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Congressional Oversight of Intelligence: Current Structure and Alternatives

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Summary

Interest in congressional oversight of intelligence has risen again in the 110th Congress, in part because of the House Democratic majority's pledge to enact the remaining recommendations from the U.S. National Commission on Terrorist Attacks Upon the United States, commonly known as the 9/11 Commission. Its 2004 conclusions set the stage for reconsideration of the problems affecting Congress's structure in this area. The commission's unanimous report, covering many issues, concluded that congressional oversight of intelligence was "dysfunctional" and proposed two distinct solutions. These were: (1) creation of a joint committee on intelligence (JCI), modeled after the defunct Joint Committee on Atomic Energy (JCAE), with authority to report legislation to each chamber; or (2) enhanced status and power for the existing select committees on intelligence, by making them standing committees and granting both authorization and appropriations power.

Congress's interest in a joint committee on intelligence dates to 1948 and the early years of the Central Intelligence Agency (CIA) and Director of Central Intelligence (DCI). Similar recommendations have arisen in the meantime, although the lion's share were made before separate Intelligence Committees were established in the House (1977) and Senate (1976). The numerous proposals for a JCI, which would end the two existing intelligence panels, moreover, vary in their specifics and raise competing viewpoints over practical matters and matters of principle.

Although it did not adopt either of the 9/11 Commission proposals, Congress has pursued other initiatives to change its intelligence oversight structure and capabilities in the 110th Congress. The House altered its arrangements (H.Res. 35), when it created an advisory Select Intelligence Oversight Panel on the Appropriations Committee, a hybrid structure that combines members of the House Permanent Select Committee on Intelligence and the Committee on Appropriations. The Senate has also changed its relationship between appropriations and intelligence. Other proposals, some with a long heritage, include clarifying the independent audit authority of the Government Accountability Office (GAO) over the intelligence community, particularly the CIA; placing the CIA expressly under the Government Performance and Results Act; increasing the coordinative capabilities and reporting of relevant inspectors general (IGs); and adding a new IG covering the entire intelligence community, and others for certain Defense Department entities.

This report first describes the current select committees on intelligence and then the former Joint Committee on Atomic Energy, often cited as a model for a counterpart on intelligence. The study also sets forth proposed characteristics for a joint committee on intelligence, differences among these, and their pros and cons. The report, to be updated as events dictate, examines other actions and alternatives affecting congressional oversight in the field.

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Congressional Oversight of Intelligence: Current Structure and Alternatives

Introduction

Congress has long considered various ways to oversee intelligence, an often perplexing and always difficult responsibility because of the secrecy and sensitivity surrounding intelligence findings, conclusions, dissemination, and sources and methods.[1] The first oversight proposal — to create a joint committee on intelligence (JCI) — appeared in 1948.[2] This was just one year after the establishment of the Cental Intelligence Agency (CIA) and the Office of Director of Central Intelligence (DCI), both integral parts of the most far-reaching executive reorganization in United States history.[3] Numerous initiatives to change Congress's oversight structure have materialized in the meantime, including, most importantly, the creation of parallel Select Committees on Intelligence in both chambers. Nonetheless, Congress's oversight capability in this area has been questioned. The 9/11 Commission's report, released in 2004, notably, concluded that congressional oversight of intelligence was "dysfunctional" and recommended either a merger of appropriations and authorization powers into each select committee or the creation of a Joint Committee on Intelligence.[4] Since then, the House's and Senate's actions modifying each body's own structure have followed different paths, diverging not only from the 9/11 Commission proposals but also from each other.[5]

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[1] See, among other sources, CRS Report RL32617, *A Perspective on Congress's Oversight Function*, by Walter J. Oleszek; CRS Report RL33742, *9/11 Commission Recommendations: Implementation Status*, by Richard F. Grimmett, Coordinator; and CRS Report RL33715, *Covert Action: Legislative Background and Possible Policy Questions*, by Alfred Cumming;

[2] H.Con.Res. 186, 80th Cong., 2nd sess., introduced by Rep. Devitt, Apr. 21, 1948.

[3] The monumental National Security Act of 1947 also gave birth to the National Security Council and National Military Establishment, later re-designated as the Department of Defense (61 Stat. 496 et seq.).

[4] U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report* (Washington: GPO, 2004), p. 420. The commission offered a second option to strengthen oversight: i.e., "a single committee in each house of Congress, combining authorization and appropriating authorities .... (Ibid.)."

[5] The House and Senate have considered proposals in this broad area through their existing committees as well as a bipartisan working group in the Senate, which has recommended enhancing the powers and status of the current Intelligence Committee. Sen. Mitch McConnell, "Senators Reid and McConnell Convene Meeting of Bipartisan Working Group to Reform Congressional Oversight of Intelligence," Press Release, Oct. 4, 2004; Sen. Bill

(continued...)

This report reviews the basic characteristics of proposed joint committees on intelligence, differences among them, and perceived advantages and disadvantages.[6] It also covers the congressional panels a JCI would replace: namely, the House and Senate Select Committees on Intelligence. Along with this is a brief review of the defunct Joint Committee on Atomic Energy (JCAE) — often cited as an organizational model for a joint intelligence panel, as it has been for the 9/11 Commission.

In addition, the report looks at recent actions, such as the creation of a new (and possibly unique in the history of Congress) intelligence oversight panel on the House Appropriations Committee, consisting of Members from both the parent committee and the Select Committee on Intelligence; the new panel would make recommendations regarding the annual intelligence community appropriations to the Defense Appropriations Subcommittee. This report also covers separate developments in the Senate, including a Memorandum of Agreement (MOA) in 2007, designed to improve coordination and transparency between the Intelligence Committee, which handles authorizations for the intelligence community, and the Appropriations Committee, which handles appropriations for the same. Other ways seen as strengthening oversight in this field would be to: (1) clarify and expand the authority of Government Accountability Office (GAO) over the intelligence community, particularly the CIA; (2) remove the Agency's exemption from coverage of the Government Performance and Results Act; and (3) increase coordination and strengthen reporting requirements among the relevant offices of inspector general.

House and Senate Select Committees on Intelligence

A joint committee on intelligence would replace the current House Permanent Select Committee on Intelligence, established in 1977, and the Senate Select Committee on Intelligence, created a year earlier.[7] These units emerged after

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[5] (...continued)
Frist, "Frist, Daschle Appoint Members to Working Group Evaluating 9/11 Commission Proposals," Press Release, Aug. 25, 2004.

[6] Additional coverage of JCI recommendations, characteristics, and perceived advantages and disadvantages, which are detailed below, is available in U.S. Congress, House Committee on Rules, Subcommittee on Rules of the House, *House Rule XLVIII*, hearing, 101st Cong., 2nd sess. (Washington: GPO, 1990); Frederick M. Kaiser, "A Proposed Joint Committee on Intelligence: New Wine in an Old Bottle," *Journal of Law and Politics*, vol.5, fall 1988, pp. 127-186; and Independent Task Force, Council on Foreign Relations, *Making Intelligence Smarter: The Future of U.S. Intelligence* (New York: Council on Foreign Relations, 1996), pp. 32-33.

[7] Development of congressional oversight of intelligence is examined in, among many other sources, U.S. Congress, Senate Select Committee on Intelligence, *Legislative Oversight of Intelligence Activities*, S.Prt. 103-88, 103rd Cong., 2nd sess. (Washington: GPO, 1994); Frederick M. Kaiser, "Congress and the Intelligence Community," in Roger Davidson, ed., *The Postreform Congress* (New York: St. Martins Press, 1992), pp. 279-300; Loch K. (continued...)

extensive, detailed congressional and executive investigations revealed widespread abuses in the intelligence community and concluded that effective congressional oversight was lacking. The panels were set up to consolidate legislative and oversight authority over the entire intelligence community, supplanting the fragmented system at the time, which relied exclusively on disparate standing committees. Although titled "Select," the intelligence panels are hybrids of standing and select committees, adopting characteristics of both types. For instance, the panels have only temporary membership, as select committees have, because they are usually short-term constructions; yet each panel holds authority to report legislation to its own chamber, a power usually reserved to standing committees.

Jurisdiction and Authority

The Intelligence Committees have broad jurisdiction over the intelligence community and report authorizations and other legislation for consideration by their respective chambers. A recent change in the House places three members of the Intelligence Committee on a new Select Intelligence Oversight Panel on the Appropriations Committee (H.Res. 35, 110th Congress). The new panel, which appears unprecedented in the history of Congress, is to study and make recommendations to relevant appropriations subcommittees. This includes the Defense Appropriations Subcommittee, which continues to prepare the annual intelligence community budget, as part of the classified annex to the bill making appropriations for the Department of Defense.

