelligence committee staffers, for their part, acknowledge the impracticality of receiving all of the raw intelligence produced by the Intelligence Community. Some chafe, however, at the suggestion that “raw

intelligence” should, as a matter of principle, not be available to them because of security concerns or their inability to evaluate its significance, noting that such reporting is widely available to consumers in the executive branch.

Some of those interviewed believe Congress receives a skewed impression of the performance of the Intelligence Community because it sees only finished intelligence intended for general circulation. As one Congressional staffer noted: “What we see up here is the reporting that deals with macro issues, that tries to predict outcomes, etc. The real strength of the Intelligence Community is in producing tactical information—hard information that people can act on. Very little of this kind of information gets into the NID, and consumers who only read the NID really have very little appreciation for what the Intelligence Community is actually doing.”

A former Congressional staffer was perhaps more realistic: “It’s really irrelevant what kind of published intelligence is sent to the Hill. Nobody has time to read it anyway.”

Access to Intelligence Through Briefings

What intelligence is assimilated by Congress comes principally through briefings, which are provided by one intelligence agency or another virtually every day when Congress is in session. These may occur in formal settings—open or closed hearings—or in informal settings where no records of the proceedings are maintained. Briefings may be presented to committees, individual Members, committee staffs, or individual staff members, as the situation requires. While most briefings are performed at the request of Members or staff, intelligence agencies also provide briefings on their own initiative when they have information

they believe should be shared with the Hill. The agencies especially feel such an obligation toward the intelligence committees, but increasingly they also have a sense of commitment to other committees that have explicitly asked to be kept informed of developments in particular areas.

Intelligence briefings are requested for various purposes. Committees want to stay apprised of developments in their areas of responsibility. Often Members simply want to understand developments abroad in order to be able to comment knowledgeably about them. Not infrequently, such requests are prompted by events reported in the press or seen on CNN. Briefings are also requested to help Members decide how to vote on particular issues or to provide background to Members crafting legislative initiatives in the foreign policy area. Individual Members, moreover, may request intelligence briefings in preparation for foreign trips or for meetings with foreign officials. CIA records reflect 39 briefings of this nature in 1995.⁵⁰

Intelligence agencies attempt to accommodate all requests for briefings they receive from Congress, but they give priority to the leadership in both Houses and to the intelligence committees and their Members. Next in priority come the other national security committees and their Members and then, finally, the rest of Congress. A list of the substantive briefings given by CIA in 1995 suggests that Congress concerns itself principally with foreign policy issues on the "front burner" of public concern. Some 71 briefings, for example, were provided on Bosnia, 40 on Iran, 35 on Haiti, 33 on weapons proliferation, 29 on Iraq, and 27 on North Korea.⁵¹

⁵⁰ Ibid

⁵¹ Statistics supplied by the Office of Congressional Affairs, CIA

Briefings to the intelligence committees are likely to contain more information about the sources and methods involved in reaching the analytical conclusions presented than briefings to other committees. Briefings to other than the intelligence committees are more apt to include facts and analytical conclusions with little, if any, information regarding how the underlying evidence was gathered.

Occasionally, even in the intelligence committees, an analytical judgment or conclusion will be based on very sensitive information that analysts feel uncomfortable imparting to a large audience. Agencies typically deal with such situations by briefing the chairman and the ranking minority member separately, or perhaps the majority and minority staff directors acting in their stead. When the full committee is subsequently briefed, the analyst usually states that certain extremely sensitive information has been conveyed separately to the chairman and the ranking minority member.

Whether sensitive information is conveyed beyond the intelligence committees—either to committees with overlapping jurisdiction or to the leadership—depends on circumstances. Both intelligence committees operate under resolutions that require them to adopt procedures governing access by other committees or Members to intelligence received by the committee.⁵² The Senate committee opted to implement this provision by resting authority in the chairman and vice

⁵² Each intelligence committee is required to maintain records of all disclosures of intelligence information to any Member who is not assigned to the committee. Members who receive such information are prohibited from disclosing it to anyone except in a closed session of their respective House. Members who violate this prohibition must be referred by the intelligence committee concerned to the ethics committee for investigation and disposition.

Intelligence agencies attempt to accommodate all requests [from the Hill] for briefings, but they give priority to the leadership . . . and to the intelligence committees.

chairman (the title used by the SSCI's ranking minority member) to make this determination. The House committee chose to require a formal vote of the entire committee before intelligence could be conveyed to other committees or Members.

This difference in the rules of the two intelligence committees has led to somewhat differing roles vis-a-vis their respective institutions. The SSCI considers that it has an obligation to keep the Senate leadership and other committees with overlapping jurisdiction aware of significant intelligence that is relevant to their responsibilities. It will brief (or have intelligence agencies brief) the leaders of the Senate and/or other committees in appropriate circumstances, or invite them to attend

briefings given to the intelligence committee or its staff. There are no criteria governing this practice. It is done to the extent the leaders of the SSCI believe it should be done.

The HPSCI, in contrast, does not routinely brief other House committees on sensitive information provided to the committee, nor does it invite members or staff of other committees to briefings of the committee. The HPSCI does make sure that the House leaders—who are ex officio members—are appropriately informed on intelligence matters. On occasion, it also advises briefers that other committees need to hear a particular briefing, but in practice, it makes little if any effort to ensure that this actually happens.

IV. Impact of Intelligence-Sharing With Congress

Writing in *Foreign Affairs* in 1988, then Deputy Director of Central Intelligence Robert Gates described the impact of intelligence-sharing with the Congress in sweeping and—from the standpoint of the executive—problematic terms:

As a result of [intelligence-sharing with the Congress] . . . many Senators and Representatives are often as well, if not better, informed about the CIA's information and assessments on a given subject than concerned policymakers. Moreover, this intelligence is often used to criticize and challenge policy, to set one executive agency against another, and to expose disagreements within the administration . . .

Most specialists writing about the change in recent years in the balance of power between the executive and Congress on national security policy cite Watergate and Vietnam as primary causes. I believe there was a third principal factor: the obtaining by Congress, in the mid-1970s, of access to intelligence information essentially equal to that of the executive branch.

This situation adds extraordinary stress to the relationship between the CIA and policy agencies. Policymakers' suspicions that the CIA uses intelligence to sabotage selected administration policies are often barely concealed. And more than a few Members of Congress are willing to exploit this situation by their own selective use of intelligence that supports their views. The end result is a strengthening of the Congressional hand in policy debates and a great heightening of tensions between the CIA and the rest of the executive branch . . .

The result of these realities is that the CIA today finds itself in a remarkable position, involuntarily poised nearly equidistant between the executive and legislative

branches. The administration knows that the CIA is in no position to withhold much information from the Congress and is extremely sensitive to Congressional demands; the Congress has enormous influence and information, yet remains suspicious and mistrustful. Such a central legislative role with respect to an intelligence service is unique in American history and in the world. And policymakers know it."⁵³

This chapter seeks to evaluate how intelligence-sharing with Congress has affected key areas of concern: relations between the two branches, the work of Congress itself, the work of the Intelligence Community, and, finally, the relationship between the Intelligence Community and other parts of the executive branch. In doing so, it addresses the issues raised by Gates as well as some he did not raise.

Impact on Executive-Legislative Relations

Of those interviewed for this study, few would take issue with Gates' contention that intelligence has made Congress a smarter, more effective critic of the executive branch, often complicating the lives of policy officials. Many note, however, that intelligence analysis provides support for the policies and proposals of an administration as often as it undermines them. Perhaps even more often, it provides ammunition for both sides of a policy debate. Indeed, it is not unusual for Members to draw different conclusions from the same information. Although, as Gates points out, Members of Congress are not above making selective use of intelligence to support their positions on particular issues, many of those interviewed noted that policymakers suffer the same affliction.

⁵³ Gates, Robert M., "The CIA and American Foreign Policy," *Foreign Affairs*, Spring 1988, pp 224-225

***"CIA today finds itself in a remarkable position, involuntarily poised nearly equidistant between the executive and legislative branches."
—Robert M. Gates***

Several [interviewees] noted that, because Congress has access to intelligence, it has sometimes managed to avoid irrational legislative responses to world events.

Most of those interviewed for this study seemed to believe that intelligence-sharing has, on the whole, improved relations between the two branches. Many pointed out, for example, that, with or without access to intelligence, it is the role of Congress to criticize. "Even if Congress got no intelligence," said one observer, "they would be seen as meddling. And they would be relying in those circumstances upon information provided by policy agencies that might be slanted or incomplete or what have you. Intelligence, on the other hand, is supposed to provide an unbiased, complete version of the facts. If Congress is going to meddle anyway, isn't it better they at least have the facts?"

Giving Congress the facts, this observer went on to say, actually decreases its propensity to meddle: "While it is true that access to intelligence gives Congress something against which to test the President's actions and policies, it usually ends up giving credence to those actions and policies. While the [political opposition] cannot be expected to defer to the President, at least they will have essentially the same information and can understand what is motivating the President. They may disagree, but they start with the same information base."

In a similar vein, one Congressional staffer thought that having access to intelligence at times had actually discouraged leaks of classified information. "If an agreement can be worked out [with the Intelligence Community]," the staffer noted, "with respect to what can be used in public and it gives both sides of an issue enough to go on, I think it actually discourages people [Members and staff] from resorting to leaks."

Several also noted that, because Congress has access to intelligence, it has sometimes managed to avoid irrational legislative responses to world events—responses that would undoubtedly have created serious diplomatic problems for the incumbent administration. As one current Member put it:

"Because the leadership has had immediate access to intelligence reporting, they have sometimes been able to stop the panic and craziness up here."

Others noted a salutary impact on the use of intelligence by policymakers. Because officials are aware that Congress has access to intelligence information, they are more likely to take it into account themselves when formulating a particular policy or proposal. If their policy choice should run counter to the intelligence reporting, they realize that one day they may find themselves defending their choice to their Congressional overseers (who have access to the same intelligence).

From this perspective, Congressional access to intelligence is seen not as a problem for policymakers but rather as a help to them. "Any policymaker worth his salt," said one intelligence official, "should be able to explain to the Congress why he or she is advocating a policy that does not appear supported by the intelligence." Although intelligence may provide ammunition for a particular Senator or Congressman to criticize, the policymaker, having weighed such information in arriving at a chosen policy, should be able to defend his/her position more effectively.

Some policymakers are not so sanguine, however, pointing to instances where they believe intelligence analysis unnecessarily provoked, rather than assuaged, an unruly Congress. They fault analysts for frequently providing intelligence (especially in briefings) that is unduly alarmist because it does not take into account ongoing US actions and/or because it is based on unreliable or incomplete reporting. As a result, Members become needlessly agitated and resort to legislative actions that are unjustified by the circumstances, creating fires that require the involvement of busy policymakers to extinguish.

Many analysts . . . believe they have an obligation to present the “worst case” scenario in their briefings so that Congress will know the outer limits of the downside.

Many analysts do, indeed, believe they have an obligation to present the “worst case” scenario in their briefings so that Congress will know the outer limits of the downside facing the United States in a given set of circumstances. Members and staff interviewed for this study also expressed a desire to know the “worst case” as the Intelligence Community perceives it (as well as what the Community considers the “most likely” scenario) in order to calibrate their positions on issues.

Whether intelligence-sharing with Congress is seen as ultimately facilitating or impeding relations between the executive and legislative branches, it has, as Gates suggests, clearly complicated them. Still, for all the complications, many see intelligence as having provided, and as continuing to provide, a firmer footing for the dialogue between the branches on national security matters. No one expects a return to the days when Congress deferred to the executive. Given this reality, many say, ways must be found to facilitate collaboration between the branches, rather than allow polarization to grow, so as to ensure that the military and foreign policies of the United States have the support of both branches as well as the American people. They see intelligence-sharing as one means—an important one—for bridging this gap.

