

A FUTURE CHALLENGES ESSAY

# The Roots of Weak Congressional Intelligence Oversight

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## Abstract

Ten years after 9/11, the least reformed part of the US intelligence system is not the CIA or the FBI, but Congress. This essay examines why. Headlines have focused on the extent to which Bush administration officials withheld information from Congress about interrogations, wiretapping, and other controversial intelligence programs. But executive branch secrecy is not the entire story. I have found that many of Congress's oversight troubles lie with Congress and two institutional deficiencies in particular: limited expertise and weak budgetary power over the Intelligence Community. This is no accident. In both areas, electoral incentives and institutional prerogatives have led Congress to tie its own hands and block oversight reforms even when the problems are known and the stakes are high. The result is an intelligence oversight system that is well designed to serve the reelection interests of individual legislators and protect congressional committee turf but poorly designed to serve the national interest.

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The September 11 terrorist attacks sparked major efforts to transform executive branch intelligence agencies, including the creation of the Office of the Director of National Intelligence, the most sweeping intelligence restructuring since 1947; the formation of the behemoth Department of Homeland Security; initiatives to transform the FBI from a law enforcement to domestic intelligence agency; and the proliferation of more than seventy regional, state, and local terrorist "fusion" centers to integrate terrorist threat

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reporting. To be sure, effort is not the same thing as success; the 2009 Christmas Day bomb plot revealed many lingering deficiencies in the US intelligence system. Nevertheless, it is fair to say that executive branch intelligence agencies have expended considerable effort trying to adapt to the terrorist threat.

Congress is another story. Although Congress has been instrumental in many post-9/11 executive branch reforms, it has been largely unable to reform itself. In 2004, the 9/11 Commission called congressional oversight “dysfunctional” and warned that fixing oversight weaknesses would be both essential to US national security and exceedingly difficult to achieve.<sup>1</sup> By 2007, Lee Hamilton, who served as the commission’s vice chairman and earlier as chairman of the House Permanent Select Committee on Intelligence, delivered an angry and ominous warning to the Senate Intelligence Committee:

To me, the strong point simply is that the Senate of the United States and the House of the United States is [*sic*] not doing its job. And because you’re not doing the job, the country is not as safe as it ought to be. . . . You’re dealing here with the national security of the United States, and the Senate and the House ought to have the deep down feeling that we’ve got to get this thing right.<sup>2</sup>

Hamilton’s words prompted vigorous nods of agreement across the aisle but never made headlines or produced major changes.<sup>3</sup> The committee’s own reform centerpiece—consolidating appropriations and authorization powers—quickly and quietly died. In January 2010, the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism concluded that congressional intelligence and homeland security reform efforts were still failing to achieve their desired results.<sup>4</sup>

This essay examines the roots of weak intelligence oversight and why these deficiencies have persisted for so long. Since 9/11, most explanations have focused on the Bush administration and the extent to which executive branch officials withheld information from Congress about secret and controversial programs such as the National Security Agency’s warrantless wiretapping, the CIA’s use of harsh interrogation methods, and the establishment of CIA black sites to detain suspected terrorists abroad.<sup>5</sup> Executive branch secrecy, however, is not the entire story. Congress has also struggled to bolster its own intelligence oversight capabilities, with limited success. What former Senate Intelligence Committee chairman John D. Rockefeller, IV, has called the “long and sordid history” of congressional oversight weaknesses began before 9/11 and continues today.<sup>6</sup>

I argue that many of Congress's enduring oversight troubles lie with Congress and two institutional deficiencies in particular: limited expertise and weak budgetary power over the Intelligence Community. This is no accident. In both areas, electoral incentives and internal congressional turf battles have led Congress to tie its own hands. The result is an intelligence oversight system that is well designed to serve the reelection interests of individual legislators and protect congressional committee prerogatives but poorly designed to serve the national interest.

I begin by discussing what "good oversight" means and why faltering intelligence oversight is a reasonable starting point. Next I turn to expertise and the power of the purse, two of the most potent weapons in Congress's oversight arsenal. I examine why Congress has a harder time using these weapons to oversee intelligence than other policy areas. The answer lies with incentives. As Mayhew argued thirty years ago, congressional rules and structures are designed to maximize the reelection interests of individual members.<sup>7</sup> Intelligence after 9/11 is no exception. Congress's irrational oversight system has rational roots: electoral incentives on the outside and the zero-sum nature of committee power on the inside provide powerful reasons for Congress to hobble its own oversight capabilities even when the national security stakes are high.