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

The House and Senate intelligence panels have nearly identical jurisdictions for the intelligence community. The House panel's domain, however, also extends over an area that the Senate's does not: "tactical intelligence and intelligence-related activities," which covers tactical military intelligence. In another departure, the House select committee has been given authority to "review and study on an exclusive basis the sources and methods of entities" in the intelligence community.[8]

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[7] (...continued)
Johnson, "Accountability and America's Secret Foreign Policy: Keeping a Legislative Eye on the Central Intelligence Agency," *Foreign Policy Analysis*, 2005, vol. 1, pp. 99-120; "Congressional Supervision of America's Secret Agencies," in Loch K. Johnson and James J. Wirtz, eds., *Strategic Intelligence* (Los Angeles: Roxbury Publishing, 2004), pp. 414-426; David M. Barrett, *The CIA and Congress: The Untold Story from Truman to Kennedy* (Lawrence, Kansas: University of Kansas Press, 2006); and Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Washington: CQ Press, 2006), Chapter 10.

[8] House Rule 3(l), added by H.Res. 5, 107th Cong., January 3, 2001.

Membership and Leadership

The membership of the committees has been limited in time, staggered, and connected to the standing committee system and political party system in Congress. These features, moreover, differ between the two panels. Each select committee, for instance, reserves seats for members from the chamber's committees on Appropriations, Armed Services, Foreign Affairs/Foreign Relations, and Judiciary. The specifics differ, however: the Senate requires two persons, a majority and minority Member, from each of these standing committees, while the House calls for only one Member from each standing committee with overlapping jurisdiction.

The two panels also differ in size (21 on the House panel and 15 on the Senate counterpart, plus ex officio members on each), tenure, and other membership features, including partisan composition and leadership arrangements. Since its inception, the Senate panel has had only one more Member from the majority party than the minority (an eight-to-seven ratio); and its vice chairman, who takes over if the chair is unavailable, must come from the minority party. The House select committee, in contrast, reflected the full chamber party ratio when it was established in 1977: two-to-one plus one, resulting in an initial nine-to-four majority-minority party membership on the panel. In the meantime, however, the minority party has been granted additional seats on the committee and the majority-minority party ratio in the full House has grown closer. The result is a select committee membership party ratio of 12-to-9 in the 110th Congress.

Secrecy Controls

The committees also have different secrecy arrangements regarding controls over their classified holdings. Secrecy oaths distinguish the two chambers. All Members of the House, including, of course, those on the Intelligence Committee, must swear or affirm not to disclose classified information, except as authorized by the rules of the chamber; the current oath is modeled after a previous one which had been required only for the members of the House Permanent Select Committee on Intelligence. The Senate does not impose a similar obligation on its Members.[9]

Non-member access to classified materials also separates the two panels. The House committee has a more detailed and exacting set of requirements for non-members than its Senate counterpart.

In addition, the Senate panel is authorized to disclose classified information publicly on its own (following elaborate procedures in which the President and the full Senate have an opportunity to act). By comparison, the House select committee cannot do so, if the President objects to its release; in that case, the House itself makes the determination by majority vote.

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[9] CRS Report RS20748, *Protection of Classified Information by Congress: Practices and Proposals*, by Frederick M. Kaiser.

Joint Committee on Atomic Energy as a Model

The Joint Committee on Atomic Energy (JCAE) — set up by the Atomic Energy Act of 1946, along with the Atomic Energy Commission (P.L. 585, 60 Stat. 772-773) — is often cited as an appropriate organizational model for a joint committee on intelligence, a reference the 9/11 Commission also adopted.[10] The JCAE, an 18-member panel composed of an equal number of Members from each house of Congress, held authority to report legislation to the floor of both chambers, a power unique among joint committees.[11] Many reasons have been offered for considering the JCAE as a model:

- favorable record for keeping highly confidential material secret;
- largely bipartisan approach to policy-making;
- considerable unity among its members;
- close working relationship with the executive (here, the Atomic Energy Commission) in this secretive and sensitive area;
- consolidated jurisdiction for a growing field;
- explicit, comprehensive oversight mandate, supported by a then-unprecedented directive that the executive keep the joint committee "fully and currently informed"; and
- ability to streamline the legislative process in general and to act rapidly, if necessary, in particular instances.

Given these attributes, the joint committee became a formidable congressional panel. In its prime, JCAE was even considered by some as "probably the most powerful congressional committee in the history of the nation."[12] Despite this — or perhaps because of it — the JCAE was abolished in 1977, nearly 30 years after its birth. It was evidently the victim of a number of reinforcing developments: concerns inside and outside Congress about JCAE's close, some thought cozy, relationship with the executive agency it was overseeing; changing executive branch conditions, such as the breakup of the Atomic Energy Commission into the Nuclear Regulatory Commission and the Energy Research and Development Administration, now the Department of Energy; new rivals in Congress, as the expanding nature of atomic

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[10] For background and further citations on the JCAE, see CRS Report RL32538, *9/11 Commission Recommendations: Joint Committee on Atomic Energy — A Model for Congressional Oversight?*, by Christopher M. Davis; Harold P. Green and Allen Rosenthal, *Government of the Atom: The Integration of Powers* (New York: Atherton Press, 1963); and Kaiser, "A Proposed Joint Committee on Intelligence," pp. 138-141.

[11] One caveat to the unique status of the JCAE is the Temporary Joint Committee on Deficit Reduction; it was authorized to report legislation but only on a narrow subject and on a case-by-case basis. In contrast to the JCAE, this joint panel was a short-term, periodic addition to Congress, set up by the Gramm-Rudman-Hollings Act of 1985. The panel could come into existence only when legislation on budget sequestration was needed and was empowered to report only a joint resolution setting forth specified reports from the Directors of the Office of Management and Budget and the Congressional Budget Office. P.L. 99-177, 99 Stat. 1037, 1100 (1985). This provision apparently was never activated and was not included in the 1987 revision of GRH.

[12] Green and Rosenthal, *Government of the Atom*, p. 266.

energy and nuclear power extended into the jurisdictions of a number of House and Senate committees; efforts in the Senate at the time to realign and consolidate standing committee jurisdictions and reduce the number of assignments for each Member; and a relatively high number of vacancies on the JCAE (six of the 18 seats).[13]

Proposed Joint Committee on Intelligence Characteristics

Recommendations to create a joint committee on intelligence have surfaced over nearly five decades, most predating the establishment of the two select committees on intelligence in the mid-1970s. Although many of these suggestions, including that from the 9/11 Commission, have followed the design of the Joint Committee on Atomic Energy, not all have; consequently, the specifics in the blueprints have varied in a number of fundamental ways. Differences extend to (1) the range and exclusivity of the panels' jurisdiction; (2) makeup of their membership; (3) selection and rotation of chairmen; (4) possibility of and characteristics of a vice chairmanship; (5) requirements for representation of certain other committees as well as at-large members; (6) special secrecy requirements for members and staff, including a secrecy oath and security clearances; (7) staff size, method of selection, and restrictions on activities; (8) official disclosures of classified information; (9) mechanisms for investigating suspected unauthorized disclosures of such information; and (10) access by non-members to the joint committee's classified holdings. Even suggested methods of establishment have varied.

Methods of Establishment

A joint committee on intelligence could be created by a concurrent resolution, a joint resolution, or a regular bill. The Joint Committee on Atomic Energy, for instance, was established by public law through the regular bill process (i.e., the Atomic Energy Act of 1946, P.L. 580, 60 Stat. 772-773).

A concurrent resolution has the advantage (for its proponents) of requiring only the approval of Congress, while a joint resolution or regular bill must be signed by the President or his veto overridden. A joint resolution or a bill, however, may offer certain benefits to its supporters over a concurrent resolution. A number of existing provisions in public law, especially ones dealing with intelligence reporting requirements to Congress, designates the House and Senate Select Committees on Intelligence as recipients (e.g., the intelligence oversight provisions and the reporting requirements for the CIA Inspector General, codified at 50 U.S.C. 413-415 and 50 U.S.C. 403q, respectively). A bill or joint resolution, when creating a joint committee, could amend these statutory provisions, whereas a concurrent resolution could not do so directly. But a concurrent resolution, although solely a congressional device, could have the same effect. By changing the rules of both chambers, a

[13] Kaiser, "A Proposed Joint Committee on Intelligence," pp. 140-141.

concurrent resolution could recognize that the powers, authority, and jurisdiction of the former select committees would be transferred to a new joint committee.

