

Congress as a User of Intelligence

L. Britt Snider

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Editor's Note: This article has been condensed from a monograph published in 1997 by CIA's Center for the Study of Intelligence. It relies principally on off-the-record interviews with more than 50 knowledgeable individuals. The author was formerly staff director of the Commission on the Roles and Capabilities of the US Intelligence Community (the Aspin-Brown Commission). He also served as general counsel for the Senate Select Committee on Intelligence (1989-95); as that Committee's minority counsel (1987-89); as Assistant Deputy Undersecretary of Defense for Policy (counterintelligence and security, 1977-86); as counsel to the Church Committee (1975-76); and as Counsel to the Senate Judiciary Committee (1972-75).

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

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

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

Serious problems, however, have largely been avoided because intelligence agencies have sought to accommodate virtually all Congressional requests in some manner. Congress, in turn, has generally demonstrated a willingness to protect the intelligence it has been given. The two sides continue to muddle along from one episode to the next, accommodating where they can, bending where they must.

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

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

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chagrined to find themselves on the wrong side of a politically significant vote.

Evolution of Intelligence-Sharing With Congress

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

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

For almost three decades, the intelligence shared with the Hill went principally to the four committees that at the time provided oversight and funding for the CIA: the two armed services committees and the two appropriations committees in each House. Over time, each of these committees established small, hand-picked subcommittees responsible for the CIA,³ with the chairman of the full committee usually doubling as chairman of the subcommittee.⁴ For

the most part, these chairmen were part of the “old guard” in their respective Houses—powerful members who, by virtue of the Congressional seniority system, were able to retain their positions for lengthy periods of time. Most were strong supporters of intelligence and did not see the need for or benefit in intrusive oversight by the Congress.

From the outset, CIA adopted the policy that it would give the four committees any intelligence reports they might request and would respond to their requests for briefings. In practice, however, few requests were received. The committees had no place to store intelligence information, and thus nothing could be left with them.

CIA's formal appearances before “its committees” were also infrequent. The committees would hold occasional oversight hearings as well as receive briefings on world events. Even on these occasions, the amount of sensitive information imparted to them was minimal.⁵ Still, membership on the “CIA committees” carried with it a certain aura. Members had access, at least in principle, to CIA secrets, and could, if they chose, use this access to justify their positions on particular issues—that is, “If you knew what I know, you would understand why I am taking this position.”

The chairmen of the “CIA committees” for the most part kept their colleagues on other committees at bay. Efforts in the House and Senate to create joint committees on intelligence were repeatedly and decisively beaten back. Requests by other committees or individual members for intelligence briefings were normally cleared with the House or Senate chairman concerned. In practice, the CIA was permitted to provide substantive briefings to other committees so long as they did not include information on intelligence operations or funding. In some cases, notably the Joint Atomic Energy Committee and the Joint Economic Committee, this analytic assistance was substantial. On the whole, however, Congressional demands for substantive analysis were light.

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

This assertiveness continued into the 1970s, and Congress grew increasingly restless with the existing arrangements for oversight and accountability of US intelligence activities.

Although CIA and the rest of the IC largely avoided being drawn into the Watergate affair, that debacle nonetheless had a profound effect upon Congress's willingness to defer to executive authority. Congress was

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



now extremely skeptical, and the press fed this skepticism. Sensing that the time was ripe, reporters began to dig into US intelligence activities, producing a number of sensational exposés.

Among the exposés was a December 1974 *New York Times* story charging that the CIA had conducted “a massive, illegal domestic intelligence operation ... against the antiwar movement and other dissident groups in the United States” in violation of its statutory charter.⁶ Congress reacted to this and other disclosures by creating special investigating committees in each body: the Church Committee in the Senate and the Pike Committee in the House of Representatives.

The Church Committee initially focused its investigation on allegations

of abuses and improprieties, but its final report looked broadly at the operation and management of the IC. The Pike Committee chose a different tack, focusing on the performance of the IC in warning of international crises during the previous 10 years. Voluminous intelligence materials were provided to both committees. It was clear the old way of doing business with the Congress had fundamentally changed.

In time, both Houses established permanent committees dedicated to the oversight of intelligence activities: the Senate Select Committee on Intelligence (SSCI) in 1976 and the House Permanent Select Committee on Intelligence (HPSCI) in 1977. Initially, the creation of these bodies tended to diminish the contacts between the IC and the “nonoversight” committees of the Congress.