### **What Does Good Oversight Look Like, Anyway?**

Defining effective oversight is easier said than done. "Good" oversight lies in the eyes of the beholder. What constitutes optimal offshore oil drilling regulation is different for the Sierra Club than for British Petroleum. Oversight does not take place in a political vacuum where legislators conduct a Spock-like assessment of options, costs, and benefits. Instead, as Aberbach notes, oversight is embedded in politics and intertwined with policy advocacy on behalf of constituents, groups, and their interests.<sup>8</sup>

Good oversight is also hard to define because most agencies have contradictory missions that pull them in different directions as the power of contending interest groups waxes and wanes. The Forest Service was originally designed to facilitate timber mining in public lands but now also has responsibility for preserving those lands for recreation and wildlife conservation. The Department of Homeland Security is charged both with letting people into the United States and keeping terrorists out. Navigating among these conflicting interests, agencies, and their congressional overseers is a herculean task.

Finally, good oversight is hard to recognize because many oversight activities are impossible to measure. Telephone calls, e-mails, and other informal staff oversight

activities occur frequently but cannot be measured in data sets. Even more important, the very *possibility* that an agency’s action might trigger a future congressional hearing (what some intelligence officials refer to as “the threat of the green felt table”) or some other congressional response can dissuade executive branch officials from undertaking the proposed action in the first place. This kind of anticipatory oversight can be potent, but from the outside, it looks like no oversight at all.<sup>9</sup>

Despite these inherent definitional limitations, my research suggests that Congress has struggled with intelligence oversight for a long time. Interviews with more than eighty current and former intelligence officials, legislators, and Capitol Hill staffers reveal a widely shared view that meaningful intelligence oversight fulfills four roles: (1) ensuring that intelligence policies and activities fall within the bounds of the law; (2) setting strategic guidance and funding levels so that resources can be matched against priorities; (3) examining and improving current programs and practices; and (4) informing the public about the vital role that secret intelligence agencies play in US national security.<sup>10</sup> Although different respondents emphasized some roles more than others—with legislators and their staff focusing on legal compliance and intelligence officials highlighting Congress’s public support function—nearly every respondent believed that oversight was bad and getting worse. In the spring of 2009, CIA director Leon Panetta said, “I do believe in the responsibility of the Congress not only to oversee our operations but to share in the responsibility of making sure that we have the resources and capability to help protect this country. The only way that’s going to work is if both parties are working in the same direction.” And yet, Panetta added, “There’s been a lot of poison in the well in these last few years. And I think in 40 years that I’ve been in and out of Washington, I’ve never seen Washington as partisan as it is today. And I think we pay a price for that in terms of trying to deal with all the problems that face this country.”<sup>11</sup> Another senior intelligence official noted that oversight had deteriorated so much during his career that “I don’t even know what good oversight looks like anymore.”<sup>12</sup> Overseers agreed. One legislator who served on a congressional intelligence committee called oversight “horrible”<sup>13</sup> and said that improving even the intelligence budget process would mean that “somebody in Congress would have to die.”<sup>14</sup>

These qualitative impressions are supported by two quantitative metrics most frequently used to evaluate oversight: hearing and legislative productivity. Tracking hearings held by fifteen House and Senate committees in 1985, 1990, 1995, 2000, and 2005, I found that the intelligence committees ranked at the bottom every year except one.<sup>15</sup> In 2005, the House Intelligence Committee held just 23 hearings (both classified and unclassified), compared to 77 hearings in the Energy and Commerce Committee,

91 in the Oversight and Government Reform Committee, and 104 hearings held by the Foreign Affairs Committee. Intelligence committees also trailed behind others in producing legislation.<sup>16</sup> In a comparison of legislative productivity among four major Senate policy committees, intelligence again ranked last. Between 1985 and 2005, the Senate Intelligence Committee considered an average of just six bills per year. The Senate Foreign Relations Committee considered an average of 118 bills per year, the Senate Banking Committee considered 161 bills, and the Senate Commerce Committee considered an average of 241 bills each year.

Interviews and congressional activity data can never paint a full picture of oversight efforts, quality, or impact. The picture they do paint, however, is informative, suggesting that, at the very least, effective oversight is a dubious proposition. The question is not so much whether intelligence oversight is weak but why.

### **Expertise: How Knowledge Becomes Power and Why It's Missing in Intelligence**

When it comes to overseeing executive branch agencies, expertise is one of Congress's most powerful weapons. As the old saying goes, knowledge is power. The more Congress knows about an agency's policy domain, the better questions it can ask, the more it can monitor agency performance, and the more it can hold the agency accountable. As one congressional staffer put it, "most of what we do in oversight is through the asking of questions."<sup>17</sup> Although oversight is never easy, developing congressional expertise helps and limiting it hurts.

Broadly speaking, Congress has three ways to develop institutional oversight expertise for any policy. The first is tapping into legislators' homegrown knowledge. Electoral incentives guarantee that winning congressional candidates are experts on their districts' key industries before they head to Washington and that they stay abreast of new developments if they want to keep their jobs.<sup>18</sup> The second is establishing rules and benefits that encourage and reward on-the-job learning. Chief among these are committee membership rules that enable members to serve for unlimited periods of time and seniority rules for determining committee chairmanships. Experience and expertise generally go hand in hand; the longer one serves on a committee, the more one is likely to know about its policy issues and processes. Third, Congress can augment member expertise by developing staff capabilities either directly—by increasing the size of committee and personal staffs—or indirectly through three major congressional support agencies: the Congressional Budget Office, the Congressional Research Service, and the Government Accountability Office (GAO).