Impact on the Work of Congress

Taking the Congress as a whole, however, intelligence analysis (whether in written or verbal form) actually reaches only a small percentage of its Members and bears upon a small proportion of its work. A survey of lawmakers conducted by the CIA’s Office of Congressional Affairs in late 1988 not surprisingly found them “overwhelmingly disinterested” in intelligence insofar as the execution of their legislative duties was concerned.⁵⁴

Apart from the intelligence committees, relatively few Congressional staffers have the security clearances needed for access to intelligence, and, for many who hold such clearances, what they see is minimal. As one legislative aide put it, “most staff up here does not have a clue in terms of what is available [in the Intelligence Community]. They see a few documents, but what they see is only the tip of the iceberg. They have no idea what is going on.”

Members’ lack of interest can be attributed partly to the fact that intelligence does not lend itself to use in a public process. As one SFRC staff member noted: “We [the committee] are part of the public debate. We deal in the realm of the overt—in what actions other governments take and what actions they don’t take. While it is still useful to understand what their plans or intent may be, most of what the committee needs to know can be obtained from the *New York Times* or CNN. And the committee will respond overtly to it.”

On occasion, access to intelligence does become important to Members. This occurs, for example, when votes are scheduled on issues that are important to them politically and on which intelligence has a significant bearing—such as, a vote to send US troops into hostilities abroad or a vote to ratify a controversial treaty. Members look to intelligence analysis not only as a source of substantive guidance but also as a way to give them political cover should their vote turn out to be the wrong one.

Intelligence has its greatest impact on Congress, however, through the work of its committees, particularly the committees with national security responsibilities. Most Members and staff of these committees have come to value the analysis provided by intelligence agencies both for its own sake and as a check on the information coming from the

⁵⁴ Unpublished draft CIA History Staff study

policy agencies under their jurisdiction. In this regard, intelligence often provides a “handle” for a committee’s oversight activities.

Quite often intelligence will also figure into the consideration of legislation handled by these committees. Such legislative measures include:

- Resolutions supporting or condemning the actions of foreign governments or international bodies.
- Legislation imposing conditions on the executive branch regarding the conduct of foreign policy.
- Legislation imposing diplomatic or trade sanctions on the governments of other countries.
- Legislation to implement treaties and international agreements.
- Legislation to commit, or fund the commitment of, US forces abroad.
- Legislation to counter threats to US security emanating from outside the United States, such as terrorism, narcotics trafficking, and proliferation of weapons of mass destruction.
- Legislation providing advice and consent for US ratification of treaties (Senate only).
- Legislation authorizing appropriations or appropriating funds to build and equip US military forces, provide security and economic assistance to other governments, and develop US intelligence capabilities.

Finally, intelligence serves simply to inform Members with respect to world affairs. One Member suggested, in fact, that this was the greatest benefit of intelligence-sharing: “Members do not have to react simplistically [to world events] any longer without the benefit of knowing what the facts are.”

Relatively few opportunities exist in the Senate and even fewer in the House of Representatives for Members to educate themselves on international affairs issues. For many Members, service on one of the national security committees is important not because it gives them an opportunity to oversee the operations of the Defense Department or learn the intricacies of the Intelligence Community, but rather because it provides access to information about world affairs they would not otherwise have. In 1992, then Chairman of the Senate Intelligence Committee David L. Boren put it this way:

[The benefit of service on the Intelligence Committee] is not just a matter of understanding the Intelligence Community. The insights that it gives you in terms of our relationship with the rest of the world are just enormous. I found that now, whenever we are talking about how we deal with the Russian state, what kind of economic aid might be effective, what’s really happening in the Middle East, how much of a danger is Islamic fundamentalism to us, and many other issues, that my service on the intelligence committee broadened my horizons . . . the more Members who have a chance to have that experience, the better for the country.⁵⁵

Some Members request intelligence briefings to educate themselves; others seek out intelligence analysts on a personal basis and establish an ongoing dialogue with them on a topic of interest. The best informed are likely to carry the most weight where international affairs are concerned—with their colleagues, the media, the administration, their constituents, and the public. Their opinions are more apt to be sought and their advice more

⁵⁵ Quoted in Smist, p. xvii

[Members] staking themselves to a position on the basis of intelligence that later proves to be wrong can be embarrassing at best and politically disastrous at worst.



Select Committee on Intelligence (SSCI) luncheon in 1993. The committee's chairman at that time, Senator David Boren, is seated in the center. Seated second from the left is the SSCI's then staff director, George Tenet (now DDCI). The author of this study is seated at the right. Others shown are SSCI staff members.

likely to be heeded. By being informed, they are better able to make a reputation for themselves.

There are, however, pitfalls in all this, even for individual Members. Staking themselves to a position on the basis of intelligence that later proves to be wrong can be embarrassing at best and politically disastrous at worst. (See the discussion concerning the Senate vote on the Persian Gulf resolution in part V below.)

Surprisingly, the intelligence analysts interviewed for this study tended to downplay their influence with Congress. Most seemed to believe that Members usually had their positions staked out and minds made up long before receiving an intelligence briefing. If the briefing lent itself to their views, the Members

would take it on board. But few Members were seen by analysts as having changed their positions based on what they heard in an intelligence briefing. Members and staff who were interviewed, on the other hand, generally thought these analysts were selling themselves short.

As a practical matter, it is impossible to quantify the extent to which intelligence information has influenced the oversight or legislative responsibilities of Congressional committees or has affected the actions (or political fortunes) of particular Members. Viewed in the context of the totality of Congress's activities, the information provided by the Intelligence Community could be said to

One of the problems cited was the potential that intelligence support to Congress could overwhelm the available analytical resources to the detriment of consumers in the executive branch.

have hardly caused a ripple. But viewed in the context of specific legislative actions—or its influence from time to time on individual Members—intelligence could as easily be seen as having played a key role in determining and shaping Congressional actions and reactions on particular issues.

Impact on the Work of the Intelligence Community

In 1989 the head of the CIA's Office of Congressional Affairs told Deputy Director Gates that, in his view, Congress had an "unquenchable appetite" for intelligence that, in the long term, could pose serious problems for CIA management.⁵⁶

One of the problems cited was the potential that intelligence support to Congress could overwhelm the available analytical resources to the detriment of consumers in the executive branch. As one executive official noted: "There are not enough resources in the Intelligence Community to provide intelligence support to 535 Members of Congress. They are going to have to draw some lines somewhere."

Most Members of Congress have little appreciation for what these resources are. They ask and they receive. Most perceive a large and faceless bureaucratic machine (funded by taxpayer dollars) with an unlimited capability to churn out analysis and provide briefings on demand.

The reality, of course, is that a relatively small corps of intelligence analysts cover a vast gamut of national security issues for consumers in both the legislature and the executive branch. Together, the analysts comprise a formidable capability. Considering the number of issues they are expected to cover, however, it is clear that this capability actually is spread quite thin. It is not unusual

for major areas to be covered by a handful of analysts in a particular agency and for more obscure areas to be covered by only one or two analysts. Although special analytical teams are sometimes put together to deal with looming or ongoing crises, they too usually find themselves stretched to the breaking point, given the demands placed on them in such situations.

For the most part, the analysts interviewed for this study regarded Congress as a legitimate and important recipient of their work. They welcomed the opportunity to support the elected representatives of the people and influence the Congressional role in public policy debates. Indeed, some saw Congress as more open to their influence than policymakers in the executive. Several also noted that, because analysts know their work may someday be scrutinized on the Hill, greater quality control is introduced into it.

Some analysts, however—while they regarded Congress as a legitimate consumer—did not see it as a "serious" one. They thought most Members had neither the time nor the interest to understand or probe what was being briefed to them. They viewed Members' reactions as often shallow and superficial. Some analysts resented having to brief staffers, whom they often saw as "nonplayers." The time and effort required to satisfy Congressional demands took time and effort away from the analysts' first priority: satisfying the pressing needs of decisionmakers in the executive branch.

A number of analysts also pointed to what appeared to be Congress's growing inclination to bring intelligence analysis out into the open, which the analysts saw as imposing additional (and unnecessary) burdens and strains. This occurs either when analysts are required to appear at public hearings of Congressional committees or when intelligence agencies are asked to "sanitize" classified analysis so that it

⁵⁶ Unpublished draft CIA History Staff study.

Policymakers often find their policies and initiatives undermined on the Hill by intelligence briefings.

can be made public by a committee or an individual Member (sometimes for a thinly veiled political purpose). Such requests, often couched in such terms as "the American people need to know this," are difficult for intelligence agencies to resist.

These requests also are often difficult for agencies to accommodate. When giving public testimony, analysts frequently are left to make generalized assertions without being able to explain—for security reasons—the intelligence reporting that led to them. Sources and methods must be talked around. If Members press with questions that call for classified responses, analysts fret about appearing rude or uninformed if they decline or limit an answer. Requests to "sanitize" classified analysis for public release do not increase personal stress, but they do involve time and effort that, from the standpoint of an analyst, is unproductive and a diversion from more important work. Going to this extra effort is especially galling when it is seen only as allowing a Senator or Congressman to score a political point against an opponent.

Several analysts interviewed also deplored the growing number of occasions when Congress insists on having the views of the Intelligence Community before the Community is ready to present them. This has happened several times within the last two years, when portions of draft estimates have been leaked to the press or when Congressional committees have otherwise become aware of their existence. If the Community balks, analysts may be required to present their agency's view or even a personal view. Analysts involved in these episodes say they have been highly disruptive of ongoing work. Either the estimative process has to be drastically accelerated to accommodate the Congressional timetable or individual agencies have to go it alone, forcing them to take positions prematurely without the benefit of the give-and-take of the estimates process.

Impact on Relations With the Rest of the Executive Branch

Whatever frustrations analysts may feel about their relationship with Congress pale in comparison with the frustrations felt by many elsewhere in the executive branch.

Policymakers often find their policies and initiatives undermined on the Hill by intelligence briefings. Sometimes the briefings are at odds with what the President or administration spokespeople have said. As a result, policymakers face hostile questioning from the press or from Congress itself. Sometimes they are confronted with intelligence they did not know existed or with analytical conclusions they do not know the basis for. Sometimes other governments are annoyed—diplomatic initiatives are disrupted and negotiations are broken off. "Policymakers should see intelligence agencies," said one intelligence official, "as simply purveyors of information, produced by professionals outside the political arena. Instead, some see us as trying to make trouble for them."

"Policymakers are often frustrated," said one intelligence analyst, "when they have to explain to the Hill why they made a decision on other than the basis indicated by the intelligence. While intelligence is always just one vector in the decisionmaking process, and analysts never advance it as anything more than that, it is not perceived that way on the Hill . . . Policymakers may understand all this themselves, but it doesn't make them any happier when they have to face hostile questioning from some Senator or Congressman."

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

“The Intelligence Community is so anxious to please its oversight committees that it’s hell-bent to get the intelligence up there, regardless of whether it’s reliable and regardless of whether they’ve touched base with the rest of the executive branch.”

—Former executive branch official

practice, however, many policymakers find that the performance of intelligence agencies falls woefully short on this score. “The Intelligence Community is so anxious to please its oversight committees,” said one former executive official, “that it’s hell-bent to get the intelligence up there, regardless of whether it’s reliable and regardless of whether they’ve touched base with the rest of the executive branch.”