Intelligence agencies began to regard the oversight committees as “their committees.” Other Congressional committees, in turn, viewed the oversight committees as having the predominant role where intelligence was concerned.

Both intelligence committees adopted informal ground rules with the CIA to govern the sharing of intelligence. This gave the committees routine access to all but the most sensitive intelligence. The ground rules never attained the status of a written agreement, however, and over time gave way when the needs of the committees required.

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informed” of their activities. The EO also instructed the Director of Central Intelligence (DCI) to “facilitate the use of national foreign intelligence products by the Congress in a secure manner.”⁷ Later, as part of the Intelligence Oversight Act of 1980, the “fully and currently informed” language was enacted into law.⁸

In the late 1970s, both committees created subcommittees to deal with issues related to intelligence analysis and production. The subcommittees undertook a number of inquiries over the next 10 years that necessitated access to voluminous amounts of intelligence reporting and assessments. The SSCI had the additional responsibility of assessing the ability of intelligence agencies to verify arms control treaties, a function that required access to a huge amount of highly sensitive data. The trend toward ever-greater sharing of intelligence continued throughout the 1980s, despite both sides’ preoccupation with covert actions undertaken during the Reagan administration, notably the Iran-Contra affair.

Intelligence-sharing with non-oversight committees also increased during the 1980s. More committees and members were requesting support in the form of briefings, especially to assess political developments in the former Soviet Union. Additional storage facilities for intelligence were created outside the intelligence committees in 1987. In 1988, CIA’s Office of Congressional Affairs reported that more than 1,000 substantive briefings had been provided to members, committees, and staffs during the year. More than 4,000 classified publications had been sent to the Hill, and more than 100 visits by members and staff had been made to CIA facilities abroad.⁹

The cataclysmic events on the world stage between 1989 and 1991—the fall of Communist governments in Eastern Europe, the breakup of the former Soviet Union, the Persian Gulf war, and the collapse of Communist rule in Russia itself—generated heavy demands for intelligence briefings. Requests were especially intense in the runup to the Gulf war, when Congress was faced with a vote to commit US military forces.

In the aftermath of the Cold War, Congress began looking at legislative proposals to restructure the IC. While the more radical proposals fell by the wayside, in October 1992 Congress enacted a detailed restatement of the DCI’s duties and authorities vis-a-vis the rest of the IC.¹⁰ This restatement spelled out for the first time in law the DCI’s responsibility to provide intelligence “where appropriate, to the Senate and House of Representatives and the committees thereof.”¹¹

In the ensuing years, Congress’s appetite for intelligence continued to grow, notwithstanding episodes such as the Ames espionage case that seemed to cast doubt on the professionalism of intelligence work generally. To many, after the Ames debacle, the CIA and other intelligence agencies seemed more intent than ever on restoring their image by proving themselves responsive. When new Republican majorities came into power at the

beginning of the 104th Congress, both Houses found an IC ready and willing to support their needs.

**What Distinguishes Congress
as a User of Intelligence?**

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

In addition to the functions expressly mentioned in the Constitution, Congress carries out other functions implicit in these Constitutional roles, which are also cited as justification for access to intelligence. The most significant is oversight, which entails keeping track of how appropriated funds are spent and whether the activities of the executive are being carried out consistent with the law. Members also say they need access to intelligence to serve constituents, asserting that legislators have a right to know what the government knows—even if they cannot pass it along to their constituents—in order to be able to advise and counsel them properly. Finally, as public figures and officeholders,

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members of Congress need to be able to comment knowledgeably on international developments.

Policymakers in the executive branch have many of the same needs, but they constitute a different kind of consumer. Few members of Congress have expertise in national security matters at the time they are elected. Virtually all consumers in the executive branch have, by contrast, been selected for their positions precisely because of their expertise or experience in some aspect of national security affairs.

Members' time is necessarily spread across the gamut of public affairs, from local to national to international, whereas consumers in the executive branch typically have defined areas of responsibility within the national security arena. While their schedules may be as busy as those of members of Congress, there is typically a clearer focus to them.

Throughout the day, members of Congress are bombarded with information. One person interviewed for this article likened members to “360-degree phased-array radars, constantly whirling, picking up blips of information here and there on their screens.” Policymakers in the executive branch are equally as likely to be bombarded with information, but on a more confined range of topics and by a smaller, less diverse group of interlocutors. They are also more apt to distinguish among the sources of the information coming to them and more likely to challenge them.