### ***What's Wrong with Intelligence Oversight?***

All three sources of expertise are far more robust in domestic policy than intelligence. For individual legislators, this arrangement makes electoral sense. The desire to win reelection naturally steers members of Congress to focus on domestic policy issues, which offer greater political benefits and lower political costs. For Congress, however, domestic political incentives weaken the legislature's institutional power vis-à-vis the executive branch in intelligence policy.

*The homegrown expertise problem: inattentive voters, weak interest groups, and bad geography.* Although newly elected legislators come to Washington knowing a great deal about a variety of policy issues, almost nobody walks in the door an intelligence expert. This is partly because intelligence is a highly technical and cloistered business, requiring years of study or insider experience to understand. Of the 535 members of the 111th Congress, only 2 ever worked in an intelligence agency.<sup>19</sup> This experience base stands in sharp contrast to the armed services committees, where typically a third of the membership or more has had military experience.<sup>20</sup> As one congressional intelligence staffer noted, military service may not make a legislator an instant expert on current issues, but “at least they know the rank structure. They can start asking questions. It’s like peeling an onion. You start with that background and then the questions get sharper.” In intelligence, by contrast, the staffer noted, “it would be almost next to impossible to fill the committee with members who have any kind of operational and educational background in intelligence.”<sup>21</sup> Instead understanding intelligence takes the one thing in shortest supply for a legislator: time. As former Senate Intelligence Committee chairman Bob Graham noted, simply learning the basics usually “exhausts half” of a member’s eight-year term on the intelligence committee.<sup>22</sup>

Admittedly, many policy areas are complicated and hard to understand from the outside. But only intelligence couples this inherent policy complexity with a trifecta of inattentive voters, weak interest groups, and bad geography. These features of the political landscape turn out to be daunting barriers to developing expertise.

Ever since the 1950s, political scientists have found that American voters care more about domestic than foreign policy issues.<sup>23</sup> In the past twenty years, despite the Soviet Union’s collapse, two wars in Iraq, globalization, and the worst terrorist attack in US history, voters have never listed foreign policy as the most important presidential election issue. In the 1996 and 2000 elections, foreign policy ranked dead last.<sup>24</sup> Congressional elections are even more local affairs. As one member of Congress remarked, “My constituents back home don’t care how I vote on Bosnia.”<sup>25</sup>

An analysis of interest groups shows a similar disparity between domestic and foreign policy. Of the 25,189 interest groups listed in the *Encyclopedia of Associations* in 2008, only 1,101, or 4 percent, were concerned with foreign policy.<sup>26</sup> Moreover, if campaign contributions are any indication, domestic policy groups appear to be significantly more powerful than their foreign policy counterparts. According to the Center for Responsive Politics, only seven of the top hundred campaign contributors to congressional and presidential campaigns during the past twenty years have been foreign policy–related groups.<sup>27</sup>

And that’s foreign policy writ large. Intelligence policy attracts even less voter attention and weaker interest group support because the key issues are secret, less tangible, more bureaucratic, and not as obviously connected to US national security. Classification plays a major role in limiting the influence and activities even among major intelligence equipment manufacturers. Defense contractors can lobby publicly and vigorously for big-ticket defense weapons programs such as the \$28 billion F-22 fighter plane or the \$40 billion aerial refueling tanker program.<sup>28</sup> Not so with major intelligence satellite programs, which are highly classified. As one former Senate Intelligence Committee staffer noted, “The F-22, the tanker, it’s all in the open. There’s lobbying in intelligence, but it’s nowhere near as much. And it’s all behind closed doors.”<sup>29</sup> Nor can legislators with intelligence satellite manufacturers in their districts talk much about it. Another congressional staffer noted that “legislators can’t go and hold intelligence awareness fund-raisers in the district.”<sup>30</sup>

In addition, voter attention to the bureaucratic details of intelligence agencies is naturally low compared to pressing foreign policy issues. Iran’s nuclear program is one thing; the FBI’s personnel system is quite another. As the House Permanent Select Committee on Intelligence concluded in its 1996 report:

Intelligence, unlike virtually all other functions of government, has no natural advocates in the public at large. Its direct effect on the lives of most citizens is largely unfelt or unseen; its industrial base is too rarefied to build a large constituency in many areas; it is largely an “inside the Beltway” phenomenon in terms of location, logistics, budget and concern. The only places where intelligence can hope to find some base level of support are from its Executive Branch masters and its congressional overseers.<sup>31</sup>

Finally, geography works against aligning electoral incentives to develop intelligence expertise. Because intelligence is a national policy issue, those who care deeply about

it are dispersed across congressional districts, which is bad news for developing congressional intelligence experts. To understand why, one need only compare agriculture policy to intelligence policy. No matter what security threats confront the United States, Congress will always have an overabundance of farm subsidy experts and a shortage of intelligence experts. Why? Because farm interests are clustered in geographic regions with organized interests who provide free information and reward representatives for advocating their positions. Senators James Harlan (R-IA) and Tom Harkin (D-IA) belonged to different parties and served in different centuries, but both represented Iowa, compelling both men to know a great deal about farming and to serve on the Agriculture Committee.