Another executive official was even more strident: “There is a rush to tell Congress everything, often before it’s been notified to us. Whatever they ask for, they get . . . Although they would never put it this way, [intelligence agencies] clearly see themselves as working for the Congress rather than the President.”

Intelligence officials also acknowledge a problem. Said one: “There is, in fact, a certain imperative about intelligence. Once it’s there, it

goes. The emphasis these days is on getting it to the Hill as fast as possible when, in fact, it ought to be on making sure the policymaker is brought in on it before it goes. I know there have been many occasions when intelligence has gone to the Hill without policymakers knowing about it, causing them to ask ‘who are those guys working for, anyway?’ It ought not to happen but it does.”

“The real problem that results from this [failing to notify what they plan to brief on the Hill],” said one former executive branch official, “is that it isolates them [the intelligence agencies] from the policymakers who then want to close them out from any involvement in the policy process, to keep them from knowing where policy is headed, and so forth. It becomes a ‘separate camps’ mentality, very destructive of the overall relationship between producers and consumers.”

V. Problems and Pitfalls in the Relationship

This section explores difficulties in the Intelligence Community's handling of its relationship with Congress, in its handling of relations with the rest of the executive branch, and, finally, in the use of intelligence by Congress itself.

Suggestions for avoiding these problems are set forth in part VI.

The Intelligence Community's Handling of the Relationship With Congress

What Intelligence Information Is To Be Provided To the Congress, and Who Decides This?

Both sides seem largely content with current practice regarding the provision of published intelligence. The Hill has access to most finished intelligence published for general circulation but not to finished intelligence tailored to the needs of high-level policymakers or to "raw" unevaluated intelligence, unless a special need exists.

Briefings given in response to Congressional requests are more problematic in that they often pose a "sourcing" question: how much information about intelligence sources and methods should be cited to explain the evidence underlying particular analytical judgments? The analysts responsible for preparing the briefings typically resolve this issue themselves, perhaps after consultation with the collection element(s) concerned.

If the information at issue is, in the view of the analysts, of marginal significance to their conclusions, it may be left out of the briefing altogether. If, on the other hand, sensitive source information is deemed so pertinent that it cannot in good conscience be left out of the briefing, the analyst may attempt to brief the information separately to the leadership of the committee concerned or, if the requester is an individual Member, tell him or her that sensitive source information is being omitted from the

briefing. The other possibility is that the analyst will leave out of a briefing sensitive source information that is relevant, and no one will be the wiser.

An even more difficult situation arises when an analyst obtains significant but sensitive information that is not included in the finished intelligence that goes to the Hill and is not provided as part of any briefing specifically requested by Congress. An example of this problem was provided by a CIA analyst who several years ago had become aware of reporting that, if true, suggested that another government was attempting to develop weapons of mass destruction that could pose a threat to the United States. The analyst knew that such a report would be a significant concern for particular Members of Congress but was also aware that the report, if provided to those Members, would in all likelihood be leaked to the press. While there was doubt among the analyst's colleagues that the reporting was credible, the analyst was convinced that it was.

The analyst was torn: "Do I take the report to the Congress and watch all hell break loose, or do I keep it to myself and risk being accused down the line of hiding significant information? I just hoped and prayed I wouldn't be caught in a trap." The analyst sought advice from a colleague in Congressional Affairs who could only offer: "Do what you think is right." Fortunately for this analyst, the report was soon included in a briefing requested by one of the intelligence committees, thus taking him off the hook.

But what if the briefing had not occurred? Was the analyst obliged to present such information on his own initiative to the relevant committees? Could he have been held accountable for a failure to do so? Does Congress expect to be advised in such circumstances?

Briefings given in response to Congressional requests often pose a "sourcing" question: how much information about sources and methods should be cited?

One Member of Congress . . . said that Congress does expect "sensitive intelligence" to be brought to its attention, but he conceded there were no criteria for identifying "sensitive intelligence" as such.

One Member of Congress interviewed for this study said that Congress does expect "sensitive intelligence" to be brought to its attention, but he conceded there were no criteria for identifying "sensitive intelligence" as such. The Member suggested that "intelligence agencies need to put themselves in the place of Members and decide what information would constitute a serious matter. It might be something that could necessitate the use of military force or might relate to a terrorist threat. It may not always be something that Congress has to act on, though, and it may not always be bad news."

The Member went on to say that intelligence agencies also should have latitude in deciding who in Congress is told of such information, so long as notice reaches the pertinent Members. "Not everyone in Congress needs to know everything, but the Intelligence Community needs to communicate significant information in some fashion to the people that matter who can ensure it is factored into the decisions being made by the body as a whole."

In 1995, DCI Deutch issued new guidelines for reporting information to the two intelligence committees. The guidelines were intended principally to ensure that operational information indicating potential oversight concerns reached the committees in a timely manner. Where substantive intelligence is concerned, the guidelines were no more specific than the existing statutory standard. While CIA and the other intelligence agencies that have adopted these guidelines occasionally report significant substantive information pursuant to them, the guidelines themselves do not move this particular train any further down the track.

On What Basis Are Distinctions Made as to Who in Congress Is Entitled to What Kind of Intelligence Support?

As noted earlier in this study, while all Members of Congress, by virtue of their elected positions, are entitled to have access

to intelligence, clear distinctions have evolved regarding the intelligence support provided to Congressional committees and to individual Members. What is the basis for these distinctions?

At one time distinctions evidently were made on the basis of security considerations. Until the two intelligence committees were created, there were no places on Capitol Hill that met the DCI's standards for storing intelligence. Now the Senate has a repository that serves Senate committees as well as individual Members. The House could establish a comparable facility if it chose to do so. In fact, the HAC, HNSC, and HIRC now have small facilities approved for the storage of intelligence.

Another possible basis for the distinctions in intelligence support would be the recipients' institutional "need to know." This might explain the more limited support provided to the Congress's "nonnational security" committees and to individual Members who do not have committee responsibilities in the national security area.

But "need to know" does not account for the difference in support accorded the intelligence committees and the other committees with jurisdiction over national security matters (for instance, the SFRC, SASC, HIRC, and HNSC). The explanation most frequently offered is that the funding and oversight responsibilities of the intelligence committees necessitate a broader level of substantive intelligence support. In order to reach judgments on the funding and effectiveness of intelligence activities, some interviewees asserted, the intelligence committees must be familiar with what has been produced and how. The needs of the other national security committees for substantive intelligence, it is argued, are more limited. They do not need all

of the intelligence that is produced—only that which is relevant to their ongoing activities. Moreover, they need to know only what the judgments of the Intelligence Community are, not how the intelligence underlying those judgments was gathered.

Although it is clear that the Intelligence Community has made a serious effort in the last two years to improve the intelligence support provided to the other national security committees, the distinctions that remain still rankle. A staffer for one of these committees, for example, said he “resented” the fact that his committee was not given the same information the intelligence committee was given. In particular, he could not understand why his committee could not be provided with information that would help it evaluate the reliability of the evidence underlying the conclusions reached by intelligence analysts: “[We] are the ones who have to act on this stuff, not the intelligence committee.”

Agreeing to, Preparing for, and Handling Intelligence Briefings on the Hill

One intelligence official interviewed for this article said that, despite 20 years of experience in briefing the Congress, “everything is ad hoc . . . every situation is a new situation . . . you would think things would be thought through by now, but they haven’t been.”

Three aspects of the briefing process are discussed below.

1. Agreeing To Provide Briefings. If an intelligence agency is asked by a Congressional committee to provide a briefing for its Members in closed session, the agency will usually accommodate the request, assuming that appropriate security measures are in place or can be put in place prior to the briefing.

But what about a request to provide an intelligence briefing under any of the following circumstances:

- In public session.
- To a committee whose chairman is obviously seeking the briefing to obtain information for political purposes.
- To a committee whose jurisdiction over the subject matter of the briefing is questionable.
- To an individual Member who has a track record of unauthorized disclosures of classified information.
- Limited to either the majority or the minority Members or staff of a committee or the majority or minority Members of the Senate or House.
- To an individual Member or group of Members who obviously plan to use the information to support their political agendas.
- When the request originates with the incumbent administration, which wants certain committees or individual Members briefed because the intelligence analysis happens to support its position on a particular issue.

Intelligence agencies deal with such requests all the time. How do they respond? The most realistic answer is, “It depends.”

For example, although no intelligence agency relishes a briefing in open session, it might agree to provide one, depending on which committee is making the request, what the committee’s perceived need is, and whether the subject matter of the briefing can reasonably be discussed in public. Similarly, the idea of providing briefings requested by

Although it is clear that the Intelligence Community has made a serious effort . . . to improve the intelligence support provided to the other national security committees, the distinctions that remain still rankle.

The idea of providing briefings requested by Members who have handled intelligence irresponsibly in the past may well grate, but most agencies if pressed will provide the briefing.

Members who have handled intelligence irresponsibly in the past may well grate, but most agencies if pressed will provide the briefing, albeit taking more care than usual with what they say.

Intelligence agencies normally will seek to avoid briefing in a partisan setting (that is, one limited to the Members or staff of one political party) or in a setting where it is apparent that their audience plans to make political use of the information provided. Nonetheless, most will if pressed provide the briefing, even at the risk that their information might be disclosed or their analysts drawn into one side of a public debate.

An example of what can happen when intelligence briefings are provided in such circumstances occurred during the 100th Congress, which was considering legislation to ease US export control restrictions. In May 1987, CIA analysts were called upon to brief a variety of Congressional committees concerning an alleged sale of "submarine-quieting" technology to the Soviet Union by a Japanese corporation, Toshiba, with the alleged complicity of a state-owned Norwegian firm, Kongsberg Vaapenfabrik, in violation of Western export controls. (The allegations had already been alluded to in public testimony by a Defense Department official and had been briefed to the intelligence committees several months earlier.) On 30 June 1987, largely in response to these intelligence briefings, the Senate passed an amendment to a trade bill prohibiting the United States from doing business with either of the foreign firms. The same day a group of Republican Congressmen, wielding a sledge hammer, obliterated a Toshiba video cassette recorder (VCR) on the steps of the Capitol.⁵⁷

⁵⁷ The Toshiba episode is the subject of an excellent case study prepared by Anna M. Warrock and Howard Husock, entitled "Taking Toshiba Public," published by the John F. Kennedy School of Government, Harvard University, Cambridge, MA, 1988.

Later the same year, when the Japanese and Norwegian Governments confirmed that their respective companies were guilty as charged and took punitive and preventive actions against them, the issue for Congress was whether the sanctions imposed earlier by the Senate should be retained in the House version of the bill.

In the meantime, the CIA analysts involved had found indications of additional export control violations by Toshiba. While the Defense and State Departments were unpersuaded by CIA's new information and were opposed to maintaining US sanctions against the companies in the House bill, CIA was asked to give repeated briefings to a small group of Congressmen who continued to favor sanctions against the companies involved. Not surprisingly, the most damning information found its way into the press. The principal CIA briefer was profiled in several major newspapers, occasionally being referred to on a first-name basis by the Members who took political sustenance from his briefings.⁵⁸ For many observers, the impression created by the episode was something less than a politically neutral CIA.

Intelligence agencies run a similar risk when they agree to undertake Congressional briefings at the request of an incumbent administration if the intelligence happens to support the administration's position. Yet here too, agencies are likely to accommodate the request if they believe a semblance of their independence and objectivity can be maintained.