The needs of policymakers for intelligence also tend to be more regular and action-oriented. Within their respective areas of responsibility,

most policymakers are constantly updating their databases, factoring in pertinent day-to-day developments disclosed in intelligence reporting. If they are policymakers who make good use of intelligence, they are in a constant dialogue with intelligence producers, refining their requirements for information.

Members of Congress, on the other hand, rarely have the time to keep abreast of day-to-day developments in intelligence reporting. Rather, the needs of most are episodic and reactive. As one intelligence official noted: “They [members] are observers, rather than customers in the usual sense. They get energized once in a while but, for the most part, we don't have the same ongoing dialogue with them that we have with customers [in the executive branch].”

On the other hand, one intelligence official noted, “There are times—usually when crises occur—when [Congress's] appetite [for intelligence] is insatiable. It's during these times that they just about overwhelm us.” Members' appetites invariably grow when they are faced with a vote on a national security issue that is politically controversial, such as whether to send US military forces

into a hostile situation or whether to ratify a trade treaty with significant economic implications for the home state or district.

Another important distinction is the milieu in which each branch operates. Where classified information is concerned, policymakers in the national security area are accustomed to operating in a secure environment, whereas most members of Congress are not. Far from living in an environment where information is tightly controlled, Congress does most of its business in public. It is, first and foremost, a political institution. Members constantly seek opportunities to get themselves and their positions before the public and are continually sifting through the information that reaches them to find ammunition for use in their political battles.

Policymakers also are looking for ammunition to use in their bureaucratic struggles, but these are not ordinarily played out in public view. There are occasions when the executive decides to disclose intelligence to the public (either officially or unofficially) to make its case to the Congress. But the ability that the executive once had to make selective use of intelligence with the Congress has been substantially eroded by the independent access that Congress now has.

For policymakers, intelligence information usually forms but one element—and perhaps not the most important one—of an administration's case to the Hill on a particular issue. US capabilities, diplomatic considerations, domestic implications, and public sentiment all will be factored in and may indicate a course

of action different from that indicated by the intelligence reporting.

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

While intelligence agencies, by most accounts, have come to regard substantive support to the Congress as an important part of their mission, they do not relate to Congress in the same way they relate to other consumers. For one thing, intelligence officials worry more about what Congress will do with the intelligence it is given than they do about what policymakers do with it. While most intelligence officials acknowledge that the Congress has a good track record where the protection of classified information is concerned, they also recognize that they will have little control once the intelligence is imparted. One such official said, "Wittingly or not, this affects what analysts say on the Hill and how they say it. They are more guarded."

The IC also does not involve Congress in the same way as other consumers in setting requirements and priorities for collection and analysis. In the executive branch, a formal process exists whereby consumers are

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consulted about their requirements and priorities for intelligence collection. These are translated into detailed collection guidance for the IC. Beyond this formal process, executive-branch consumers are frequently consulted as part of the ongoing process for tasking collection assets.

Congressional consumers are not consulted as part of this process. Nor are they consulted about potential topics for intelligence analysis. Moreover, while the DCI is charged with evaluating the utility of intelligence to “consumers within the government,” this role has never been seen as extending to the utility of intelligence to the Congress.

Many of those interviewed for this article pointed out, however, that whether or not the needs of Congress are formally considered in setting requirements and priorities for collection or analysis, Congress can obtain “whatever it wants, whenever it wants it” from the IC. Indeed, some in the executive branch believe Congress’s needs are given preferential treatment by the IC over those of consumers in the executive. As one person interviewed noted: “The Community will not accept requirements from us unless they come from an Assistant Secretary. Where Congress is concerned, they will do

whatever any staffer says he or she wants them to do For Congress, the Intelligence Community is the candy store that is always open.”

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

Notably, the Congressional staffers interviewed for this article did not disagree. While some noted that there were events on the Congressional calendar requiring intelligence support that could be anticipated, such as votes on “most-favored-nation” trade treatment for China or on arms control treaties, they also acknowledged that most intelligence was provided in response to events and developments that could not readily be predicted. So long as they could continue to get what they need when they needed it, they were content to rely on the intelligence that was produced for use by executive consumers and leave themselves out of the requirements and priorities process.