That kind of naturally occurring and self-reinforcing expertise system does not exist in intelligence. Although surveillance satellite producers are based in certain regions, there is no Iowa equivalent for intelligence, no heavy geographic concentration of industry or a natural constituency that incentivizes legislators to learn the intelligence business and serve on the intelligence committees to help folks back home. As the House Intelligence Committee concluded, committee service contains “more overt drawbacks than attractions: it likely offers no help vis-à-vis the interests of the Members’ districts; it detracts time and attention from issues of direct interest to constituents; and there is little Members can say about what they do.”<sup>32</sup>

In sum, expertise does not arise naturally in intelligence. Although legislators may have strong personal policy interests,<sup>33</sup> they know their time is precious and must be employed judiciously to win reelection.<sup>34</sup> *Ceteris paribus*, legislators are more likely to develop expertise on issues their constituents care about most and in areas where interest groups are powerful and plentiful.

*Term limits and on-the-job learning.* The second route for developing congressional expertise—on-the-job learning—has proven equally challenging. The same electoral incentives that discourage members from joining intelligence committees in the first place also encourage them to leave quickly. Indeed, Congress has designed committee rules to ensure that this happens in intelligence but almost nowhere else. Nearly all of Congress’s committees allow unlimited service so that members can rise in seniority, become more powerful (and expert), and provide greater benefits to their districts.<sup>35</sup> But the intelligence committees do not. Instead, the House Intelligence Committee has limited members to four terms since its inception in 1977,<sup>36</sup> and the Senate imposed term limits on members of the Select Committee on Intelligence for nearly thirty years,

abolishing them only in 2005.<sup>37</sup> These term limits are not determined by law but by internal House and Senate rules, which are far easier to change.

Many contend that intelligence committee term limits were designed originally to keep legislators from being co-opted by the agencies they oversee. But that logic has never been applied to the armed services committees or most of Congress’s other committees, which presumably face similar co-optation challenges. Moreover, intelligence committee term limits have persisted for years, despite repeated calls from nonpartisan studies before and after 9/11 to strengthen expertise by abolishing the limits, including a 1996 report issued by the House Intelligence Committee’s own staff.<sup>38</sup>

A more compelling explanation is that term limits are electorally efficient, ensuring that members can quickly roll off the intelligence committees and onto committees that confer greater benefits to their constituents. Serving on the intelligence committees is not a particularly attractive assignment. Congress’s most powerful members have been avoiding the intelligence committees in increasing numbers, suggesting that the intelligence committees are actually less attractive now than they were twenty years ago. In 1987, 73 percent of the members of the Senate Intelligence Committee also held top leadership posts in the chamber, a strong indicator of the committee’s importance. Yet by 2007, only 33 percent of the committee could be classified as “movers and shakers” in the Senate. The percentage of movers and shakers serving on the House Intelligence Committee also fell, from a high point of 47 percent in 1987 to just 25 percent in 2007 (see table 1).<sup>39</sup>

**TABLE 1:** Decline in Movers and Shakers on Intelligence Committees, 1977–2007

<i>Committee</i>	<i>Year</i>	<i>Number of Movers and Shakers</i>	<i>Committee Size</i>	<i>Movers and Shakers % of Committee Total</i>
<b>Senate Intelligence</b>	1977	6	17	35%
	1987	11	15	73%
	1997	9	19	47%
	2007	5	15	33%
<b>House Intelligence</b>	1978*	6	13	46%
	1987	8	17	47%
	1997	7	16	44%
	2007	5	20	25%

\*Data not available for 1977

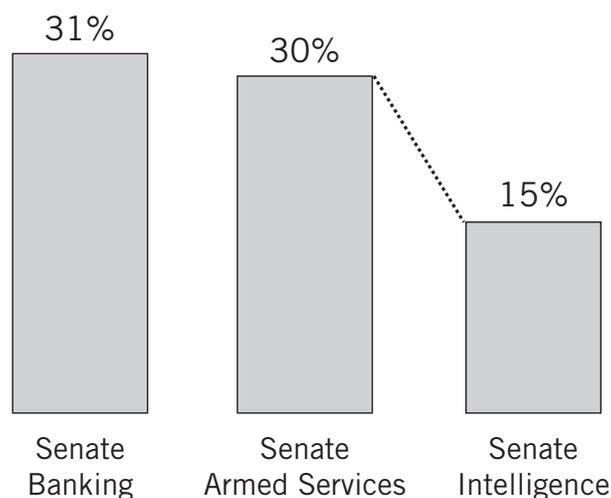
**Source:** 1977, 1978, 1987 data from Charles Brownson, *Congressional Staff Directory* (Mount Vernon, VA: Congress); 1997 data from Joel Treese, *1997 Congressional Staff Directory*, Fall, (Alexandria, VA: CQ Staff Directories, 1997); 2007 data from *Congressional Directory: 110th Congress* (Washington, D.C.: GPO, January 2007).