Jurisdiction and Authority

A joint Intelligence Committee could consolidate jurisdiction for the entire intelligence community, extending to all intelligence entities as well as intelligence and intelligence-related activities, including significant anticipated activities (i.e., covert operations). Legislative authority over intelligence could be shared for all entities with overlapping jurisdiction; or, as is now the case in the House and Senate, it could be held exclusively for certain specified components (e.g., CIA and DNI), while being shared for others.

Membership

A bicameral body requires equal membership from both the Senate and House. In addition to bicameralism, a joint committee on intelligence could be directed to accommodate three other criteria: bipartisanship, representation of specified standing committees, and at-large selection of members.

For example, the membership from each chamber could be required to have representatives from standing committees with overlapping jurisdiction (e.g., Appropriations, Armed Services, Foreign Affairs/Foreign Relations, and Judiciary), as both the House and Senate Intelligence Committees do now. This selection might include both a majority and a minority party member from each represented committee. A JCI could also call for a specified number of members selected at-large, as the Senate intelligence panel does now. As an illustration, an 18-member JCI could include nine Senators and nine Representatives, with five majority and four minority party members from each chamber. At least one member, but not more than two, could come from each of the four committees with overlapping jurisdiction; this option (a maximum of eight from each chamber) would still allow for one selection at large from each house. By comparison, a larger committee or a panel requiring only a single member from each of the specified standing committees would allow for more members to be selected at-large.

Provision could also be made for *ex officio* members, particularly the majority and minority party leaders from the Senate and the Speaker and minority leader from the House.

Terms and Rotation

Membership on the joint committee could have no term limits or be given a maximum length of service (six or eight years, as the House and Senate Intelligence Committees have had, or shorter or longer terms). Under term limits, the total time on the committee might be measured either by continuous service or by non-continuous service accumulated over a specified number of Congresses (e.g., a total of eight years over six Congresses). If a JCI had maximum lengths of service, it could be treated as a temporary assignment, which might not count against other standing committee assignments in each chamber. By comparison, membership on

the JCI could be permanent.[14] If so, it might be treated as if it were a standing committee in each chamber, counting against other committee assignments.

Member terms could also be staggered, so that new members would arrive with each new Congress. Staggered terms, however, would mean that a portion of the original membership could not serve the maximum period, at least not as part of the original composition.

Leadership

The chair, selected at the beginning of each Congress or each session (as some proposals called for), could alternate between the two chambers and/or political parties. A vice chairmanship could also be established; this officer would replace the chair when he or she is absent (as occurs now on the Senate Intelligence Committee). The vice chair could be a member of the other body and/or the other political party.

Secrecy Controls

Various types of secrecy controls could be applied to a joint committee on intelligence to regulate access to its classified holdings by non-committee members, protect against the unauthorized disclosure of classified information, and allow its authorized release. Such controls could (1) set requirements for determining access by non-members; (2) require security clearances, oaths, and/or secrecy agreements for committee members and staff; and (3) provide for investigation of suspected security breaches, conducted by the House and Senate Ethics Committees.

Controls could also spell out procedures for disclosing classified information to which the President objects, either by a joint committee itself, by the joint committee in concert with either or both chambers, or by either or both chambers as the final arbiter. One of five distinct options might be adopted: (1) the joint committee on intelligence could act alone; (2) the panel could act only after one house responded to a request from it to release classified information; (3) the JCI could act only after both houses responded; (4) a single house could disclose the information; or (5) both chambers would have to agree to do so. Currently, disclosure procedures differ between the House and Senate intelligence panels. The House select committee does not have authority to release classified information on its own. The full House must act to disclose it, at the request of its intelligence panel, if the President objects to the release. On the Senate side, the select committee may disclose classified information on its own, after both the President and full Senate have acted.[15] It appears that this procedure has not been used by the Senate panel.

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[14] The 9/11 Commission — referring to both a joint committee on intelligence and a new standing committee in each house — recommended that "Members should serve indefinitely on the committees, without set terms, thereby letting them accumulate expertise." 9/11 Commission, *Report*, p. 421.

[15] The select committee's charter provides for three responses from the full Senate to an Intelligence Committee request to release classified information, if the President objects to it. The chamber can (1) approve the disclosure; (2) disapprove the disclosure; or (3) "refer

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Staffing

The number of staff on a new JCI would presumably be smaller than the combined total for both the House and Senate Intelligence Committees. Hiring could be accomplished in seven different ways: (1) by the majority party on the full JCI; (2) by the majority party from each chamber on the committee; (3) by full committee vote; (4) by the majority party and minority party separately; (5) by the chair alone; (6) by the chair and vice chair/ranking minority member together; or (7) by individual members (with each legislator selecting a single staff member). Additionally, staff could be selected by a combination of several compatible ways (e.g., individual member selections for some plus committee-wide selections for others). The staff could also be required to meet certain agreed upon criteria set by the committee, such as fitness for the duties and without regard to party affiliation.[16]

Staffers could be required to have an appropriate security clearance (for Top Secret and access to Sensitive Compartmented Information), as is now mandated by both House and Senate select committees. They could also be directed to sign a nondisclosure or secrecy agreement not to reveal classified information, again a requirement for the staff of both intelligence panels.

Budget and Funding

The budget for a joint committee on intelligence would presumably be smaller than the combined budgets of the House and Senate intelligence panels. Funding could be shared by both chambers, deriving equally from the contingent funds of the Senate and House.

Pros and Cons

Differences over the establishment of a joint committee on intelligence tie into practical matters as well as matters of principle.

Pros. Supporters of a joint committee on intelligence argue that it would make for a more effective and efficient overseer than the current arrangement, which the 9/11 Commission concluded "is now dysfunctional," because of limitations on the

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[15] (...continued)
all or any portion of the matter back to the committee, in which case the committee shall make the final determination with respect to the public disclosure of the information in question" (Sec. 8(b)(5), S.Res. 400, 94th Cong., 2nd sess.).

[16] The 9/11 Commission, for instance, recommended that the "staff of this committee should be nonpartisan and work for the entire committee and not for individual members." 9/11 Commission, *Report*, p. 420.

two select committees.[17] According to its proponents, a single joint committee, housing fewer members and staff than the two existing ones combined, would:

- Strengthen oversight of intelligence for four primary reasons. The executive would be more open and forthright with a single, small oversight body than with two with a larger combined membership; the legislators and staff on the JCI, recognizing that there is no other authorizing panel to conduct oversight, would attach a greater importance to this responsibility; a committee composed of legislators from both chambers could better integrate and take advantage of congressional expertise and experience in the field; and a JCI could be established with fewer restraints and restrictions than the separate select committees now have.

- Improve coordination, cooperation, and comity between the House and Senate and among other relevant committees (with overlapping jurisdiction) in both chambers. A joint committee could serve as a conduit of information and advice and as a facilitator for policy formulation between the two chambers as well as between the political parties; a JCI could also encourage mutual respect and trust between the chambers and parties; this could occur by treating all of its members equally in committee leadership posts and voting, by merging the stands of Members of both houses in committee deliberations and decisions, by taking a joint committee consensus on legislation, endorsed by Members of both chambers, to the floor of each house, and by providing an opportunity for House Members to be involved, if only marginally and informally, in a Senate function (i.e., confirmation of presidential nominees).

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

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[17] Competing views on a joint committee on intelligence are available from Members and committees of Congress, among other sources. Supportive arguments are included in: U.S. Congress, Senate Temporary Select Committee to Study the Senate Committee System, *Report* (Washington: GPO, 1984), pp. 13-14; Sen. Howard Baker and Rep. Henry Hyde, statements before the Temporary Select Committee, *Senate Resolution 127, To Study the Senate Committee System* (Washington: GPO, 1984), part 1, pp. 5-11 and part 2, pp. 83-85; Rep. Henry Hyde, statement before the Joint Committee on the Organization of Congress, *Committee Structure*, hearings, 103rd Cong., 1st sess. (Washington: GPO, 1993), pp. 832-841; and Minority, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House Select Committee to Investigate Covert Arms Transactions with Iran, *Report*, S.Rept. 100-216 and H.Rept. 100-433, 100th Cong., 1st sess. (Washington: GPO, 1987), p. 583.