How Intelligence-Sharing Works

All members of Congress have access to intelligence by virtue of their

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

Classified intelligence reports¹² are routinely provided only to the committees with responsibilities in the national security area.¹³ Committees that do not have national security responsibilities and individual members who do not serve on national security committees may request intelligence support, but they are typically given a lower priority. Intelligence agencies do, nevertheless, try to accommodate them in some fashion, usually by providing briefings. On occasion, typically in connection with a vote in either House on a national security issue, the IC may be asked to provide intelligence briefings that are open to the entire body.

The intelligence committees today receive hard copies of most finished intelligence published by the IC for general circulation. In 1995, approximately 5,000 such publications—excluding the daily current intelligence publications—that is, the *National Intelligence Daily* (NID) and the *Military Intelligence Digest* (MID)—were delivered to each of the intelligence committees. In addition, both intelligence committees in 1996 installed computer terminals linking them to an IC network, known as PolicyNet, that provides electronic access to most finished intelligence,

and, in some cases, to intelligence reports that are not available in hard copy.

By contrast, the other “national security” committees receive copies of the NID and MID, but they have to request copies of other finished intelligence (including National Intelligence Estimates) from lists that are regularly provided by the principal production agencies (CIA and DIA). Committees with responsibilities outside the national security area do not receive intelligence publications at all, nor are they given lists of such publications from which to choose.

Use of the finished intelligence provided to the Hill—either in hard copy or by electronic means—appears limited. While the NID and MID are regularly read by the staff of the national security committees, the members themselves rarely take the time to do so. If they are informed at all, it usually occurs through staffers briefing them or showing them items of interest. Most of the finished intelligence furnished to the two oversight committees is, in fact, read by no one, and only occasionally does that which is read prompt a followup. Both members and staff say they are too busy to keep up with the voluminous amount

of reporting that comes in each day. As one staffer conceded, “I cannot, in good conscience, recommend to my member that it is worth his time to come in here and read this stuff. Frankly, it is not even worth my time.”

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

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

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vided by one intelligence agency or another virtually every day that Congress is in session. Briefings may be presented to committees, individual members, committee staffs, or individual staff members, as the situation requires. While most briefings are performed at the request of members or staff, intelligence agencies sometimes provide briefings on their own initiative, when they have information they believe should be shared with the Hill. The agencies feel this obligation primarily toward the intelligence committees but increasingly toward other committees as well, especially where those committees have asked to be kept informed of developments in particular areas.

Intelligence agencies try to accommodate all the requests for briefings they receive from the Congress, but they give priority to the leadership in both Houses and to the intelligence committees and their members. Next in priority come the other national security committees and their members, and then, finally, the rest of Congress. A list of the substantive briefings given by the CIA in 1995 suggests that Congress concerns itself principally with foreign policy issues on the “front burner” of public concern. Some 71 briefings, for example, were provided on Bosnia, 40 on Iran, 35 on Haiti, 33 on weapons proliferation, 29 on Iraq, and 27 on North Korea.¹⁴

The Impact of Intelligence-Sharing

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

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

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

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

istration knows that the CIA is in no position to withhold much information from the Congress and is extremely sensitive to Congressional demands; the Congress has enormous influence and information, yet remains suspicious and mistrustful. Such a central legislative role with respect to an intelligence service is unique in American history and in the world. And policymakers know it.¹⁵

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

Most of the interviewees believe intelligence-sharing has improved relations between the two branches. Many pointed out, for example, that, with or without access to intelligence, it is the role of Congress to criticize. “Even if Congress got no intelligence,” said one observer, “they would be seen as meddling ... and if Congress is going to meddle anyway, isn't it better they at least have the facts? It seems to me that giving them the facts will actually decrease their propensity to meddle.”

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Several noted that, because Congress had access to intelligence, it had sometimes managed to avoid irrational legislative responses to world events, responses that would have created serious diplomatic problems for the incumbent administration. As one current member put it: “Because the leadership has had immediate access to intelligence reporting, they have sometimes been able to stop the panic and craziness up here.”

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

Taking Congress as a whole, however, intelligence analysis (whether in written or verbal form) actually reaches only a small percentage of its members and bears upon a small proportion of its work. A survey of lawmakers conducted by the CIA’s Office of Congressional Affairs in late 1988 not surprisingly found them “overwhelmingly disinterested” in intelligence, insofar as the execution of their legislative duties was concerned.¹⁶

Members’ lack of interest can be attributed in part to the fact that intelligence does not lend itself to use in a public process. As one Senate Foreign Relations Committee (SFRC)

staff member noted: “We [the committee] are part of the public debate. We deal in the realm of the overt—in what actions other governments take and what actions they don’t take. While it is still useful to understand what their plans or intent may be, most of what the committee needs to know can be obtained from *The New York Times* or CNN. And the committee will respond overtly to it.”