Whereas legislators with presidential aspirations can burnish their national security credentials, for most members overseeing intelligence is difficult and costly because it requires delving into highly technical issues without watchdog groups or any other information sources freely available in the unclassified world. Legislators also cannot talk about their committee work with constituents. As former CIA director Michael V. Hayden put it, “No member ever gets a bridge built or a road paved by serving on the intelligence committee. It’s an act of patriotism.”<sup>40</sup>

Given these costs and benefits, term limits are an electoral godsend, ensuring that every legislator can switch to more attractive committee assignments, even though doing so hinders Congress from developing intelligence oversight expertise.

*The expertise gap.* Not surprisingly, term limits have created substantial experience gaps between the intelligence committees and Congress’s other oversight committees. From 1975 to 2008, 31 percent of the Banking Committee and 30 percent of the Armed Services Committee served at least five congressional sessions, but just 15 percent of the Intelligence Committee served that long (see figure 1). The experience gap is even more pronounced in the House. So-called long termers constituted 32 percent of the House Armed Services Committee and 23 percent of the House Banking Committee but just 5 percent of the House Permanent Select Committee on Intelligence.

**FIGURE 1:** Percent of Long Termers\* Serving on Senate Banking, Armed Services, and Intelligence Committees, 1975–2008



\*Long termers are defined as Members serving on the committee five congressional sessions (ten years) or longer.

**Source:** *Official Congressional Directory*, 94th–110th Congress (Washington, D.C.: GPO).

Other metrics paint an even starker picture: The longest serving member of the House Armed Services Committee spent fifteen terms, or thirty years, on the committee. A dozen other representatives served twenty years or more. In intelligence, the longest-serving member spent twelve years on the committee, and the majority of legislators spent four years or less. In the 103rd Congress, one of House Intelligence Committee's highest turnover years, eleven of nineteen members, or nearly two-thirds, were brand-new to the committee. As former CIA director Michael Hayden concluded, "Term limits are stupid. I don't know why they still have them but they are hanging themselves."<sup>41</sup>

*Outsourcing to staff: The road not taken.* Congressional staff capabilities offer a third mechanism of developing institutional expertise. Yet Congress has not deployed staff capabilities to compensate for members' expertise limitations. The Government Accountability Office (GAO), called "Congress's watchdog," is widely considered one of the institution's most potent oversight tools, evaluating, investigating, and recommending management improvements to federal agencies. Yet at the insistence of intelligence agencies and the US Justice Department, the GAO has been prohibited from auditing the CIA and many other intelligence agencies for more than forty years, even though one thousand GAO employees currently hold top secret security clearances, only seventy-three hold sensitive and compartmented information (SCI) clearances, which grant them access to the most sensitive intelligence information.<sup>42</sup> Since 9/11, several congressional bills to grant GAO stronger intelligence auditing authority have failed. The most recent of these efforts, the 2010 Intelligence Authorization Bill, makes GAO auditing possible but unlikely by placing responsibility for determining GAO's role in the hands of the Director of National Intelligence.

Although the House Intelligence Committee staff has grown, it continues to lag behind staffing levels in the Armed Services and Banking Committees, despite dramatic changes in the intelligence mission, wrenching reform efforts in the Intelligence Community, and a doubling of the intelligence budget during the past ten years.<sup>43</sup> The Senate's intelligence committee staff has actually shrunk over time, from forty full-time staff in 1977 to thirty-four in 2007, a 15 percent decline. During the same period, the Armed Services Committee Staff ballooned by 59 percent and the Senate Banking Committee staff stayed roughly the same.<sup>44</sup>

### **Budgetary Power**

Budgetary authority is a second powerful oversight weapon. As Mathew McCubbins put it, "Congress holds the power of life or death in the most elemental terms throughout the existence of any agency."<sup>45</sup> Lee Hamilton echoed those sentiments twenty years

later, noting that “all of us have to live by the golden rule, and the golden rule is that he who controls the gold makes the rules.”<sup>46</sup>

Vested in Article I, Section 9, of the Constitution, Congress’s budgetary power is a two-step process: Congress first authorizes an agency or program and then funds the agency or program through separate appropriations legislation.<sup>47</sup> Broadly speaking, oversight in all matters is divided between those who examine agency activities and those who fund them. Most congressional committees are authorizing committees, charged with examining the policies and activities of specific agencies within their jurisdiction. Appropriations of funds are handled exclusively by twelve subcommittees of the House and Senate Appropriations Committees. The system is supposed to ensure that one set of committees develops policy expertise and examines substantive issues in depth and that another set of committees develops fiscal expertise and guards against excessive government spending. But this bifurcated oversight system also ensures that an authorizing committee’s budgetary power goes only so far. Authorizers can threaten to cut budgets, but appropriators must deliver. Effectively wielding the power of the purse requires coordinating across committees.