One CIA analyst interviewed for this article recalled a request by an administration to brief undecided Members of Congress on a treaty whose implementation required Congressional

⁵⁸ "CIA Aide tells of Toshiba Deliveries," *Washington Times*, 9 March 1988, p 1

action. Not surprisingly, the intelligence happened to support the administration's position in favor of the treaty. CIA accommodated the request by agreeing to provide briefings to undecided Members. For those interested in receiving the briefing, analysts were sent to hold one-on-one meetings with each such Member.⁵⁹ CIA rationalized its action because other Members (on both sides of the aisle) were themselves encouraging their undecided colleagues to obtain the CIA briefing—it was not solely an administration idea—and because the briefers were careful to steer clear of any policy prescription. One of the briefers was nonetheless chagrined when a Member came up to congratulate him in the hallway on getting their side “two more votes” as a result of the briefing initiative.

2. Preparing for Briefings on the Hill.

Preparations for Congressional briefings also vary widely. Briefings to committees ordinarily receive the most attention. If the briefings involve a controversial topic, briefers are more likely to follow a written text that has been coordinated beforehand within the agency concerned and with relevant players in other agencies. Such briefings are also more apt to be previewed by managers at the agency concerned. Senior analysts are more likely to be tapped to do the briefing or be sent to accompany a more junior briefer.

If the briefing is essentially informational—presenting facts rather than judgments—and does not involve a controversial subject, analysts may brief on the basis of notes that are not coordinated with anyone or simply “wing it” without notes. There is no “dry run” in such instances.

If the briefing is to an individual Member or committee staff, few analysts will go to the trouble of preparing a script. The degree of

their preparation will depend upon the controversy attached to the issue and how they perceive the sophistication of their audience with respect to it. Often they will “wing it” based on their knowledge of the issue.

Whether an analyst doing an intelligence briefing is “prepped” on the political “lay of the land” that he or she can expect to encounter will also depend on the controversy attached to the briefing as well as the analyst's own experience and savvy. One Congressional staffer interviewed for this study saw such prepping as improper, perhaps leading analysts to alter their conclusions or the manner of their presentation to avoid conflict with Members. Most, however, saw this kind of preparation as essential, especially where the analyst was inexperienced in dealing with Congress. As one former CIA Congressional Affairs official noted: “Most of [the analysts] see themselves as intellectually pure, immune from politics. Then they are sent to the Hill, many never recognizing what a hornet's nest they are walking into . . . Often they would not recognize where a Member was coming from with his questions, and they would give an answer that totally confused and complicated the process. Sometimes it would take us a month to work out of it.”

Whether special attention is given to preparing an intelligence briefing on the Hill will also depend on the analyst's recognition that the briefing is likely to be controversial. Such recognition does not always occur. In 1993, for example, in connection with an intelligence briefing being given to a nonoversight committee on US-Russian cooperation on the space shuttle, a former Congressional Affairs aide related: “The analyst doing the briefing was unaware that the administration had taken a public position in favor of this cooperative venture where they [the White House] had stated that the Russians had the technology

“Most of [the analysts] see themselves as intellectually pure, immune from politics. Then they are sent to the Hill, many never recognizing what a hornet's nest they are walking into.”

—Former CIA official

⁵⁹ CIA rejected a suggestion by an administration representative that all undecided Members be bussed to the CIA for the briefing.

“The Intelligence Community always seems to be saying ‘the sky is falling, the sky is falling.’ Policymakers are usually the ones to say ‘not so fast, let me put this in context for you.’ ”
—Former executive branch official

and expertise to make a useful contribution. The analyst’s briefing took much the opposite view. When staff from the committee later raised this testimony with the White House, they went through the roof [with us] because they hadn’t been told about it. The fact is, the analyst didn’t realize he was putting himself at odds with them.”

Analysts also do not always appreciate what information has and has not been provided to Congress prior to incorporating it into their briefings. Some might assume that information from “raw” intelligence reports or from specially tailored analysis has been made available to the Hill when, in fact, it has not. In some cases, such information may be at odds with the finished intelligence the Hill has received. Where the information is especially pertinent, it may put the analyst in the position of having to explain why it had not been previously provided. Whether the analyst is made aware of these potential pitfalls seems more a matter of happenstance than systematic planning.

In sum, in most agencies, preparations for briefings on the Hill are left by and large to individual analysts and their immediate superiors. Congressional Affairs staffs will try to ascertain in advance whether the briefings being planned satisfy the requirements of the Hill and whether the presentations are in a form that can be assimilated by a Congressional audience. But what the analyst plans to say and how he or she plans to say it are normally left to the analytic office concerned. Whether this office fully appreciates the circumstances surrounding a particular briefing is by no means assured under the current system.

3. How Analysts Handle Intelligence Briefings on the Hill. Whether briefing Members of Congress or executive branch officials, intelligence analysts are trained to make factual, objective presentations. They are taught to base their judgments and conclusions on the available evidence. If those

judgments and conclusions are premised on certain assumptions, the assumptions are identified. If the evidence needed to reach a conclusion is not available, analysts are expected to say so.

By all accounts, the vast amount of intelligence analysis presented to Congress substantially meets these standards. But there have been occasions, in the view of some observers, when it has not.

“Too often,” said one executive branch official, “there is a selective presentation of intelligence to the Hill . . . It may not even be witting. Every bit of evidence that analysts can construe as pointing to [a foreign policy calamity in the making] is pointed out, while very little evidence is pointed out leading away from such a conclusion.”

As one former executive branch official noted, this often puts the policymaker in an awkward position: “The Intelligence Community always seems to be saying ‘the sky is falling, the sky is falling.’ Whereas policymakers are usually the ones to say ‘not so fast, let me put this in context for you.’ Generally they will downplay the significance of the intelligence. This leads to suspicions on the Hill that policy agencies are trying to interpret intelligence for their own political purposes. Intelligence analysts, on the other hand, are given more credibility because they are seen as independent rather than pursuing the administration’s policy line.”

A former Congressional Affairs officer also noted the tendency of analysts to want to present a lucid picture on the Hill regardless of the quality of the evidence: “Analysts often do not go to the trouble of alerting [Members] to the quality of the information that supports their conclusions. This happens particularly when they have a good story to tell. There is a tendency to want to tell that story rather than

Members of Congress often do not appreciate the principled position analysts occupy, and they attempt to draw them into policy discussions.

present the holes or gaps in it." A Congressional staffer put it this way: "Analysts are too focused on what the intelligence says and not what it doesn't say. Rarely will they point out to the committee when their evidence is thin."

"There is also a tendency among intelligence analysts," said another executive branch official, "to reach analytical judgments which are not theirs to make. But because they know that's what the Hill is interested in, they make them anyway." This official cited as an example an intelligence briefing in which an analyst reached a judgment that, if accepted as true, would effectively have prejudged a determination that the President, by law, was supposed to make.

Intelligence analysts are not, to be sure, in the policy business. They support policymakers; they do not make policy, nor do they opine about what policy is or should be. Indeed, it is precisely because they are not in the policy business that their analysis has value.

Members of Congress, however, often do not appreciate the principled position analysts occupy, and they attempt to draw them into policy discussions. This happens most often when the analysis being offered seems to indicate a particular policy choice and a Member wants the analyst to confirm it, or when the analysis offers no clear policy direction and a Member wants to know what conclusion the analyst would draw. Sometimes a Member's question arises so naturally that the analyst does not realize what he or she is being asked to do.

Even if the analyst demurs on the ground that he or she is not "a policy person," a Member will often press on with "well, just give me your personal opinion, then" or, "I know, but you're the expert. I've got 30 minutes to spend on this issue and that's it. So you've just got to help us on this." Or things may turn blatantly political ("So from what you've told us, the President's

policy is a lot of baloney. Is that right?") The analyst may feel his or her only choice at this point is to appear rude ("I can't answer that, sir") or ignorant ("I don't have an opinion, sir.") If the briefing is being held in open session, the pressure to respond to such questions is even greater.

Analysts who succumb to such pressure usually find themselves (and/or their bosses) on the receiving end of an angry telephone call from the policymaker(s) whose territory has been violated. Their relationship with the policymaker (whom they normally support) can be seriously jeopardized as a result.

Analysts may also find that Members who disagree with the policy that their analysis appears to support sometimes try to find fault with the analysis, either by pitting other analysts against them ("Does everyone else at the table agree with what Mr. Smith just said?") or by questioning the weight to be accorded the analysis ("Does this represent only your view, Ms. Jones, or only the view of your office? My understanding is the Secretary of Defense takes a different view.")

How analysts handle such questions may be crucial to the success of the briefing. Yet most analysts are unprepared to cope with them. While analysts are accustomed to defending themselves in intellectual combat, most are not used to this kind of questioning. Few have experienced the rough and tumble, and at times downright nastiness, of the political arena.

To remedy this situation, some interviewees suggested that analysts who brief Congress be provided formal training, or at least receive instruction prior to a particular briefing, in the foibles of the political process. But it is not clear how many absolutes there are to imbue. One Congressional Affairs officer, for example, on the question of providing an opinion on a policy

As a practical matter, so much intelligence is now shared with Congress that it is impossible for intelligence agencies to advise pertinent policymakers in the executive branch . . . of everything being provided.

issue, said he advises analysts that, if the pressure from Members becomes excruciating enough, "go ahead and answer the man's question . . . we'll worry about it later."

Intelligence Community Handling of Relations With the Rest of the Executive Branch

The tensions that may arise between an intelligence agency and other executive branch entities as a result of sharing intelligence with the Congress were described in part IV above. How does the Intelligence Community deal with these tensions?

Providing Advance Notice to Policymakers of Intelligence To Be Shared With the Congress

As a practical matter, so much intelligence is now shared with Congress that it is impossible for intelligence agencies to advise pertinent policymakers in the executive branch (primarily at the White House and the State and Defense Departments) of everything being provided. Nor are there any mechanisms for policy agencies to get "back-briefed" on what transpires on the Hill. Communications largely occur by word of mouth. Most policymakers are aware that the Hill has access to most finished intelligence and frequently receives intelligence briefings.

Intelligence agencies say they ordinarily make an effort to provide specific notice to affected policymakers if they anticipate that the intelligence to be shared with the Congress will cause problems for these policymakers. Obviously, unless the analyst or others involved in the process—such as the Congressional Affairs staff—spot a potential problem, notice will not be forthcoming.

At other times, notice is provided but, for a variety of practical reasons, does not "take." To begin with, notice is usually left until the last

minute. Players in other agencies are not consulted or notified until the intelligence agency has itself resolved what its analysts will say to the Hill. Phone calls to policymakers are missed. Proposed testimony winds up in the legislative affairs office rather than with the relevant policymaker. Or, if it is sent to the policymaker, he or she is too busy to read it.

Even if the appropriate policymakers do read what intelligence agencies plan to brief to the Hill, they may be too busy to weigh in with comments. Or, if they are uncertain the briefing will produce a "flap," they may simply decide to hope for the best. Some are also concerned that, if they comment on the proposed analysis or attempt to delay it from reaching the Hill, they may be accused of "politicizing" the process, either by the analyst concerned or by the committee or Member who requested the analysis.

The fear of subjecting analysis to political influence also inhibits intelligence analysts from confronting policymakers. While analysts insist that, in giving policymakers advance notice, they do not seek their views or concurrence, they know that policymakers frequently do not see the matter that way. If the policymaker does respond with comments, criticism, or complaints, the analyst may be left in a quandary as to how to deal with the policymaker's views within his or her allotted time frame.