- Respond rapidly to investigate a major development, when conditions dictated.

- Increase the stature of overseeing and legislating on intelligence matters and, thus, make serving on an intelligence panel more attractive and important than on either select committee. This could result from making the joint committee the equivalent of a standing committee, by granting it permanency and authority to report legislation to each chamber and giving the members indefinite tenure. A JCI with these characteristics would be unique in the current era, the first of its kind since 1977, and apparently one of only a few in the history of Congress, also elevating its stature.

- Make for more efficient government. A single panel, versus two, would probably reduce the amount of time that the Administration and intelligence officials would spend on Capitol Hill testifying, briefing, notifying, and meeting with members and panels.

- Improve the protection of classified information in Congress's possession. A smaller number of legislators and staff on a joint committee would have access to it, and a single office would be easier to secure.

- Encourage trust between Congress and the Executive in this sensitive field. This could occur by reducing the number of panels, Members, and staff with access to such highly classified information and by easing the cooperative relationship between the branches by way of a single committee, instead of two.

- Pinpoint responsibility in Congress for oversight and legislation affecting intelligence, thereby avoiding any confusion or uncertainty about it.

- Cut back the total number of committee seats for legislators in the House and Senate combined, by replacing the two panels with a single committee with fewer seats; for instance, a new 18-member joint committee with nine Senators and Representatives would be half the size of the combined total of 37 on the two select committees. The replacement would modestly help reduce the number of legislators holding too many committee assignments and/or being "spread too thin." Reducing the number of seats available for Representatives and Senators would allow them to concentrate on one less committee assignment.

- Reduce costs, because of fewer staff and a single suite of offices.

Cons. Critics of proposals for replacing the current House and Senate Intelligence Committees with a single joint committee contend that it would weaken oversight and compromise a fundamental feature of the Congress, namely, two

different (and sometimes competing) bodies.[18] As viewed by its opponents, a JCI would:

- Adversely affect oversight of intelligence. This would occur by reducing the number of legislators and staff who have an incentive and opportunity to conduct oversight and by reducing the number of separate panels, with different characteristics and incentive structures, to conduct it; in this regard, the number of committees to which the President reports covert action plans is now only two (the select committees on intelligence), having been reduced from eight in 1980, at the request of the executive.

- Undercut the legislative benefits (e.g. longer deliberation time and different viewpoints) of relying on two committees from separate and distinctive chambers. This usual situation allows two panels — each reflecting different chambers, types of constituencies, and electoral schedules — to examine the same legislation and authorizations and conduct oversight from different vantage points, based on their own priorities and demands; the loss of a second view would be felt not only in the initial committee deliberations but also in later conference committee action, which might be dominated by joint committee members.

- Cause a loss in continuity, stability, and experience. This would be especially evident in joint committee leadership, if the chair (and ranking member or vice chair) rotated every two years; this in turn would make membership on the joint committee less desirable than on other panels; the turnover could also extend to staff, because of the frequent change in leadership; finally, this loss of stability and experience could hamper Congress's ability to influence public policy and compete with the executive.

- Result in a more acute impact on Congress if a joint committee develops a close and supportive relationship with the executive entities it oversees, rather than a neutral and critical one. With a single panel, Congress would have only one locus for oversight and checks on the executive, not two; if this happens, the impact on Congress, on oversight, and on legislation would be more extensive

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[18] Criticisms and concerns are voiced by Rep. Dan Glickman, Rep. Larry Combest, and Sen. Dennis DeConcini, statements before the Joint Committee on the Organization of Congress, *Committee Structure*, hearings, 103rd Cong., 1st sess., pp. 64-79 and 406-412; Rep. Larry Combest, Chairman of the House Permanent Select Committee on Intelligence, *IC21 — The Intelligence Community in the 21st Century, The Intelligence Community Act of 1996*, Mar. 4, 1996, p. 7; U.S. Congress, House Permanent Select Committee on Intelligence. *IC21: Intelligence Community in the 21st Century* (staff study), committee print, 104th Cong., 2nd sess. (Washington: GPO, 1966), pp. 316-318 and 328; House Select Committee on Committees, *Final Report* (Washington: GPO, 1980), p. 416; and Majority, Senate and House Select Committees Investigating the Iran-Contra Affair, *Report*, p. 427.

and significant, because of the absence of a possible balance from a second committee.

- Operate contrary to the long-term tendency to end reliance on joint committees, either by abolishing them or not establishing them in the first place.[19] A JCI, if authorized to report legislation to the floor of both houses, would be unique currently; it would be the only such empowered joint committee since 1977 (when the JCAE was abolished), and one of the few in the history of the Congress; a joint committee on intelligence would also raise the prospect of similar panels for other policy areas, including homeland security, which have wide-ranging jurisdictions that cross a number of executive agencies and programs along with congressional committee jurisdictions.

- Harbor uncertainty regarding confirmation of presidential nominees. It might be unclear whether House Members should play any role at all in the process or, if so, perhaps only at certain stages (e.g., initial meetings and interviews, background investigations, formal hearings).

- Artificially make the political parties equal or nearly so. This could occur, even though the differences in party ratios in each chamber could be substantial, as they have been in the past.

- Artificially make the two chambers equal on the joint committee. The number of Members from each chamber would be the same, even though the House is more than four times larger than the Senate; because of this situation, Representatives would have proportionately fewer opportunities to serve on a joint committee than Senators.

- Cut back the possibility of serving on an intelligence panel for all Members of Congress, especially if there are no term limits on JCI membership. This reduction in numbers would, in turn, reduce the diversity and representational characteristics of the membership compared to two separate committees.

- Bring about a change in the different jurisdictions that the current select committees now hold. The House panel having a broader jurisdiction than its Senate counterpart.

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[19] The 9/11 Commission (p. 421), for instance, did not advocate a joint committee for homeland security. Instead, it called for consolidating jurisdiction in a permanent standing committee in each chamber. For additional discussion on such a transformation, see CRS Report RS21901, *House Select Committee on Homeland Security: Possible Questions Raised If the Panel Were to Be Reconstituted as a Standing Committee*, by Judy Schneider.

- Not necessarily improve protection of classified information over the current two select committees. Their controls over it are exacting and their reputations in this regard are good; a JCI could also require new procedures for the public release of classified intelligence information held by the joint committee; this would raise the prospect of (and cause disagreement over) whether the joint committee alone could do so, whether one chamber could do so, or whether both houses must act together as the final arbiter.

- Add confusion and conflict over investigations of suspected unauthorized disclosures of classified information. This could arise, for instance, if the ethics committee from one chamber conducted investigations which involved members of the other body, even if only tangentially and in an initial inquiry.

- Raise practical difficulties in setting meeting schedules, times, and locations for panel members from two different chambers of Congress.

Alternatives to a Joint Committee

There are other options which might enhance and regularize congressional oversight of intelligence. These changes, both formal and informal, could have an impact not only on the structure of the current select committees on intelligence, but also on their relationship with other committees and Members in its respective chamber and its counterparts in the opposite chamber, as well as the relationship between the legislature and the executive.

Changing the Select Committees' Structure and Powers

The most direct and immediate among the options to increase and improve oversight of intelligence would be ways to enhance the status, stature, and resources of the existing select committees on intelligence or replace them with standing committees.[20] This might be accomplished through several different (and sometimes competing) means:

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[20] The 9/11 Commission emphasized the need for "substantial change" in congressional oversight, either by establishing a joint committee or by creating "a single committee in each house of Congress, combining authorization and appropriating authorities .... " Each panel would be a standing committee and hold subpoena authority. The membership would be relatively small and serve without term limits. Its composition would be nearly equal between the parties, with the majority having only one more member than the minority, and representing four panels with overlapping jurisdiction (i.e., Armed Services, Judiciary, Foreign Affairs, and the Defense Appropriations Subcommittee) with one seat each on the new committee. 9/11 Commission, *Report*, p. 420-421. For further information and analysis, see CRS Report RS21908, *Senate Select Committee on Intelligence: Term Limits and Assignment Limitations*, by Judy Schneider.

- Grant the current select committees status as standing committees, along with indefinite tenure for their membership, to reduce turnover; increase experience, stability, and continuity; and make membership on the panel more attractive.

- Expand the authority of such committees, giving them power to report appropriations as well as authorizations and to hold subpoena authority on their own.