In theory, two factors should make coordination easier: availability of information and lower committee workloads. The more information that is easily available, and the more manageable the budget workload, the easier it is for legislators and their staffs to deal with issues and work across committee lines. Committees in other policy areas enjoy both of these advantages far more than intelligence committees do.

### ***Availability of Information***

For most policy issues, budget information is widely and publicly available, meaning that if an authorizing committee wants to punish an agency by recommending budgetary cuts, everyone knows it. That fact alone enhances the credibility of the threat. To be sure, the availability of information enables many players, including organized interests, to jump into the fray and lobby on behalf of pet programs or agencies. But this informational environment also limits the degree to which an agency can circumvent the authorizing committee and go straight to the appropriations subcommittee without being punished. As one congressional staffer put it, “If John McCain [who serves as the ranking member on the Senate Armed Services Committee] doesn’t like something in the defense appropriations bill, he can object on the floor of the Senate and offer amendments. It’s all in the open.” The more that information is out in the open, the harder it is for an agency to get away with gaming the system.

Intelligence is a different world. For decades, the executive branch refused to declassify any budget-related information, including total intelligence spending. Today, little more than the top-line figure is declassified, although by law the president can choose to wave declassification if he chooses. Legislators serving on the intelligence committees and the defense appropriations subcommittees (which handle the intelligence budget) can gain access to this information, but no one else, including personal congressional staffers, can. Few personal congressional staffers hold security clearances. In nearly all cases, these clearances are lower than the SCI level required for much of the intelligence committees' work. In addition, members of Congress must read classified documents in a secure location, making it logistically difficult for them to do their homework.<sup>48</sup> Many do not. One intelligence staffer estimated that "less than 50 percent of the Members come in and read materials."<sup>49</sup>

These and other secrecy rules are designed to protect highly sensitive intelligence sources and methods. But they also make end runs around the intelligence committees more likely because they give the executive branch a tremendous information advantage. In the classified intelligence world, where information is tightly restricted and security breaches are serious business, where interest groups are few and weak, and where press reporting is difficult, it is hard for one congressional committee to know or object publicly to what another committee is doing. As one congressional staff member put it, "There's lobbying in intelligence, but not nearly as much and it's all done behind closed doors. . . . What are you going to do if you're an authorizer who doesn't like what's in the appropriations bill? Hold up the entire defense appropriations bill? No way. There's not much recourse for intelligence authorizers, but there is in other areas."<sup>50</sup> Savvy intelligence officials, knowing this, quietly appeal to appropriators when intelligence committees threaten to cancel or decrease funding for a program. Secrecy creates an environment that is ripe for gaming.

### ***Budget Workloads***

Budget workloads exacerbate matters. The number of legislators, professional staff, and budget responsibilities for each of the Senate's twelve appropriations subcommittees are seen in table 2. The defense subcommittee, which is responsible for the intelligence budget, has the heaviest workload by far, handling more than half a trillion dollars in annual discretionary spending. No other subcommittee comes close. On a per capita basis, legislators assigned to the defense subcommittee are responsible for appropriating \$33.5 billion dollars of the federal budget each year. That's triple the work load of the Labor, Health and Human Service, and Education Subcommittee, which ranks second; nearly six times greater than Veterans Affairs Committee, which ranks third; and ten times

greater than the per capita budget workloads of the other nine Senate appropriations subcommittees. Similar disparities exist in the House. The per capita budget workload for Defense Subcommittee members is \$39.8 billion, four times greater than the per capita budget purview of the second-ranked Labor, Health and Human Services, and Education Subcommittee.

**TABLE 2:** Senate Appropriations Subcommittee Budget Workload, FY 2010

<i>Senate Appropriations Subcommittee</i>	<i>Number of Professional Staff</i>	<i>Number of Legislators</i>	<i>FY 2010 Discretionary Budget (\$ billions)</i>	<i>Budget Billions per Legislator</i>	<i>Budget Billions per Staff</i>
Defense	7	19	636.3	33.5	90.9
Labor, Health and Human Services, and Education	2	14	163.1	11.7	81.6
Veterans Affairs	3	13	76.7	5.9	25.6
Transportation, Housing, and Urban Development	2	20	67.7	3.4	33.9
Commerce, Justice, and Science	3	17	64.9	3.8	21.6
State Department	1	15	48.7	3.2	48.7
Homeland Security	3	15	42.9	2.9	14.3
Energy and Water Development	1	18	34.3	1.9	34.3
Interior and Environment	3	16	32.1	2.0	10.7
Financial Services and General Government	1	8	24.4	3.1	24.4
Agriculture	3	16	24.0	1.5	8.0
Legislative Branch	0	4	3.1	0.8	n/a

**Source:** Staff and legislator figures from Roll Call, accessed at <http://www.congress.org/congressorg/directory/committees.tt?commid=sappr>, 13, August 2009; budget data from Senate Appropriations Subcommittee press releases summarizing FY 2010 budget, accessed at <http://appropriations.senate.gov/subcommittees.cfm>, 13 August–20 December 2009.