Various bureaucratic means are currently used to cope with the notice problem. The DCI meets regularly with senior White House staff and the heads of policy departments, sometimes using these occasions to alert them to controversies brewing on the Hill. The DCI and heads of intelligence agencies also receive calendars that show upcoming Congressional briefings. Weekly teleconferences have been instituted between Congressional Affairs offices in which

upcoming briefings are identified and discussed. The principal intelligence offices at State (the Bureau of Intelligence and Research) and Defense (the Defense Intelligence Agency) participate in these teleconferences and thus are able to advise policymakers in their respective departments of scheduled hearings and briefings. On occasion, where Congressional support for important foreign policy initiatives of the administration may be affected, the National Security Council (NSC) staff has stepped in and has become the conduit for intelligence going to the Hill on a particular subject.

In the end, however, nothing short of personal contact between the analysts involved and the affected policymakers and/or their staffs is likely to be effective. By all accounts, making this connection remains a significant practical problem.

Perhaps no episode better illustrates the foibles of the Congressional process and its potential consequences for analysts and policymakers alike than the briefings in October 1993 regarding an NIE on Haiti. Work began on this Estimate in 1992, which turned out to be the last year of the Bush administration. After the US presidential election in November, the project was expedited to assist the President-elect in dealing with an anticipated exodus of "boat people" from Haiti to the United States. Intelligence personnel briefed officials in both the outgoing and incoming administrations on the draft NIE during the presidential transition period. The NIE went through the normal staffing process within the Intelligence Community and ultimately was approved by Acting DCI William Studeman and National Foreign Intelligence Board (NFIB) principals in early 1993.

By October, the political cauldron was bubbling. The United Nations had imposed an economic embargo on goods going into Haiti in an effort to force the military rulers there to

accept the return of President Jean-Bertrand Aristide, who had been ousted in a military coup in 1991. An international flotilla, led by the United States, was assembled to enforce the embargo. In the meantime, the US Government was weighing its options should the embargo fail to bring about Aristide's return. One of these options was the introduction of US military forces into the country. Opposing this idea was the Senate Minority Leader, who introduced a resolution severely limiting the President's authority to send in US military forces. The President, in turn, strongly objected to this proposed limitation on his authority, and negotiations were under way to work out a compromise.

Enter the NIE. In early October, a Republican staffer on the Senate Foreign Relations Committee asked CIA for a briefing on the Estimate. The senior analyst responsible for the NIE was sent to do the briefing. No effort was made at this point to advise the National Security Council (NSC) or the State Department. The briefing was given to about a half-dozen cleared members of the minority staff, who homed in immediately on issues dealing with Aristide. (It was clear to the analyst concerned that the staff already was aware of, at least in general terms, conclusions reached in the Estimate.) At the end of the briefing, according to one participant, the staff said the Estimate should be "briefed up to the Member level," but no specific request was made at the time.

A few days later, CIA received another request, this time from the HPSCI, to brief on Haiti. The briefing was to include responses to specific questions about Aristide. This request prompted the senior analyst involved to prepare a carefully worded classified statement describing the judgments and the supporting evidence contained in the NIE. The NSC and State Department were not advised

Perhaps no episode better illustrates the foibles of the Congressional process . . . than the briefings in October 1993 regarding an NIE on Haiti.

of the impending House briefing, however, until the morning of the late-October day on which it was to occur.

Earlier that day, unbeknownst to the analysts involved, Senator Jesse Helms, Ranking Minority Member of the Senate Foreign Relations Committee, had asked the White House, in the name of the majority and minority leaders, for a CIA briefing to take place as soon as possible for all Senators on the portions of the NIE pertaining to Aristide. The White House staff agreed to the request and instructed CIA to arrange such a briefing. Because the Agency's two senior Latin America analysts were already on the Hill to brief the House intelligence committee early that afternoon, the decision was to send them over to brief Senators after the House briefing had ended.

The briefing to the House committee proved an immediate sensation, provoking many, often hostile, questions. One Congressman reportedly said he intended to take the subject up with the President immediately after the hearing was over.

At the end of this grueling session, the analysts learned that they had to give a repeat performance to the Senate. It was now late afternoon, and they were exhausted, but a commitment had been made by the White House.

When the analysts arrived at the briefing room, they found that the Assistant Secretary of State with responsibility for Haiti was there, along with the Assistant Secretary for Legislative Affairs. When the briefing began, about 15 Senators, including Senator Helms, were present. The senior analyst briefed from the same script that he had used earlier before the House committee. As time wore on, additional Senators entered the room. Each time a new Senator arrived, the analyst would be asked to summarize what he had briefed earlier from the prepared script. According to one observer

who was present, this happened four or five times, with the analyst using progressively more succinct "shorthand" to describe the judgments contained in the Estimate. "By the end of the briefing," said this observer, "all nuance had disappeared."

The State Department officials in attendance were immediately put on the defensive by the Senators present and were unprepared to offer a convincing rebuttal. Senator Helms announced that the information was "something the American people needed to know about." Eight or nine Senators remained behind at the briefing to question the analysts. One of them put in a call to the White House to tell it that "the administration has a real problem on its hands."

In the weeks that followed, numerous briefings and hearings were held on the NIE. Some of these sessions involved lengthy, painstaking appraisals of the evidence that formed the basis for the Estimate's conclusions. Although the President subsequently came forward with a defense of the administration's position concerning Aristide, the wounds left at the White House and at the State Department did not soon heal.

Responding to Complaints and Requests of Executive Branch Officials

As noted in the preceding section, intelligence agencies acknowledge the need to provide a "heads-up" to policymakers with respect to intelligence going to the Hill that is likely to create a problem for them. The purpose of such notice is to ensure that policymakers are not "blindsided" and have adequate time to formulate a rejoinder.

Intelligence agencies are not looking for the policymakers' concurrence or comments on the substance of the briefing. Nevertheless, this is often what they receive, especially if policymakers see their program, policy, proposal, or initiative in danger of going down the drain as a result of the material being

provided to Congress. Policymakers may question whether the evidence underlying the analysis is accurate or complete, whether the judgments reached by the analyst are sound, or why this is something Congress needs to know. They sometimes ask if briefing Congress can be delayed until an ongoing initiative with an affected foreign government can be completed or until that government can be officially advised. It is not uncommon for a policymaker to elevate these issues directly to the top of the intelligence agency concerned.

What are the obligations of the Intelligence Community to policymakers in these circumstances? How far can intelligence agencies go in terms of shaping the content and timing of analysis without subjecting themselves (and policymakers) to charges of politicizing intelligence?

Most intelligence agencies say that, if a policymaker complains about the accuracy or completeness of intelligence analysis to be briefed to the Hill, the agencies will, in fact, review the preparatory work their analysts have done. As one senior intelligence official noted: "Policymakers who complain about intelligence going to the Hill are crying wolf most of the time, but about 20 percent of the time they may have a point. Let's face it. Analysis can be shoddy and unprofessional. [Intelligence producers] have an obligation to make sure it's accurate and complete before it leaves here." This may entail a *de novo* review of the evidence supporting the analyst(s)' conclusions and/or sending the analyst(s) involved to meet with the complaining policymaker in an effort to discern what the policymaker knows that apparently the analyst(s) do not. If the analysis proves to be inaccurate or incomplete, changes may be factored in. Ultimately, however, what is briefed to the Hill will remain the intelligence agency's call.

If, on the other hand, the policymaker's complaint is that he or she simply disagrees with the analysis or that it will adversely affect an ongoing initiative, intelligence producers typically will provide a polite turndown. "If you tell us it's wrong," said one intelligence official, "we'll fix it. But if you just say you don't like it, it goes."

Intelligence agencies sometimes will honor a request to delay providing intelligence to the Hill, depending on the circumstances. Why has the delay been requested—to avoid a legitimate diplomatic problem or because the policymaker simply wants to put off the inevitable conflict? How urgent are the needs of Congress? To what extent does the intelligence bear upon pending Congressional action, as opposed to being sought by a particular Member for a limited political purpose? Intelligence agencies recognize that, the longer they delay in responding to Congressional requests, the more likely Congress is to perceive their action as politically inspired. As one intelligence official noted: "Information that undermines an administration's policies and initiatives is precisely what Congress most wants to know about. Any effort to delay it is going to [incur] a heavy political cost."

Understandably, many policymakers are not altogether happy with this state of affairs. One who was interviewed for this study said bluntly that "the system is broken and no one can fix it—not the DCI, not the White House, and not [the policy departments] . . . What intelligence is briefed to the Hill is decided by analysts . . . Much of what goes up there is irrelevant as far as the Hill is concerned and much of it is crap. But because everyone is worried about politicizing intelligence, nobody will stop it . . . In the end, it is the analysts who are the ones that politicize intelligence by deciding what will be provided and how."

Most intelligence agencies say that, if a policymaker complains about the accuracy or completeness of intelligence analysis to be briefed to the Hill, the agencies will, in fact, review the preparatory work their analysts have done.

Some in Congress also fear that, if policy officials are invited to intelligence briefings, the end result is likely to be a "homogenized" presentation rather than a "gloves off" intelligence briefing.

A former policymaker expressed similar frustrations: "Intelligence agencies work for the President like everybody else in the executive branch. But the intelligence they produce is not seen as subject to his control. Once it is created, a certain imperative attaches to it. No one can stop it, even if it creates political problems for the President and even if its assertions and conclusions are dubious. Anyone who tried to do so would pay a high price in terms of being charged with cooking the books . . . So it goes to the Hill where it's seen as 'ground truth.' The views of the policymaker, on the other hand, are treated as suspect, tainted by his association with the administration . . . Is this good government? You tell me."

The frustrations felt by these policymakers may well be overblown. Clearly, administration policy is often the beneficiary, rather than a casualty, of intelligence analysis. Nonetheless, policymakers' concerns about how Congress will perceive and use intelligence are not entirely groundless.

How Congress Uses the Intelligence It Receives

Failure of Congress To Integrate Intelligence With Other Relevant Information

Most of the policymakers interviewed for this study faulted Congress for taking intelligence analysis too seriously. They noted that Congress is often unaware of, and does not take the time to understand, the context of the issue being addressed in intelligence briefings. They complain that what Congress often hears—particularly when analysts do not have firm evidence one way or the other—is the worst case scenario and that this, in turn, skews Congressional perceptions of the issue being briefed. They also fault Congress for too readily accepting the judgments of intelligence

analysts without probing the basis for them, leading to conclusions that the policymaker regards as unjustified by the evidence.

Most of the Members and staff interviewed for this article acknowledged the need to obtain appropriate "context" in order to evaluate the intelligence they receive and conceded that at times this does not happen.⁶⁰ Some noted, however, that the fault often lies with policymakers who refuse to appear at intelligence briefings to provide "the policy side" of an issue. This happens especially when the committee making the request is not the "policymaker's committee"—that is, the committee that exercises principal jurisdiction over the department to which the policymaker belongs.

Some in Congress also fear that, if policy officials are invited to intelligence briefings, the end result is likely to be a "homogenized" presentation rather than a "gloves off" intelligence briefing. Indeed, many intelligence analysts concede that they prefer briefing Congressional audiences without policymakers present in order to avoid uncomfortable situations.

Members and staff also acknowledge the frequent failure of Members to probe the judgments offered by intelligence analysts. As one Member put it, "Many Members take what the Intelligence Community says as gospel when in fact they should look on it as an educated opinion . . . The real problem is, Members don't spend enough time probing what they hear from the Intelligence Community. If they spent more time analyzing

⁶⁰ One Member did express a preference for receiving intelligence briefings without policy officials attempting to provide "context." This Member also thought Congress needed to hear "the worst case" from intelligence analysts if it is trying to weigh the consequences of a particular course of action

what they were hearing, they would know more what needs to be fleshed out in order to make their own judgments.”

Intelligence analysts usually cannot be counted upon for such help. They may be unwilling or unable to comment, even if asked, about the political context that surrounds a given issue. As a consequence, Members often do not receive a complete picture from an intelligence briefing.