- Place members of the Select Committee on Intelligence on their chamber's Defense Appropriations Subcommittee or another subcommittee with jurisdiction over IC appropriations. Or create a special advisory and oversight body on the Appropriations Committee, combining Intelligence Committee and Appropriations Committee members, as the House has done; under this plan, the new panel would report its findings and recommendations for IC funding to the defense or other appropriate subcommittee, thereby modestly expanding the effective jurisdiction and influence of the select committee.[21]

- Add professional staff, hire temporary consultants, set up short-term task forces, and/or increase the use of congressional support agencies, especially in fields where the panels might require new or expanded expertise and skills.

Although neither the House nor the Senate adopted the 9/11 Commission recommendations for intelligence oversight, other changes have occurred through a variety of mechanisms. These include the chambers' leadership, existing committees, and a Senate bipartisan working group; these efforts have led to the Senate's restructuring its oversight panels and each chamber instituting new working arrangements between its intelligence and appropriations panels.

Senate Action. The Senate's response to the 9/11 Commission and other recommendations for oversight of intelligence has proceeded through several phases.

Initial Changes in 2004. Several of these suggestions were approved by the Senate on October 9, 2004, when it agreed to S.Res. 445 (108th Congress) affecting its oversight of intelligence. The resolution eliminated certain restrictions on serving on the select committee, reduced the number of members (from 17 to 15), and modified security procedures regarding the public disclosure of classified information. S.Res. 445, however, did not transfer authority and jurisdiction over

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[21] This proposal materialized in 2007 in the House with members of the Intelligence Committee serving on a special oversight panel on the Appropriations Committee (H.Res. 35, 110th Congress). The concept was raised in late 2006 by Rep. Nancy Pelosi, then House Minority Leader and prospective Speaker of the House. Tim Starks, "Pelosi Wants Intelligence Appropriations Oversight Panel," *CQ.com*, Dec. 14, 2006; David Rogers, "Pelosi Plans Panel to Oversee Spy-Agency Funds," *Wall Street Journal*, Dec. 14, 2006, p. A3; and "Pelosi Looks to Boost Oversight of Intelligence and Ethics," *Washington Post*, Dec. 15, 2006.

intelligence appropriations to the Intelligence Committee; instead, it created an Intelligence Subcommittee on the Senate Appropriations Committee.

Structural Changes Involving the Committees on Intelligence and Appropriations in 2007. Additional steps have been taken in the 110th Congress. A prominent one is a Memorandum of Agreement (MOA), designed to improve coordination and transparency between the Intelligence Committee and Appropriations Committee.[22] The MOA — signed by the chairman of the select committee (but not its ranking minority member) and the chairs and ranking minority members of the Senate Appropriations Committee and its defense subcommittee — advanced several changes to accomplish this:

- notify staff and allow them to attend the intelligence hearings of the other body;
- allow each Intelligence Committee member who is also an appropriator to bring his or her intelligence staff members to Appropriations Committee hearings and markups;
- permit all Senators and cleared staff of one committee to review the bill, report, and classified annex of the other before action is taken; and
- give the chairmen and ranking minority members of each the committee the opportunity to appear before the other panel to present their views prior to the markup of either the intelligence authorization or appropriations bills.[23]

Notwithstanding the effort, the effectiveness of the new arrangements under the Memorandum of Agreement has elicited differing impressions. The chairman of the Senate Intelligence Committee emphasized that the agreement "has made great strides toward bringing our committees together in a unity of effort that was lacking before."[24] A competing interpretation was offered by the Intelligence Committee's ranking minority member, who is also an appropriator. He determined that the MOA was "ineffective," adding that "in my experience I've seen more evidence of the need for a better synthesis of the two."[25]

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[22] Hon. John D. Rockefeller, Chairman, Opening Statement, in U.S. Congress, Senate Select Committee on Intelligence, *Congressional Oversight*, hearing, 110th Cong., 1st sess., Nov. 13, 2007, p. 2. See also, letter to Hon. Harry Reid, Senate Majority Leader, and Hon. Mitch McConnell, Senate Minority Leader, on changes in Senate oversight of intelligence, by Hon. John D. Rockefeller, Chairman, Senate Select Committee on Intelligence, and others, Feb. 28, 2007.

[23] Ibid., pp. 2-3.

[24] Ibid., p. 3.

[25] Hon. Christopher S. Bond, Opening Statement, in Senate Intelligence Committee, *Congressional Oversight*, pp. 4-5.

Proposed Changes Involving the Committees on Intelligence and Appropriations in 2008. In March 2008, Senators Rockefeller, chairman of the Senate Select Committee, and Christopher S. Bond, vice chairman, among others, offered another proposal to the Senate leadership.[26] It calls for the establishment of a Subcommittee on Intelligence on the Appropriations Committee, which would include members of the Intelligence Committee and would appropriate all funds for the National Intelligence Program (NIP), as opposed to the current situation where such appropriations are divided among several appropriations subcommittees.

This plan has been opposed by the leadership of the Senate Appropriations Committee. Its chairman, Robert C. Byrd, and ranking member, Thad Cochran, noted that other changes in oversight, including those by way of the 2007 MOU, have been put into effect.[27] They argued that the proposed Intelligence Appropriations Subcommittee, "led by members of the Intelligence Committee," would prove counterproductive: "We strongly believe that consolidating authority over intelligence in a smaller group of Senators is precisely the wrong way to improve the Senate's oversight of intelligence."[28] The Senators added that the separation of authorization and appropriations functions should be maintained and that consolidating appropriations for the entire NIP in one subcommittee would have an adverse impact on other policies, such as foreign policy, that are handled by different subcommittees.[29]

As a separate, but related, matter, Senators Rockefeller and Bond reminded the Senate leadership that an attempt to consolidate authorization and appropriations authority in the SSCI, as recommended by the 9/11 Commission, "was considered and rejected by the Senate during consideration of S. Res. 445 in October 2004."[30] Nonetheless, an identical measure has been introduced in the 110th Congress (S.Res 375).[31]

House Action. The option to consolidate authority — by reserving seats for Intelligence Committee members on the Defense Appropriations Subcommittee — was raised at the end of the 109th Congress by Representative Nancy Pelosi, then House Minority Leader and presumptive Speaker of the House in the 110th

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[26] Letter to Hon. Harry Reid, Senate Majority Leader, and Hon. Mitch McConnell, Senate Minority Leader, on proposals to change Senate oversight of intelligence, from Hon. John D. Rockefeller, Chairman, and Hon. Christopher S. Bond, Vice Chairman, Senate Select Committee on Intelligence, and others, March 6, 2008, pp. 2-3.

[27] Letter to Hon. Harry Reid, Senate Majority Leaders, and Hon. Mitch McConnell, Senate Minority Leader, in response the proposal from the Senate Select Committee on Intelligence, from Hon. Robert C. Byrd, Chairman, and Hon. Thad Cochran, Ranking Member, Senate Committee on Appropriations, April 5, 2008, p. 1.

[28] Ibid., p. 2.

[29] Ibid.

[30] Letter from Senators Rockefeller and Bond, on proposed changes (2008), p. 1.

[31] Ibid.

Congress.[32] The final product was a variation on this theme. H.Res. 35 (110th Congress), which passed the House on January 9, 2007, created a new Select Intelligence Oversight Panel — consisting of 13 members and an eight-to-five inter-party ratio — with three representatives from the Intelligence Committee joining 10 from appropriations, including the chairman and ranking minority member of the full committee, the chairman and ranking minority member of the Defense Subcommittee, and six additional members from appropriations. This special panel is authorized to study and make recommendations to all appropriations subcommittees on relevant areas, specifically the annual intelligence appropriations to the Defense Subcommittee, which retains authority to report it to the full committee.

Concerns about Restructuring the Intelligence Committees. The set of changes producing a restructured and strengthened Intelligence Committee in each chamber, as called for by the 9/11 Commission, might also generate concerns and criticisms. A new standing committee — smaller than the existing select committees in each chamber (if combined), with representation from four standing committees with overlapping membership and indefinite tenure for its members — would substantially reduce (1) the number of Members in each chamber serving on an intelligence panel at any one time; (2) the number of at-large seats available; (3) the number of vacancies available over time; and, thus, (4) the likelihood of a Member finding a seat on the committee. These changes in tandem would also lead to fewer former members from the committee, thus, reducing the ability of the full chamber and non-members to be knowledgeable about how the intelligence community operates and intelligence policy; and it could result in a decline of the ability to question if not challenge the committee (as well as the executive). Arguably, this could result in the prospect of a closed system, making it easier for the intelligence panels to dominate the agenda and debate in their respective chambers and in the full Congress.