Professional staff capabilities do not compensate much for these workloads. Even though the Defense Subcommittee has the largest professional staff of any Senate appropriations subcommittee, each staff member is responsible for about \$91 billion per year. The median appropriations subcommittee staff member handles just \$25 billion per year, less than one-third the workload of the staff member in the Defense Subcommittee. In the House, despite recent increases,<sup>51</sup> total professional staff employed by the Defense Subcommittee number fewer than two dozen.<sup>52</sup>

The defense budget's sheer size and complexity, compared to the legislative and staff capabilities arrayed against it, make vigorous oversight and coordination with authorizers difficult. Overseeing the intelligence portion of that budget is even harder because it constitutes less than 10 percent of overall defense spending. With \$600 billion

to appropriate, the Defense Subcommittee members and their small professional staffs do not have the capacity to examine the intelligence budget carefully. As Senate Intelligence Committee vice chairman Kit Bond noted, the Senate Defense Appropriations Subcommittee is overtaxed and overwhelmed. Marking up the entire intelligence bill usually takes “about twenty minutes,” said Bond, which is less time than the intelligence committee spends debating a single issue.<sup>53</sup>

### ***Gaming the System: The Satellite Program That Would Not Die***

In intelligence, secrecy considerations and the enormous Defense Department budgetary workload have created yawning gaps in oversight between the intelligence authorizing committees and the appropriations committees. Intelligence Committee members have complained about this problem for years. Lee Hamilton testified that, when he chaired the House Intelligence Committee, he was “frequently, continually bypassed” by intelligence agencies that went instead to the appropriations committees to secure funding for their programs.<sup>54</sup> Tim Roemer, who also served on the House Intelligence Committee, testified that intelligence officials “game the system,” circumventing the authorizing committee that has spent months, sometimes years examining an issue by going to “two or three people on the Appropriations Committee.”<sup>55</sup>

Outsiders gained a rare glimpse into this dynamic in 2004, when Senator John D. Rockefeller, IV (D-West Virginia), then vice chairman of the Senate Intelligence Committee, made public the committee’s opposition to a classified satellite program on the Senate floor. The *New York Times* reported that the cost of the satellite program had ballooned from \$5 billion to \$9.5 billion and that the resulting system was so fraught with technical problems it could take photographs only in daylight hours and in clear weather.<sup>56</sup> Citing his “strenuous objection” to a “particular major funding acquisition program that I believe is totally unjustified and very wasteful and dangerous to national security,” Rockefeller noted that the Intelligence Committee had voted twice to kill the program on a bipartisan basis but had been overruled by the Appropriations Committees.<sup>57</sup>

This is not an isolated case. In 2009, a congressional intelligence staffer noted that the Senate had objected to three separate satellite programs on a bipartisan basis during the past five years. “Two of the three have been killed,” the staffer noted, “but we are still fighting over the third.” When asked how long the programs were funded for, despite the committee’s objections, the staffer replied, with notable frustration, “longer than they should have been.”<sup>58</sup>

In sum, secrecy and budget workloads create an environment that weakens oversight by the intelligence authorizing committees. For intelligence officials, making end runs around objectionable demands by the House and Senate Intelligence Committees is attractive. For legislators on the intelligence committees, it is difficult to detect and object to end runs. For overworked appropriators who have no time to delve into the details of complicated intelligence programs, capitulating to the end runs and granting agency requests are often the paths of least resistance.

### ***Why Budget Reforms Fail***

Like expertise, Congress's weak budgetary hand over the Intelligence Community is well known, and proposals to address it have floundered. Before 9/11, the blue-ribbon Hart-Rudman Commission recommended consolidating authorization and appropriations powers in the intelligence committees.<sup>59</sup> After 9/11, this same proposal was the 9/11 Commission's principal recommendation for Congress. Yet since the 2001 attacks, resolutions to grant appropriations powers to the intelligence committees have failed three times in the Senate and have never come to a vote in the House. Instead, the House in 2007 chose to keep appropriations powers in the Appropriations Committee, creating a special intelligence appropriations "Select Intelligence Oversight Panel" that included some intelligence committee members but whose recommendations were nonbinding. This system was discontinued after four years, replaced by a new arrangement that allows three appropriators to attend Intelligence Committee hearings and briefings. At the time of this writing, it remains unclear just how this process will work. What is clear, however, is that this system still stops significantly short of moving budgetary power to the Intelligence Committee. The Senate has taken even less action, creating a notional Intelligence Appropriations Subcommittee in 2004 that has never actually met.<sup>60</sup>

Budgetary oversight reforms have failed for the same reasons that the weaknesses they sought to remedy arose in the first place: the current split between authorizations and appropriations maintains Congress's internal distribution of power and serves legislators' external reelection interests.