This situation has implications not only for policymakers but also for Members themselves, especially when it later turns out that the intelligence analysis was wrong or should have been treated more circumspectly. Members who relied on such analysis in deciding how to cast a controversial vote or in formulating a position on a controversial issue may suffer politically as a consequence. They may, in turn, blame the Intelligence Community for producing what they see as shoddy analysis or, worse, for having deliberately misled them.

A graphic illustration of this problem occurred in connection with the Senate vote in December 1990 authorizing the President to send US troops to the Persian Gulf. For weeks preceding this vote, the Senate Intelligence Committee received almost daily briefings from representatives of the Intelligence Community, given principally by a senior DIA analyst, with other Community representatives also involved. These briefings focused on the strength of the Iraqi military forces. Staffers recall the committee being told “the Iraqi military was the most advanced in that part of the world, battle-tested by eight years of war with Iran . . . The Iraqis would use chemical and biological weapons against the coalition forces . . . In all likelihood, the United States was in for a prolonged conflict of at least six months’ duration involving many casualties.”

Largely on the basis of these dire predictions, several Senators on the SSCI—including its Chairman, David L. Boren of Oklahoma—as

well as the Armed Services Committee Chairman, Sam Nunn of Georgia, ultimately voted against the resolution authorizing the President to send troops to the Gulf. Later, when it turned out that coalition forces achieved immediate air superiority and the ground war ended in a matter of days with relatively few American casualties, the Senators who had voted in the negative were understandably upset. Some had lost considerable political support in their home states as a result of their votes. Senator Nunn later said the vote not only had hurt his credibility as chairman of the SASC but also had removed any thoughts he might have had about running for President, knowing that his vote would have been a “major debating point” in any election campaign.⁶¹ After all, they were Senators supposedly “in the know” and yet appeared to have egregiously misread the situation. Most felt “sandbagged” by the Intelligence Community.

“In the end,” said a former committee staffer, “it was apparent the Intelligence Community didn’t know squatola about the Iraqi military—what they had, how bad they were, or what they intended to do.” A former intelligence official disputed this view and suggested that information may have been held back from the Congress for military operational reasons: “The Intelligence Community knew how poorly trained the Iraqi forces were. Some of them had been dragged out of dancehalls in Baghdad in their Bermuda shorts. But, for some reason, this wasn’t highlighted to the Congress . . . perhaps because they were concerned this information would leak out and it might suggest which Iraqi forces were the softest targets.”

⁶¹ “Nunn Regrets Vote on Gulf War,” *Washington Post*, 26 December 1996, p. A12

***“The Intelligence Community knew how poorly trained the Iraqi forces were. Some of them had been dragged out of dancehalls in Baghdad in their Bermuda shorts. But . . . this wasn’t highlighted to the Congress.”
—Former intelligence official***

For those Senators whose votes against the Persian Gulf resolution were determined by the intelligence briefings they received, the high regard some of them had held for intelligence analysis was seriously shaken.

"But the real problem for the committee," said a former committee staffer, "was that it was never given 'blue team' information [information on US military capabilities]. It was never advised, for example, that stealth aircraft were to be used. It was never provided an assessment of our forces versus theirs."

Senators could, of course, have done more to seek such information outside the Intelligence Community. As one staffer said: "A lot of relevant information was not provided . . . Not because it wasn't available but because it was not asked for . . . Much of it could have been obtained by any legislative assistant in any Senator's office. But no one asked." Senators might have sought a Pentagon "net assessment" of the military forces involved in the Gulf conflict.⁶² Or they might have sought personal assurances from the Secretary of Defense or the Chairman of the Joint Chiefs of Staff. Indeed, several Senators on the SSCI did seek out additional information beyond what they were receiving from the Intelligence Community. At least one of them changed his position from opposition to support for the resolution on the basis of this additional information.

The administration itself might also have done more to get this kind of information into the committee's mix. Indeed, given the closeness of the Senate vote on the resolution authorizing the President to commit US forces, in retrospect it is surprising to some of those interviewed for this study that no such effort was made. Some attribute this to a historical reluctance on the part of the executive to give Congress advance information about US operational plans. But a former intelligence official involved in planning for the operation said a more likely explanation was that "[the] administration was so busy at that point, it paid very little attention to what was being briefed to

⁶² One former Senate staffer who did hear the briefings to the Senate Armed Services Committee by US military officials recalled them as "every bit as pessimistic" as those presented to the SSCI

the intelligence committees. Had they known the impact it was having, they might have done something about it, but this was really not on our screens at this point."

Several of those interviewed had little sympathy for the Members who found themselves in this position. As one noted, "they are big boys now and can look out for themselves." Another pointed out that "Members are never going to get all the information known to the executive on a particular issue . . . If they miss something, they miss something."

When Members are inadequately informed, however, regardless of who is to blame, the repercussions can extend beyond the Members themselves. For those Senators whose votes against the Persian Gulf resolution were determined by the intelligence briefings they received, the high regard some of them had held for intelligence analysis was seriously shaken. Such feelings can later translate into negative votes where intelligence funding and oversight matters are at issue.

Selective Use of Intelligence for Political Purposes

It will surprise no one that Members and their staffs at times use intelligence, or information derived from intelligence, for political purposes. The same phenomenon is not unknown in the executive branch, but Members of Congress operate for the most part in an open political environment, whereas executive officials usually take things public only after having lost the battle internally.

Neither branch has done much to discourage the practice. Leakers of intelligence are rarely identified and even more rarely punished. As one Congressional staffer noted: "People here have the sense that, since no one enforces the rules, they are not to be taken all that seriously. It's like the tendency people have to speed up

on a freeway if they never see a cop. Let me tell you, they aren't writing any tickets on this freeway."

Members of Congress are protected by the "speech and debate" clause of the Constitution, which immunizes them from criminal prosecution for what they say on the floor of either House. Nevertheless, because they are elected officials, they must think twice before saying anything that might jeopardize their standing for the next election or subject them to criticism by their colleagues. For most Members, these are strong inhibiting forces.

In any case, some Members, when they see a chance to score political points, will be tempted to do so, regardless of the source of their information. Members and staff concede as much. While most Members take care to protect the intelligence they are given, some will seek a way to turn it to their political advantage without (in their view) endangering national security. Few will be so bold as to publicly release classified information themselves, but there are many subtle ways to insinuate intelligence information into the political process. In the end, most Members and staff do not see a realistic means of controlling this practice. One staffer regarded it as "an artifact of the system." Another said, "the winds up here will blow where they will . . . Intelligence agencies know it and just have to factor it into their calculations."

Intelligence agencies, interestingly enough, actually give Congress high marks for protecting intelligence information. Apart from a handful of widely reported and somewhat dated examples, no intelligence agency personnel interviewed for this study could point to instances of compromise by Members or their staffs. In any event, no one saw the "leak" problem as sufficiently serious or widespread to warrant executive branch reconsideration of the amount or sensitivity of the intelligence shared with the Hill.

Widespread concern was expressed, however, over the growing number of cases in which Members or their staffs demand that information contained in intelligence briefings or reports be declassified or "sanitized"⁶³ so that the Member can make public use of it. According to many intelligence officials, the political motivation behind many of these requests is quite transparent. Many in Congress apparently have seized on this technique as a way of making selective use of intelligence in a legal way. Intelligence agencies have attempted to accommodate such requests, which has only encouraged more of them.

Failure of Congress To Assimilate Finished Intelligence

Another apparent problem is the failure of the national security committees of Congress (including the intelligence committees) to avail themselves in a meaningful way of the finished intelligence that is distributed to, or can be requested by, these committees. This situation was described in Part III.

Having access to, but not acting upon, information described in finished intelligence can become a source of embarrassment. This happened recently to the SSCI; its chairman publicly criticized the Secretary of Defense for failing to respond to finished intelligence reports indicating a security threat to the Khobar Towers complex in Saudi Arabia, only to find that the SSCI had received the same intelligence reports and had done nothing with them prior to the bombing there in June 1996 that killed 19 US airmen. Although the committee correctly noted that security for a military complex was not its responsibility, the fact that it had not previously raised the issue with those who were responsible weakened the impact of its chairman's criticism.

⁶³ This is accomplished principally by removing references to intelligence sources and methods and recasting the analysis in more general terms.

[For Congress,] having access to, but not acting upon, information described in finished intelligence can become a source of embarrassment.

Both branches recognize the problem, but neither has been inclined to do much about it. While the national security committees would like to do a better job of availing themselves of finished intelligence available to them, they are too busy to spend much time worrying about it. Because they are able to request and obtain intelligence briefings whenever they need them, keeping up with developments in finished intelligence does not claim a high priority on their time.

Having computer access to intelligence (now limited to the two intelligence committees) also does not appear likely to solve the problem, at least until more terminals become available and committee staffs become more adept at using them. Intelligence committee staff now must take the time to go to a computer terminal that is located outside the staff's own workspaces (and that may already be in use)

and search computer files for what may be relevant. Indeed, one Congressional staffer said that computer access actually had made it more difficult for him than having "hard copy" intelligence.

Intelligence agencies, for their part, recognize that very little of the finished intelligence sent to the Hill is actually read. Nonetheless, just the fact that the material is there or can readily be made available offers the agencies some degree of protection. Committees cannot claim they did not know this or were denied access to that. If the committees choose not to avail themselves of the finished intelligence that is offered or provided, from the standpoint of intelligence producers, "It's their problem, not ours."

VI. Conclusions and Recommendations

Once largely acquiescent in matters of national security, Congress took on a more assertive role in the 1970s, reflecting a loss of confidence in executive branch leadership after the Vietnam war and Watergate as well as a desire to establish itself as a coequal branch of government where national security was concerned. It is a role the legislative branch is not likely to relinquish.

To perform this role, Congress requires information about the rest of the world. For the most part, its needs can be satisfied (indeed, they often are *better* satisfied) without resort to intelligence. Nevertheless, there are times, not altogether infrequent, when intelligence agencies provide a unique source of relevant information. If Congress is to base its decisions on the best available evidence, it must have access to this information and integrate it into its own process.

In principle, the executive branch does not disagree. For at least the last 20 years, a steadily increasing flow of substantive intelligence has been provided to the Hill. For the executive branch, however, the results have been mixed. On one hand, intelligence has produced a more informed Congress, one better able to understand what is motivating the executive branch on the international stage and one less apt to make irrational overtures of its own. On the other hand, intelligence has provided, and continues to provide, the Congress with ammunition it can use to challenge the executive. Thus intelligence-sharing can be seen as fostering bipartisanship on foreign affairs and military issues in some cases and in other instances as undermining it.

Most of the intelligence shared with Congress is channeled through its two intelligence committees. In recent years, however, other committees as well as individual Members have increasingly been gaining access on their own terms.

In practice, the road has been a bumpy one. While reasonably well-developed, well-understood practices govern some aspects of intelligence-sharing, for the most part there are no formal rules.

Undoubtedly there is virtue in this kind of system for both sides. It allows maximum flexibility to deal with circumstances that all concede cannot be safely predicted. It allows leaders on each side (for instance, a new DCI or new chairman of a key committee) to take a greater hand in constructing and managing the overall relationship.

But such a system also leads to uncertainty and conflict. Because little is written down, existing practices are more apt to be challenged or violated, unreasonable or inappropriate demands are more likely to be made, and confusion is more apt to reign. What is accepted in one circumstance becomes precedent for the next. What is learned must be relearned.