A second set of cautions might surround the proposed new authority, particularly, adding appropriations to its authorizing control and independent subpoena power. Such subpoena authority, which could cover either or both materials and individual testimony, would be held (and used) without needing approval in each instance by the chamber. This might be seen as infringing on an important full-chamber power and removing a check on this particular committee, which would be already subject to fewer constraints than the current select committees have.

The addition of appropriations approval would apparently produce a unique situation in the contemporary Congress and a rarity in its entire history. A reversal of this plan — placing Intelligence Committee members on the defense appropriations subcommittee — also appears to be a rare, if not unprecedented action; this revamped panel could better coordinate and complement the actions of both committees. This change, moreover, could indirectly increase the power of the select committee. By reserving seats for its members on the relevant appropriations subcommittee, the Intelligence Committee would play a more direct and influential

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[32] Sources in footnote 21.

role in appropriating IC funds than it does now. At this time, no other committee has a comparable guarantee of seats on a relevant appropriations subcommittee. Consequently, the left-out authorizing committees, particularly those dealing with sensitive national security matters, might make the same appeal as intelligence: that is, to have seats reserved on the appropriate appropriations subcommittee. Following either avenue, the intelligence panel's power would be enhanced if it held both appropriations and authorization authority, either directly or indirectly (via its members on the defense appropriations subcommittee).

In either event, however, the intelligence panel might be perceived as too powerful. It would hold two impressive and reinforcing authorities and would no longer be subject to a check and competition from a significant outside source (i.e., the Appropriations Committee in its chamber). At the same time, the transfer of appropriations would remove an important part of the Appropriations Committees' jurisdiction. Reserving seats for Intelligence Committee members on defense appropriations could also reduce competing viewpoints and an independent check on IC appropriations. Either change might encourage other authorizing committees to request the same treatment, that is, to control both appropriations and authorizations. Although the appropriations and authorization processes are parallel to one another, they are not identical and not always reinforcing or complementary. The combined authority could result in substantially more work for the Intelligence Committee in each session, with the need to "scrub" the intelligence budget twice each year. Or, alternatively, the transfer could lessen its examination of the appropriations and authorization, if each were to occur only in alternate sessions within a single Congress. The potential increase in the panel's workload could have two adverse ramifications: (1) short-change either the appropriations or authorization process, or both; or (2) reduce the panel's time for other legislative and oversight efforts.

By comparison to these two proposed changes — consolidating authorization and appropriations in the Intelligence Committee or reserving seats on the Defense Appropriations Subcommittee for Intelligence Committee members — the establishment of the special intelligence oversight panel on the House Appropriations Committee is more limited in its impact. Only three of its 13 seats are reserved for Intelligence Committee members; and the new panel can only make recommendations to the Defense Appropriations Subcommittee, which continues to report the annual intelligence community appropriations.

Improving Coordination Between the Two Intelligence Panels

Such changes would affect the Intelligence Committees' individual structure and powers. Others could be designed to increase coordination and shared responsibility between the two intelligence panels — so as to avoid duplication, encourage cooperation, develop working relationships across chambers, enhance understanding, and share expertise, information, and knowledge — while at the same time, maintaining the distinct characteristics of each panel. These might include joint hearings and cross-committee leadership meetings, which may already exist on a regular basis.

Joint Hearings. One option along these lines is to schedule joint hearings for relatively routine and regular matters, such as the initial annual authorization briefings from the Executive. Another opportunity for a joint session would occur when the inspectors general in the intelligence community, especially at the CIA, submit their semiannual reports to Congress. These shared enterprises could allow the combined membership to receive the same information and data as each panel would individually, establish working relationships among the two groups of members, encourage cross-fertilization among them, and reduce duplication for the Executive. Of course, followup hearings could be handled separately by the two panels and may even be stimulated by such joint efforts. The shared experience over the initial budget submission could also help to avoid duplication of effort over some modest matters, while helping to set priorities for more significant ones.

Joint hearings could also be conducted into critical events, as they were with the select Intelligence Committees combined inquiry into 9/11 attacks.[33] Another example of an inquiry with panels from both chambers was the Iran-contra affair, an investigation conducted by two temporary committees working together and issuing a joint report.[34]

Leadership Meetings. Another means of encouraging inter-chamber cooperation is for the leadership of the two panels to meet regularly to discuss issues, concerns, and priorities (recognizing, of course, the practical and political limitations on such exchanges). These efforts might include only the full committee chairs or might extend to subcommittee heads and majority and minority members. These sessions could be supplemented by meetings of senior staff on both panels, at the direction of the leadership. Whatever the arrangement, a number of different opportunities exist to enhance awareness of common concerns and cooperation in examining them between the two panels.

Constraints on Coordination. Coordination between two panels from different chambers may encounter practical and political problems. Scheduling meetings and hearings, especially if a large number of members is involved, for instance, runs into several hindrances. These include: (1) different priorities and meeting arrangements for each committee; (2) competing chamber and committee responsibilities for Members, especially Senators, each of whom serve on more committees than Representatives; and (3) different electoral and campaign requirements, which affect the demands on Members and the time they spend in the capital. In addition, rival political affiliations and policy stands, along with competition between the chambers for influence over public policy, might make cooperative ventures few and far between.

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[33] U.S. Congress, Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, *Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001*, S.Rept. 107-351 and H.Rept. 107-792, 107th Cong., 2nd sess. (Washington: GPO, 2002).

[34] U.S. Congress, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, and House Select Committee to Investigate Covert Arms Transactions with Iran, *Report on the Iran-Contra Affair*, S.Rept. 100-216 and H.Rept. 100-433, 100th Cong., 1st sess. (Washington: GPO, 1987).

Enhancing Interchanges with Other Panels and Members

Other approaches to increasing the powers of each panel and their cooperative ventures might be considered: ease the exchange of information with non-committee members, allow for more oversight by other committees, and/or increase contacts among members of the appropriations and authorizing panels. Along these lines, the 9/11 Commission wrote: the "new committee or committees should conduct studies of the activities of the intelligence agencies and report problems relating to the development and use of intelligence to all members of the House and Senate."[35]

Placing Intelligence Committee members on the defense appropriations subcommittee or on a special appropriations intelligence oversight panel, as the House has done, also eases interchanges between these two committees. Other ways of increasing coordination between the appropriations and authorizing committees — through formalized member and staff involvement in the other panel's hearings, for instance — have been advanced in the Senate, as noted above.

Goals. This type of change could reduce the challenge of intelligence oversight on the select committees, bring different viewpoints to bear on intelligence matters, expand the knowledge of Members not on the panels, and allow for their informed judgments on intelligence policy and programs as well as on committee activities and operations. Strict controls over the classified information would have to be maintained. The current committee rules — which on the House side are more stringent than on any other committee — might be modified to accommodate additional sources for review and oversight. Such a revision could begin with a comparison of access controls by other panels, particularly the committees with overlapping membership. In addition, House and Senate chamber rules authorizing secret or closed sessions might be used more often to allow for an open exchange of information between the Intelligence Committees and all the Members of a particular chamber. Along with this, committee members might be allowed to present "declassified" versions of sensitive or otherwise classified reports to their colleagues, in secret or open sessions.

Techniques. Several potential techniques to expand non-committee involvement and non-member access to information follow:

- Ensure that relevant information is appropriately and expeditiously shared with committees with overlapping membership.

- Give greater allowance for other committees to conduct oversight of intelligence components, activities, and programs, including standing committees without overlapping membership.[36]

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[35] 9/11 Commission, *Report*, p. 420.

[36] See especially House Subcommittees on Efficiency and on National Security, *CIA Refusal*, 2001.

- Ease access for non-members to Intelligence Committee holdings, by reducing the exacting requirements over the availability of the classified.

- Encourage the Intelligence Committees, on their own initiative, to share information as appropriate with the full membership of their house.

- Make more information available to non-members by securing declassification of certain intelligence reports or by providing classified and declassified versions of IC reports (for the committees and for the general membership, respectively); the agencies proper or their inspectors general (charged with preventing and detecting waste, fraud, and abuse) might do either or both, possibly at the request or directive of the Intelligence Committees.