Few things are as sacrosanct in Congress as the power of the appropriations committees. As one congressional staffer joked, "In Congress there are Democrats, Republicans, and Appropriators."<sup>61</sup> Political scientists have traditionally argued that Appropriations Committee slots are "duty" assignments that confer relatively little electoral benefit but provide members with Congress's most important internal currency: power.<sup>62</sup> More recent empirical work, however, suggests that legislators gain

more direct constituency benefits than previously believed. Examining district-level data and Appropriations Subcommittee bills from 1959 to 1998, E. Scott Adler finds that half the subcommittees are made up of “high demanders,” members whose districts stand to gain disproportionately from the appropriations bills they consider. Even these duty-oriented committees, he finds, are often stacked with members who derive constituency benefits from their service.<sup>63</sup>

Both forces—garnering internal power within Congress and votes outside it—suggest that appropriators are motivated to protect their jurisdictional equities, which is exactly what they do. Since 9/11, only one proposal to lodge appropriations powers in the intelligence committees has come to a chamber vote. It was defeated in the Senate 73–24. All but one member of the Senate Appropriations Committee voted against it. The lone appropriator who voted in favor of limiting his own committee’s power, Mike DeWine, actually stood to get it right back because he also served on the Senate Intelligence Committee. As one congressional staffer put it, “Appropriators believe in Appropriations, and they are vigorous in their way of doing things and protecting their rights.”<sup>64</sup>

## **Conclusion**

The above discussion suggests three policy implications for the future. The first is that despite all the talk of lackluster intelligence oversight during the Bush administration, congressional oversight is unlikely to improve in the Obama administration. This is because Congress’s oversight difficulties have less to do with which party or individuals controls the White House and Congress and more to do with the basic electoral incentives that drive all legislators to devote their energies to designing Congress in ways that maximize their own reelection prospects. Intelligence oversight problems are deeply rooted because they are intimately tied to the two most valuable prizes in legislative politics: winning reelection and guarding congressional committee turf. Democrats and Republicans alike will fight to the mat for both.

Second, the essay suggests that reducing executive branch secrecy is important but is not enough to improve intelligence oversight. Meaningful oversight takes two branches of government, not one. A hypothetical illustrates the case. Imagine a world where no secrecy existed, where the executive branch briefed Congress on every intelligence issue and program immediately and fully. Would oversight improve substantially? Would agencies be held much more accountable or work better? Probably not, for two reasons. The first is that briefings are only as good as the questions asked in them. Receiving data downloads from executive branch officials is not the same thing as vigorous

probing and debate. Meaningful oversight requires good questions, and good questions require expertise. Unless Congress fosters institutional mechanisms to develop greater expertise, more executive branch information will only go so far. Second, Congress cannot demand greater bang for its intelligence buck unless and until it develops a budgetary system that will deploy resources effectively and hold agencies accountable for results. Intelligence officials are not fools. In a system that invites gaming, they play to win, circumventing the intelligence committees to secure budgets from appropriators. As long as the intelligence committees cannot credibly threaten budgetary punishment, executive branch agencies will be less inclined to respond to their demands.

Major gains, in short, require Congress to reform itself. No big new ideas or even new laws are necessary. Instead, Congress needs to start implementing three old ideas to change its internal operations:

- Abolish term limits in the House Intelligence Committee
- Consolidate budgetary power in the House and Senate Intelligence Committees
- Strengthen congressional intelligence staff capabilities

These three changes would not eliminate oversight problems, but they are the most important immediate steps to take to mitigate them.

The third implication is more a cautionary warning: do not count on these or any other significant oversight improvements anytime soon. This essay finds that weak oversight did not arise by happenstance. Electoral self-interest on the outside and protection of turf on the inside have hindered the development of congressional intelligence expertise and weakened Congress's budgetary power for years. Inattentive voters, few and weak interest groups, and the absence of a natural district constituency make developing intelligence oversight expertise costly and unlikely. The pathologies of intelligence budgetary oversight also appear to be entrenched. Secrecy, an overburdened Defense Appropriations Subcommittee staff, and the fragmented congressional committee system are not about to fade away.

Ironically, the very mechanisms intended to hold legislators accountable to citizens have created an oversight system that cannot hold the executive branch accountable to Congress. Rational self-interest has led legislators across parties, committees, and

eras to sabotage Congress's collective oversight capabilities in intelligence. Executive branch secrecy may make meaningful intelligence oversight difficult. But Congress's self-inflicted weaknesses make it next to impossible.

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