Judging from the interviews conducted for this study, Congress seems more satisfied with the present system than does the executive—largely, one suspects, because in recent years Congress has been able to get what it wants from intelligence agencies. Indeed, most observers believe the Intelligence Community has bent over backward to accommodate in some fashion whatever Congressional demands are placed on it. Some see this compliant posture beginning to take a toll on managers and analysts within the Intelligence Community. Clearly, it is straining their relationship with the rest of the executive branch. As demands from Congress continue to grow, the greater these stresses will become.

Congress itself, though relatively satisfied with its ability to tap into intelligence information, still remains at the forbearance of the executive in terms of the intelligence it is given.

While reasonably well-developed, well-understood practices govern some aspects of intelligence-sharing, for the most part there are no formal rules.

Written “rules of the road” are needed to govern intelligence-sharing with Congress.

Even in the categories it is permitted to see or hear, Congress cannot request information it does not know exists.

Congress also has no systematic way for integrating the intelligence it receives with other information that bears upon a particular issue. Committee staffs or individual Members may attempt to do this, but their efforts are subject to the vagaries of the Congressional process. So long as this remains the case, the greater are the odds that Members will rely on intelligence and come to the wrong conclusions.

Some things need to change. The author’s recommendations on this score are enumerated below.

The Need for Written “Rules of the Road”

Written “rules of the road” are needed to govern intelligence-sharing with Congress. They are needed to govern what intelligence is shared and how such sharing is accomplished. They are also needed to govern the Intelligence Community’s internal efforts in support of Congress as well as the coordination of this support with the rest of the executive branch.

These “rules of the road” should be put in the form of “understandings to be generally observed” rather than “absolutes from which there is never deviation.” They should incorporate those longstanding, time-tested practices that have worked and end those that have not. The author’s notions of what has worked and what has not worked are set forth in the following three subsections.

Congress, through appropriate representatives, should participate in the development of these written understandings—even those internal to the executive branch—to alleviate any concern that the policies and procedures agreed upon by executive agencies may allow intelligence

support to Congress to be manipulated or politicized. Congress should understand how the executive branch plans to develop and provide such support and should be satisfied with those arrangements.

Finally, these written understandings should be subject to ongoing review and amendment. What does not work should be discarded.

What Should Be the “Rules of the Road” To Govern the Provision of Intelligence to the Congress?

1. Published Intelligence. The eight Congressional committees that share principal responsibility for national security matters should continue to have access to finished intelligence published for general circulation within the government. The daily current intelligence publications, the *National Intelligence Daily* and the *Military Intelligence Digest*, should continue to be provided in hard copy to these committees, and other finished intelligence pertinent to their needs should be available to them electronically, where feasible, or upon request. The intelligence agencies that produce finished intelligence should work directly with the staffs of each of these committees to determine specifically what the substantive intelligence needs of the committees are and how best to satisfy them. If needs exist that can be predicted at the beginning of each session—for example, intelligence relating to a vote on “most favored nation” treatment for China, renewal of the Export Administration Act, or ratification of a particular treaty—intelligence producers ought to factor these requirements into their planning at an early stage.

As a general rule, Congress should be content with the intelligence analysis produced for use by the executive branch and should not be part of the formal process in the executive branch for tasking such analysis. At the same time, Congressional needs ought to be taken into account in that process by the intelligence agencies themselves. In addition, where

Congressional requests for new analysis happen to coincide with the needs of policymakers, intelligence producers should try to accommodate such requests with available resources.

Committees that have, or acquire, electronic access to finished intelligence should consider hiring a computer specialist (preferably with experience in the Intelligence Community) who is able to identify and retrieve pertinent reporting in response to Member or staff requests. Similarly, committees that lack computer access should be served by liaison officers from the producing agencies who can identify and obtain finished intelligence pertinent to the needs of Members and staff.

Several of those interviewed for this study thought the Intelligence Community should go further by establishing a secure "liaison office" on the Hill, similar to the office operated by the military services, that would be linked electronically to intelligence producers and provide immediate responses to requests for finished intelligence from committees and Members. While this proposal deserves closer scrutiny, whether the advantages would justify the costs is not altogether apparent.

Finished intelligence should not normally be furnished to committees or individual Members who do not have responsibilities in the national security area. Requests from such committees or Members for written analyses should ordinarily be referred to the Congressional Research Service, which produces highly professional analyses using publicly available information,⁶⁴ or, if that does not suffice, should be satisfied by intelligence briefings.

⁶⁴ It is apparent that the CIA and perhaps other intelligence producers need to establish a working relationship with the Congressional Research Service. Both are involved in providing information support to Congress. Many requests now referred to intelligence agencies could be satisfied (indeed, *should* be satisfied) with publicly available information. A mechanism for handing off such requests to the Congressional Research Service ought to be created.

Access to finished intelligence that has been tailored to the needs of the President and other senior officials should continue to be limited to situations in which such analysis is pertinent to an oversight investigation or inquiry. "Raw" intelligence should not routinely be provided to the Hill, but it should continue to be made available for oversight purposes and should be provided to the oversight committees where relevant to substantive briefings.

2. Intelligence Briefings. Consistent with security requirements, intelligence briefings on substantive topics should continue to be provided in response to the requests of Congressional committees, so long as the requests relate to matters within the jurisdiction of such committees. Intelligence briefings for individual Members should ordinarily be limited to matters within the jurisdiction of a committee to which the Member is assigned or to issues of specific concern to the Member's state or district.

Where it appears that a Member's request for a briefing can be satisfied with unclassified information (for instance, background for a foreign visit or for a meeting with a foreign dignitary, or material relating to a constituent request), intelligence agencies should try to ascertain whether the request can be satisfied by the Congressional Research Service. If the needs of an individual Member cannot be met in this manner, intelligence agencies should provide a briefing under the auspices of the pertinent intelligence committee. This will ensure that the briefing is given in a secure environment, provide an opportunity for the Member to be educated on the handling of classified information, and subject him or her to the intelligence committee's rules prohibiting disclosure of the information except in a closed session of the parent body.

Where it appears that a Member's request for a briefing can be satisfied with unclassified information . . . intelligence agencies should try to ascertain whether the request can be satisfied by the Congressional Research Service.

Intelligence briefings should as a rule be provided in closed session.

[They] also should not be given in partisan settings.

Substantive briefings should not divulge information concerning intelligence operations, budgets, and programs unless the briefings are being presented before the intelligence committees. Otherwise, distinctions should not be made in terms of the substantive analysis briefed to Congressional committees, even if this means "sourcing" relevant information. What is said to one should be said to all, assuming the requisite security measures are in place.

Intelligence briefings should as a rule be provided in closed session. Such briefings inherently involve the presentation of information derived from classified information. Forcing intelligence agencies to present this information in public jeopardizes security, places an undue burden on the participants, and in the end substantially diminishes the value of the briefing. If a committee sees a compelling public interest in having an intelligence briefing made public, a sanitized transcript of the briefing can be created and released.

Intelligence briefings also should not be given in partisan settings. To do so creates the impression that the Intelligence Community is lending itself to partisan purposes. It should be understood by both sides that requests to brief the Members or staff of one political party on a substantive issue are not appropriate unless the requester is willing to open the briefing to Members of the other political party.

Finally, requests for intelligence briefings to Congress should come from Congress itself. If an administration wants Members of Congress to receive intelligence briefings on a particular issue, it should suggest this directly to the Members concerned rather than levying the requirement upon intelligence agencies to make such contacts.

3. Intelligence That Is Neither Published nor Briefed. Some understanding needs to be reached with respect to the obligation of

analysts (and their superiors) to bring significant intelligence to the attention of Congress when such information is not included in finished intelligence going to the Hill and is not otherwise being provided in response to a Congressional request. Clearly, if the analyst (or producing agency) concludes that the information is patently unreliable, there should no obligation to convey it. Moreover, when the information is "interesting" but has little significance in terms of US security or the functions of Congress itself, there should be no obligation to provide it.

If, on the other hand, the information is deemed reliable and bears directly on a matter that Congress is considering or will soon act upon, the obligation to convey it is strong. Similarly, if the information is judged reliable and discloses a development that could pose a serious national security problem for the United States (whether or not a Congressional response is immediately indicated), the obligation is strong.

It should also be understood by both sides that intelligence agencies may choose to use a variety of means and channels for conveying intelligence to Congress. Especially sensitive but highly relevant information might be limited to the Congressional leadership and/or the leaders of the intelligence committees; less sensitive but highly relevant information might be limited to the leaders of the policy committee(s) concerned; sensitive but less relevant information might be limited to the leaders of the intelligence committees. Committee staff directors could act for their respective bosses in most circumstances.

Congress needs to understand that a decision to convey sensitive intelligence that is not otherwise being reported to it involves a subjective evaluation of its reliability as well as its value to Congress. When an intelligence producer decides not to provide sensitive intelligence because it meets neither test, that

Intelligence agencies should require that all Congressional briefings . . . be scripted.

decision ought to be accorded reasonable deference on the basis of the facts that were known, or should have been apparent, to the producing agency at the time the decision was made.

For its part, the Intelligence Community needs to understand that, if sensitive intelligence is deemed reliable and Congressional interest in having such intelligence is strong, *someone* in Congress needs to be advised. Close calls should be resolved in favor of notice in some appropriate manner. Congress has traditionally been far more agitated if *no one* on the Hill received word of significant intelligence than if intelligence agencies simply chose the wrong person(s) to advise.

What Should Be the “Rules of the Road” To Govern the Intelligence Community’s Preparations for Briefing Congress?

Preparations for intelligence briefings vary widely. More attention is given to briefing committees than to briefing individual Members or staff. In fact, however, briefings to individual Members or staff often have greater consequences than briefings to full committees, or can lead to briefings of full committees. The degree of preparation should be roughly the same whatever the audience.

First, when a request for a briefing is received, the analyst assigned to provide the briefing should be advised by the Congressional Affairs office of precisely what is expected by the Congressional requester. Currently, such guidance is provided to some degree, but it often consists of vague instructions conveyed over the telephone or by electronic mail. Often the Congressional Affairs office itself has an unclear understanding. A more routinized, systematic approach would mean fewer problems.

Analysts who have never given Congressional briefings need to be instructed by their respective Congressional Affairs offices. They should be told to avoid being drawn into policy

discussions and how to deal with the situations that commonly arise. In this regard, they should be given the same latitude they have with consumers in the executive branch. That is, if they are permitted to set forth alternative scenarios for policymakers and opine as to the likelihood or consequences of each one, they ought to have the same latitude before Congress.

Analysts who have never briefed Congress should also be instructed as to what sorts of information are appropriate in their briefings and what sorts, if any, are to be avoided. This should include being told to make clear and comprehensive recitations of the evidence supporting their analytical judgments. If there are concerns about sourcing some of the evidence, the analyst should be told how to handle them. If analysts are appearing before other than the intelligence committees, they should be told to avoid giving information that concerns intelligence operations, programs, or funding.

Intelligence agencies should require that all Congressional briefings—to committees, to individual Members, to staffs, or to entire bodies—be scripted. These scripts should contain all the hallmarks of good analysis—that is, they should set forth the pertinent background, state the key judgments as well as the presumptions and evidence underlying them, and make explicit what is known and unknown. Scripting takes time and effort, but it is the only way an analyst’s agency has of knowing exactly what he or she expects to say to Congress and the only means of establishing with the rest of the executive branch what an analyst plans to say or has said.

A systematic process should also be established to identify any briefing that is likely to be controversial. Briefings should be considered controversial if they present

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analytical judgments (as opposed to reporting factual material) on a topic where there is dispute in Congress or among the public about what US policy should be. Determining whether this situation exists should, at a minimum, involve a communication between the analyst(s) and the Congressional Affairs staff concerned.