Limitations. Interchanges between the Intelligence Committees, on the one hand, and other panels and Members, on the other, might be limited for several reasons. Concerns about the unauthorized disclosures of classified information might be raised as the possibility of leaks rises, because of the increased number of individuals with access to sensitive information. Along with this, intelligence agencies would likely be reluctant to respond to congressional requests for sensitive and classified information, even from the Intelligence Committees, if the agencies anticipate that all or some of it will be disclosed outside the sequestered Intelligence Committee rooms, possibly to the floors of both houses.

Another possibility, which might retard information-sharing by the Intelligence Committees, could be a concern about a reduction in their control over the intelligence agenda and debate. As more Members and panels became familiar with the relevant information and policies, more questions might arise relating to the committees' policy positions. This development might be seen as weakening the committees, a condition that might reduce their (and, in turn, Congress's) influence over intelligence agencies and policies in dealings with the Executive.

Other Options

Several other options could enhance congressional oversight over the Intelligence community.

Using Congressional Support Agencies. Other options might enhance the oversight capabilities of the select committees on intelligence along with other appropriate panels.

Increased Use. One approach is to increase the use of the legislative support agencies — Congressional Budget Office, Congressional Research Service, and

Government Accountability Office (GAO), formerly the General Accounting Office — where appropriate.[37]

New Authority for GAO to Audit the IC. A supplemental proposal would be to clarify and expand GAO's independent authority to audit all components of the Intelligence Community (IC). Legislation has been introduced in the 110th Congress (H.R. 978 and S. 82) to accomplish this; and hearings have been held on the Senate version.[38] These and similar proposals, which date to the mid-1970s, are the result of a fundamental disagreement between GAO and the IC with regard to the Office's authority and jurisdiction over all of them.

The Government Accountability Office possesses nearly unfettered jurisdiction to audit and investigate the federal government. GAO's access, however, may be precluded in certain situations: by the President, if it involves sensitive or classified records, such as foreign intelligence and counterintelligence activities; in instances where records are statutorily exempted from disclosure; or in cases where an executive agency holds competing powers which are used to prevent GAO access.[39]

The last of these obstacles to full access has led to conflicts between the Government Accountability Office and the Intelligence Community, particularly the Central Intelligence Agency (CIA).[40] The CIA views its own statutory authority as

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[37] The oversight roles of the support agencies are spelled out in CRS Report RL30240, *Congressional Oversight Manual*, by Frederick M. Kaiser, et al.

[38] The Intelligence Community Audit Act, H.R. 978 and S. 82, 110th Cong. Congressional hearings and press coverage include U.S. Congress, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Government-wide Intelligence Community Reform*, hearings, 110th Cong., 2nd sess., Feb. 29, 2009, available at [http://hsgac.senate.gov/public/index.cfm?Fuseaction=Hearings.Detail&HearingID=301d0683-d270-41a2-b024-9736f89e0df2]; Chris Strom, "Panel witnesses press for GAO audits of intelligence agencies," *Government Executive*, available at [http://www.govexec.com/story_page.cfm?filepath=/dailyfed/0208/022908cdpm2.htm], February 29, 2008; and Paul Kane, "GAO Seeks Review of Spy Agencies," *Washington Post*, Mar. 7, 2008, p. A15.

[39] Statutory citations for such restrictions include Central Intelligence Agency Act of 1949, 63 Stat. 213; General Accounting Office Act of 1980, 94 Stat. 311; 31 U.S.C. 716(d); and 31 U.S.C. 716(b) and 3524(c).

[40] GAO is limited in its independent authority to audit and investigate the CIA, because of provisions in public law and congressional rules as well as tradition and precedents. The CIA, however, is the only intelligence component which makes such an across-the-board claim. See U.S. General Accounting Office, *Central Intelligence Agency: Observations on GAO Access to Information on CIA Programs and Activities*, statement by Henry J. Hinton, GAO-01-975T (Washington: GAO, 2001); *Information Sharing*, GAO-06-385, (Washington: GAO, 2006), pp. 6-7;and *DOD Personnel Security Clearances*, Letter to Honorable George V. Voinovich, Chairman, Senate Subcommittee on Oversight of Government Management, June 14, 2006, p. 1. See also U.S. House Government Reform Subcommittees on Government Efficiency and on National Security, *Is the CIA's Refusal to Cooperate with Congressional Inquiries a Threat to Effective Oversight of the Federal Government*, hearings, 107th Cong., 1st sess (Washington: GPO, 2001); Frederick M. Kaiser,

(continued...)

keeping it off-limits to independent GAO audits and investigations. Under this interpretation, the CIA has declined to participate in GAO reviews (as well as in some congressional oversight hearings held by panels other than the Select Committees on Intelligence); and the Agency has, on occasion, attempted to enlist other components to do the same.[41] In contrast to the CIA's position, however, other IC entities have not asserted the same proscription against GAO audits. For instance, the Department of Defense, which houses the largest number of intelligence units, has issued the following instructions:

> It is DoD policy that the Department of Defense cooperate fully with the GAO and respond constructively to, and take appropriate corrective action on the basis of, GAO reports .... [But DoD is also to] be alert to identify errors of fact or erroneous interpretation in GAO reports, and to articulate the DoD position in such matters, as appropriate.[42]

GAO has taken exception to the CIA's position, emphasizing that the Office has authority to audit the Agency independently but lacks enforcement power.[43] If enacted, the Intelligence Community Audit Act would change this situation. These

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[40] (...continued)
"GAO Versus the CIA: Uphill Battles Against an Overpowering Force," *International Journal of Intelligence and Counterintelligence*, vol. 15 (2002), pp. 330-389; and CRS Report RL30349, *GAO: Government Accountability Office and General Accounting Office*, by Frederick M. Kaiser.

[41] See House Government Reform Subcommittees on Government Efficiency and National Security, *CIA's Refusal to Cooperate*, pp. 1-8. The subcommittee chairmen emphasized that the CIA had initially agreed to participate in a GAO survey of computer security programs but later declined. The Agency also attempted, unsuccessfully as it turned out, to have other IC entities follow suit. Finally, the CIA declined to participate in any of the subcommittees' hearings or meetings, even if held in executive or secret session.

[42] Department of Defense Instruction 7650.02, November 20, 2006.

[43] Elaboration of GAO's support for such new authority and the DNI's (and the previous DCI's) opposition appears in, letter from David M. Walker, Comptroller General, to Hon. John D. Rockefeller, Chairman, and Hon. Christopher S. Bond, Vice Chairman, Senate Select Committee on Intelligence, March 1, 2007; and letter from J. M. McConnell, Director of National Intelligence, to Hon. John D. Rockefeller, Chairman, and Christopher S. Bond, Vice Chairman, Senate Select Committee on Intelligence, Mar. 7, 2007. See M.Z. Hemingway, "GAO wants more muscle," *Federal Times*, March 26, 2007, p. 1; and "GAO Seeks Greater Role in Oversight of Intelligence," *Secrecy News*, Oct. 3, 2007, available at [http://www.fas.org]. For the competing views of the disputes over independent GAO access, which date to the earliest days of the CIA, see U.S. Central Intelligence Agency, *DCI Affirmation of Policy for Dealing with the General Accounting Office (GAO)*, Memorandum for the Director of Central Intelligence, from Stanley L. Moskowitz, Director of Congressional Affairs, 7 July 1994; U.S. General Accounting Office, *Central Intelligence Agency: Observations on GAO Access to Information on CIA Programs and Activities*, statement of Henry J. Hinton, GAO-01-975T (2001); letters from the Comptroller General to the Director of National Intelligence (DNI), April 27, 2006, and to the Chairman and Ranking Minority Member of the Senate Committee on Homeland Security and Governmental Affairs, May 15, 2006, disagreeing with the DNI's position that the "review of intelligence activities is beyond the GAO's purview," as stated in *Information Sharing*, GAO-06-385 (2006), pp. 6 and 71.

and similar proposals, which were first raised in the mid-1970s, are designed to "reaffirm the authority of the Comptroller General to audit and evaluate the programs, activities, and financial transactions of the intelligence community."[44]

Applying GPRA Requirements to the CIA. A different scheme would affect the executive directly: place the CIA expressly under the requirements of the Government Performance and Results Act, commonly referred to by its initials (GPRA) or as the Results Act. This 1993 enactment emphasizes assessing agencies based on outcomes (that is, their performance and results) rather than outputs (for instance, meeting certain deadlines, quotas for issuing grants, or expenditure levels).[45] The CIA remains the only significant explicit exemption to GPRA's mandates. These include developing a broad mission statement; a five-year strategic plan flowing from it; an annual performance plan, setting specific objectives and ways to carry out the strategic plan; and a followup evaluation of the agency's accomplishments, failures to meet expectations, and reasons for both. These GPRA reports from the CIA could be submitted to the House and Senate Intelligence Committees in a classified version.

Enhancing the Inspectors General. A different set of alternatives would rely upon changes in offices of inspector general (OIGs), established in executive departments and entities to combat waste, fraud, and abuse and to keep the agency head and Congress fully and currently informed about these matters.[46] Changes that might directly or indirectly benefit congressional oversight of intelligence would be to: (1) ease and increase coordination among the relevant offices of inspectors general through existing or new councils and other mechanisms;[47] (2) establish a new post of inspector general with comprehensive jurisdiction over the intelligence community;[48] (3) place the administratively established IGs in the Defense

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[44] H.R. 978 and S. 82, 110th Congress.

[45] P.L. 103-62, 107 Stat. 285.

[46] 5 U.S.C. Appendix. For an overview and other sources, see CRS Report 98-379, *Statutory Offices of Inspector General: Past and Present*, by Frederick M. Kaiser.

[47] In the 110th Congress, several legislative initiatives are designed to enhance the independence and coordination among inspectors general. This would occur through additional protections for the IGs and a new coordinative council, which would include the statutory IGs in the intelligence community (IC), among others operating under the IG Act and other laws. Prominent bills are H.R. 928, which passed the House, and S. 2324, as reported by the Senate Committee on Homeland Security and Governmental Affairs. CRS Report RL34176, *Statutory Inspectors General: Legislative Developments and Legal Issues*, by Vanessa K. Burrows and Frederick M. Kaiser.

[48] Notwithstanding its overarching jurisdiction, the IC inspector general would not replace the existing counterparts in various departments and agencies. See H.R. 2082, 110th Cong., which has cleared the House and Senate; and U.S. Congress, Senate Committee on Intelligence, *Intelligence Authorization Act for Fiscal Year 2008*, S.Rept. 110-75, 110th Cong., 1st sess., pp. 16-19. The bill, which passed the House and Senate, however, was vetoed by President Bush; and his veto was sustained. *Congressional Record*, March 11, 2008.

Department under the Inspector General Act of 1978, as amended; [49] (4) clarify and strengthen the jurisdiction and authority of the statutory OIGs over the administrative counterparts within an agency or department; and (5) augment the authority, jurisdiction, independence, and reporting requirements of the IG in the Office of the Director of National Intelligence.[50]

Observations on Oversight of Intelligence

Obstacles to Oversight

Congressional oversight of intelligence meets obstacles that are not usually present in other areas.[51]

Secrecy Constraints. The most significant constraint is the high degree and pervasiveness of secrecy surrounding intelligence policy, information, activities, operations, resources, and personnel. For Congress, this means that the legislature, its committees, and its Members are circumscribed in a number of ways: what they know; who receives the information, how, and in what form and forum; who provides it; what information can be shared with other Members and panels, how, and in what detail; and what non-governmental sources can contribute to legislators' knowledge, to what degree, and in what ways.

The secrecy imperative results in a system that is often closed to outsiders — not just the general public but also Representatives and Senators who do not have seats on the select committees on intelligence. The impact of official secrecy is evident in the restrictions on access to and disclosure of classified information in the panels' custody as well as on restraints covering what the select committee members

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[49] Ibid. The vetoed H.R. 2082 also included a provision to place four DoD entities — the National Reconnaissance Office, Defense Intelligence Agency, National Security Agency, and the National Geospatial-Intelligence Agency — under the Inspector General Act of 1978, as amended. These agencies would be the equivalent of "designated federal entities," that is, entities whose IGs are appointed by and removed by the agency head. However, the Secretary of Defense would be able to prevent or halt an audit or investigation, if the Secretary or DNI determined that such a prohibition would be necessary to protect vital U.S. national security interests. The House and Senate Committees on Defense and on Intelligence would have to be notified of such an exercise by the Secretary of Defense.

[50] The DNI, under authority establishing the post and office (P.L. 108-458), has complete discretion to create and construct an OIG in his Office, based on provisions he selects from the Inspector General Act of 1978, as amended. In 2006, the director established an inspector general post in his office. U.S. Office of the Director of National Intelligence, *Report on the Progress of the DNI in Implementing the Intelligence Reform Act of 2004*, May 2006. In the meantime, however, the House and Senate Intelligence Committees have raised questions about the IG's independence, capabilities, jurisdiction, and reporting to Congress. U.S. Congress, House Permanent Select Committee on Intelligence, *Intelligence Authorization Act for 2007*, H.Rept. 109-411, 109th Cong., 2nd sess.

[51] See CRS Report RL32617, *A Perspective on Congress's Oversight Function*, by Walter J. Oleszek.

themselves can discuss outside its confines.[52] These restrictions and their demanding requirements not only slow down or prevent access by non-members, because of an anticipated lengthy delay in complying with the procedures, but might also harbor a "chilling effect" for some, because of the strict limitations on disclosure and use of the information among colleagues outside the Intelligence Committees. As noted above, moreover, other access controls adopted by the executive set limits on the Government Accountability Office, Congress's chief audit and investigative agency.

The impacts and implications of secrecy are extensive and burdensome. The 9/11 Commission summarized the effects this way: "Secrecy stifles oversight, accountability, and information sharing."[53]

Appeal of Intelligence Oversight. Along with this is the apparently limited appeal of overseeing intelligence and making intelligence policy, including authorizing the budget. Congressional efforts here remain largely hidden and may have only marginal direct effects on Members' constituencies, districts, or states.[54]

Overcoming the Obstacles

Objectives and Goals. The impact of these limitations on Congress's oversight of intelligence is that it is significantly more difficult than in other fields. And the usual incentives for Members to serve on certain committees and conduct oversight appear to be more modest or even non-existent for intelligence.

Steps have been advanced, however, to increase Congress's capacity to overcome these hurdles. Prospects along this line include (1) heightening the appeal of serving on the intelligence panel; (2) enhancing the expertise and knowledge of Members (both on and off the panels); (3) reinforcing the shared responsibilities between an Intelligence Committee, on the one hand, and panels with overlapping memberships, on the other; (4) expanding the contacts and coordination between the intelligence authorizors and appropriators; (5) changing the relationship between the two chambers on intelligence matters, through, for instance, a joint committee or increased contacts between the existing committees; and (6) developing new connections between Congress and the executive that lends itself to more effective oversight.

The Joint Committee Approach and Alternatives. Growing out of these goals are a number of recommendations to strengthen oversight of intelligence, which have arisen since the genesis of the modern intelligence community six decades ago. Recent ones have come from the 9/11 Commission, which proposed two distinct alternatives. One was to create a joint committee on intelligence. Yet over the years, the drafts for a JCI have differed in important respects: membership,

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[52] Illustrations of such restrictions can be found in an interview with Representative Jane Harman, a former member of the House Intelligence Committee: "House Committee to Probe Ruin of CIA Tapes," *Morning Edition*, National Public Radio, January 6, 2008.

[53] 9/11 Commission, *Report*, p. 24.

[54] Ibid., pp. 420-421.

leadership, jurisdiction, authority, staffing, and controls over classified information, among other matters. Moreover, rationales for a JCI have met with competing objections and concerns.

A second major option advanced by the 9/11 Commission was to enhance the powers and status of the Intelligence Committee in each house, along with realigning committee jurisdiction over intelligence appropriations, with the prospect of merging authorizing and appropriations in one committee. The Senate — in S.Res. 445 (108th Congress), approved October 9, 2004 — followed this path part of the way, when it removed the term limits on serving on its intelligence panel, reduced the number of members, and created a separate Subcommittee on Intelligence on the Appropriations Committee. In separate action, leaders on the Senate Intelligence and Appropriations Committees issued a Memorandum of Agreement in 2006, designed to improve coordination and transparency between the two. The House has traveled a different route, in creating a Select Intelligence Oversight Panel on the Appropriations Committee, which includes members of the Intelligence Committee.

Other approaches to change legislative oversight of intelligence have been proposed. These include several that would affect the executive directly as well as Congress's own structure and capabilities: increase the use of congressional support agencies; clarify and extend independent access for GAO to audit intelligence community agencies, particularly the CIA; require the CIA to meet the GPRA planning and reporting obligations, as other IC components must do; increase the independence of and the coordination among IC inspectors general; improve their reporting to Congress, where needed; and add a new inspector general with jurisdiction over the entire intelligence community.