For those briefings identified as potentially controversial, a special set of procedures should apply:

- A senior analyst should be selected to do the briefing or, at a minimum, to accompany the junior analyst to the Hill. Analysts who are known to have “axes to grind” on particular issues—those who have strong personal differences with the assessments being briefed—should ordinarily not be selected for these assignments.
- Thorough internal coordination of the proposed presentation should take place. Analysts should not be sent to give briefings on controversial subjects that their superiors would not be prepared to give. Where time permits, “dry runs” of the briefing should be conducted.
- An analyst conducting a briefing should be “educated” if necessary by the Congressional Affairs staff on what sorts of responses and questions the analyst may encounter at the briefing so that he or she can prepare sufficiently. If Members being briefed have already taken positions on the issue involved, or have expressed concerns about the issue, the analyst providing the briefing should be aware of these factors—not for the purpose of modifying the briefing but rather to facilitate a coherent discussion at the time the briefing occurs.
- Coordination should occur with the other Intelligence Community briefers, if any, by telephone, video conference, or face-to-face meetings. The purpose of such coordination

should not be to reconcile competing analytical views, but rather to identify likely areas for questioning as well as to ensure that appropriate policymakers are aware of the briefings.

Whether or not a briefing is deemed controversial, analysts who have not previously briefed on the Hill should be instructed on the techniques to use—and those to avoid—in making oral presentations to the Congress. For most occasions, analysts should not read from the prepared script. Indeed, more often than not, they will not be allowed to. Analysts should be expressly told this and should prepare themselves for it. If they hope to hold the attention of their audience, oral presentations should come directly to the point with a minimum of background explanation. Analysts should take the key points from their prepared script, and, where points are known to be controversial, should use precisely the same wording for the oral presentation. Otherwise, the briefing can take on an “Alice in Wonderland” quality. Leave the details to questioning.

What Should Be the “Rules of the Road” Governing Coordination of Intelligence Support to the Congress With the Rest of the Executive Branch?

As a practical matter, because so much intelligence is provided to the Hill, it would be impossible (and ultimately unproductive) for intelligence agencies to effect coordination on all of it with the rest of the executive branch. A more selective approach seems called for.

As a starting point, the National Security Council staff should identify those (perhaps five or six) national security issues of particular significance to the incumbent administration on which it wishes to be notified before intelligence on these issues is given to the Hill. The NSC staff should provide this list at the start of each session of Congress. If such a list is not immediately forthcoming, the

Intelligence Community should request it. Relevant Congressional Affairs staff and analysts should also be made aware of this list.

Beyond this, advance notice should, at a minimum, be provided to pertinent policy officials when the intelligence to be provided to Congress conflicts with, or otherwise can be expected to undermine, policies or proposals under their cognizance. Such notice should be provided by the analysts involved (or by their superiors) and should go directly to the policymakers or to their staffs. Congressional Affairs channels should not be solely relied upon for this purpose. Where possible, a copy or draft of the proposed briefing script should be delivered in time for affected policymakers (and/or their staffs) to read it.

If policymakers object to what intelligence agencies plan to say on the grounds that it will undermine their policies or proposals, intelligence agencies must have the intestinal fortitude to withstand their complaints. If, on the other hand, a policymaker's complaint concerns the accuracy or completeness of the analysis proposed to be briefed, the agency involved should satisfy itself that the quality of the analysis is sound by reviewing the evidence and the reasoning and, where feasible, interviewing the complaining policymaker. The determination of the intelligence producer should be regarded as final. Once an intelligence agency has determined that the analytical work is sound, it should be provided to the Hill and the complaining policymaker so informed.

If a policymaker asks that analysis be delayed in going to the Hill, the intelligence agency ought to ask why. If the analysis simply does not "suit" the policymaker or if he or she only wants more time to formulate a rejoinder, delay is not justified. On the other hand, if there are demonstrable problems that might be created—for example, if the United States has promised a foreign government to treat a matter confidentially and needs time to consult

this government before briefing Congress—greater latitude should be shown. If the delay is expected to be substantial, the Congressional requester should be consulted about the situation.

Occasionally, information will be sent to the Hill without an intelligence agency perceiving its "flap" potential in advance; the dustup occurs after the material is presented. In these circumstances, the intelligence agency concerned should take the initiative to notify the policymaker(s) affected as soon after the briefing as possible, providing a copy of the script and other information that may be necessary to understand what transpired.

The Need for a More Systematic Effort To Integrate Intelligence Into Congressional Decisionmaking

Congress, like consumers of intelligence in the executive branch, needs to be able to place the intelligence it receives into context. Unlike executive branch consumers, few of its Members enter service as experts in national security affairs, and fewer still have the time and energy outside their normal duties to become experts.

On any given issue, in addition to the intelligence they receive, consumers in the executive branch ordinarily have information regarding the US posture on the issue (what the United States is doing about it, what US capabilities are for dealing with it, and what the domestic implications of the issue are), as well as information about the postures of other governments on the same issue. Moreover, they are usually in touch with experts in the private sector, including academics, media people, "think tanks," and specialists in the United States and abroad.

If policymakers object to what intelligence agencies plan to say on the grounds that it will undermine their policies or proposals, intelligence agencies must have the intestinal fortitude to withstand their complaints.

While intelligence analysts cannot be expected to know . . . all the considerations weighing upon a particular policy decision, . . . they can alert Members and/or their staffs to the existence of such considerations when they are aware of them.

Lawmakers have access to the same type of information, should they seek it, but this does not occur naturally. The flow of information to Members is haphazard and unfocused. Even the work done in particular committees will ordinarily not encompass all aspects of a particular national security issue—that is, diplomatic, military, intelligence, and domestic considerations. For those who have access to the intelligence, the tendency is to place too much reliance on this aspect of the decisionmaking process. As seen in the Persian Gulf episode described earlier, this tendency can lead to undesirable consequences for particular Members when the intelligence proves to be wrong; it also may ultimately undermine the relationship these Members have with the Intelligence Community.

While intelligence analysts cannot be expected to know—much less inform Members—about all the considerations weighing upon a particular policy decision by the executive branch (apart from the intelligence analysis they are briefing), they can alert Members and/or their staffs to the existence of such considerations when they are aware of them. Doing so would at least put Members on notice that other relevant information exists and help them discern where to look for it.

Congressional committees themselves should make a more systematic effort to ensure that their Members receive a complete picture of significant issues. In most circumstances, the preferable alternative is to have policy witnesses appear at intelligence briefings and intelligence witnesses appear at policy briefings. When this is not feasible, an effort should be made to have separate policy and intelligence briefings. Policy departments and intelligence agencies, for their part, need to recognize the legitimate need of Congressional committees in this regard and abandon their predilections to appear before only “their” committees.

Beyond the briefing process, committee staffers should be designated to develop appropriate “context” for their Members where significant national security issues are concerned. This might entail establishing networks of contacts at policy agencies, military services, other Congressional committee staffs, the Congressional Research Service, private think tanks in the United States and abroad, the academic community, the media, and other institutions—networks that could be quickly tapped when “context” was needed on a given issue. To some extent, this kind of networking occurs today, but whether and how well it is done depends on how much time, energy, and ingenuity a staffer devotes to it. Higher priority and greater management attention should be given to this aspect of staff work.

Finally, Congressional committees should from time to time assess how well they have been served in terms of the information (including the intelligence) they received on a particular issue. Did the intelligence analysis prove correct? If not, where did it fail and why? Did the committee receive all of the relevant information bearing upon the issue? If not, why not? What additional information should have been obtained? At present, this sort of assessment rarely, if ever, occurs.

The Need To Discourage Political Use of Intelligence

Operating as part of a political institution, Members of Congress and their staffs are frequently tempted to make political use of the intelligence to which they have access. On the whole, they do a commendable job in resisting this temptation. Still, scoring political points on issues of public importance will be justification enough for some. Experience has shown that when these leaks occur very little is done about them.

While none of this is likely to change, several preventive actions could be taken to discourage such disclosures by the legislative branch. (The executive branch is equally culpable but beyond the purview of this study.)

One safeguard is simply for intelligence briefers to be good analysts by giving a complete, unbiased picture of every issue, identifying the caveats and uncertainties. If a Member is tempted to make selective use of information for political purposes, this approach by briefers will at least force him or her to confront intellectually the information on the other side of the coin. Few Members wish to be accused of intellectual dishonesty by their colleagues who heard the same briefing. If they recognize that the analysis provides something less than full support for their political position, they may be less tempted to make use of it at all.

Another preventive measure is for briefers to tell Members specifically (if it is not apparent) of the harm that might result if the intelligence is disclosed. If an intelligence agency has a particular concern, it might well work with staff of the Member concerned, either before or after the intelligence is conveyed, to explain what the specific harm might be—for example, damage to diplomatic relations with country X, loss of a SIGINT source, endangerment of a human agent, or countermeasures to thwart US military operations. Members may not, in the end, find such warnings persuasive, but at least they would be using the information with their eyes open. At present, many Members simply do not appreciate the possible consequences of their actions at the time they use the information.

Disclosures might also be prevented by adoption of the suggestion earlier in this study that intelligence briefings for individual Members who are not assigned to a committee with national security responsibilities be channeled through the intelligence committees of their respective Houses.

Finally, some control ought to be exerted over Congress's growing practice of requesting that "sanitized" versions of intelligence reports be prepared for public use. Such control might take the form of (1) limiting the initiation of such requests to the committees that have national security responsibilities (as opposed to individual Members or committees without jurisdiction in the national security area); (2) establishing as a matter of policy that intelligence agencies will not "sanitize" selected portions of documents that support one side of a political argument without sanitizing and, if necessary, releasing the portions that support the other side; and/or (3) accommodating such requests only when they meet a higher threshold—for example, when the issue involves an important matter of general public interest and sanitization can be readily accomplished without jeopardizing sensitive sources and methods.

Congress relates to the Intelligence Community essentially in three ways: by annually providing funds for intelligence, by performing oversight of intelligence, and by receiving and using intelligence.

Where funding and oversight are concerned, Congress relates to the Intelligence Community in much the same way Congress relates to other departments and agencies of the executive branch. The third aspect of the relationship, however, while played out in the same contentious, complex crucible, has at its heart a different purpose: namely, to help Congress carry out its own responsibilities. Thought of in this way, intelligence-sharing is not only different from other aspects of the Intelligence Community's relationship with Congress but is qualitatively different from the functions performed by other executive branch agencies. (Is there another element of the executive branch whose charter includes providing assistance to the Congress in the performance of its duties?)

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By the same token, this particular function—supporting Congress with information bearing on policy issues—at times creates tensions with the rest of the executive branch, which is unaccustomed to having other departments and agencies more or less openly undermine administration policies and proposals on the Hill.

One would think enough self-interest exists on each side of this political triangle to drive the parties toward a mutual accommodation where intelligence-sharing is concerned. Congress has an interest in seeing that its needs are met and that information is not being improperly withheld. Intelligence agencies have an interest in ensuring that Congressional requirements do not outstrip their resources, that their information is protected, and that their independence from the political process is respected. The rest of the executive branch has an interest in seeing that the intelligence

support rendered Congress is, to the extent possible, consistent with the executive's own needs.

Thus far, however, the players involved have shown little interest in developing an agreed-upon framework for intelligence-sharing, preferring instead the rough and tumble, give-and-take of the political process, uncertain and contentious as this may be. Their reluctance may stem in part from an inability to envision what such a framework might look like and what the benefits might be for themselves. If a study such as this one can make a difference, it is hopefully by providing a vision of the possibilities.