On occasion, having access to intelligence does become important for the Congress. Quite often it figures into the consideration of legislation in the national security area: from resolutions expressing the “sense of the Congress” with regard to the latest international development, to bills imposing diplomatic or trade sanctions on other governments, to bills funding the latest weapon system. Intelligence also helps Congress perform its oversight function, providing a check on information coming from other sources.

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

better able to make a reputation for themselves.

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

Some, while regarding Congress as a legitimate consumer, did not view it as a “serious” one. They believed that most members had neither the time nor the interest to understand or probe what was being briefed to them. Members’ reactions were often seen as “shallow and superficial,” their requests “motivated by politics, pure and simple.” Some analysts resented having to brief staffers, whom they saw as “nonplayers.” The time and effort required to satisfy Congressional demands took time and effort away from their first priority: satisfying the pressing needs of decisionmakers in the executive branch.

Whatever frustrations analysts feel about their relationship with Congress pale in comparison to the frustrations felt by many elsewhere in the executive branch. Policymakers often find their policies and initiatives undermined on the Hill by intelligence briefings. Sometimes, the briefings are at odds with what the President or administration spokespersons have said. As a result, policymakers may face hostile

questioning from the press or from Congress itself. Sometimes, they are confronted with intelligence they did not know existed or with analytic conclusions, the basis for which they do not know. Sometimes, other governments are annoyed: diplomatic initiatives may be disrupted and negotiations broken off. "Policymakers should see intelligence agencies," said one intelligence official, "as simply purveyors of information, produced by professionals outside the political arena. Instead, some see us as trying to make trouble for them."

In principle, intelligence agencies acknowledge an obligation to keep pertinent policymakers apprised of the intelligence analysis being shared with the Congress in order to give them time to prepare for and deal with the consequences that are likely to follow. In practice, many policymakers say that the performance of intelligence agencies falls woefully short on this score. "The IC is so anxious to please its oversight committees," said one former executive official, "that it is hell-bent to get the intelligence up there, regardless of whether it is reliable and regardless of whether they have touched base with the rest of the executive branch."

Some intelligence officials do acknowledge a problem. One said: "There is, in fact, a certain imperative about intelligence. Once it is there, it goes. The emphasis these days is on getting it to the Hill as fast as possible when, in fact, it ought to be on making sure the policymaker is brought in on it before it goes. I know there have been many occasions when intelligence has gone to the Hill without policymakers knowing about it, causing them to ask, 'Who are those guys working for, anyway?' It ought not to happen, but it does."

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

Challenges and Pitfalls

Deciding what intelligence information should be provided to Congress:

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

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

An even more difficult situation arises when an analyst obtains significant but sensitive information that is not included in the finished intelligence that goes to the Hill and is not being

provided as part of any briefing specifically requested by the Congress. Assuming the information is judged reliable, what is the obligation of an analyst—or the analyst's superiors—to present such information on their own initiative to the relevant committees? Could they be held accountable for failing to do so?

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

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

Making distinctions as to who in Congress is entitled to what kind of intelligence support:

Although all members of Congress, by virtue of their elected positions, are entitled to access to intelligence,

clear distinctions have evolved regarding the intelligence support provided to Congressional committees and to individual members.

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

Another possible basis for the distinctions in intelligence support would be the recipients' institutional "need to know." This might explain the more limited support provided to the "non-national security" committees of the Congress and to members without committee responsibilities in the national security area. But need-to-know does not account for the difference in support accorded the intelligence committees and the other committees with jurisdiction over national security matters (the SFRC, the Senate Arms Services Committee, the HIRC, and the HNSC).

Although the IC made significant strides in the last Congress to improve the intelligence support provided to the other national security committees, the distinctions that remain still rankle. A staffer for one of these committees said he resented the fact that his committee was not given the same information the intel-

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ligence committee was given. In particular, he could not understand why his committee could not be provided with information that would help it evaluate the reliability of the evidence underlying the conclusions reached by intelligence analysts: "[We] are the ones who have to act on this stuff, not the intelligence committee."

Agreeing to, preparing for, and conducting briefings on the Hill:

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

Agreeing to brief. If an intelligence agency is asked by a Congressional committee to provide a briefing for its members in closed session, the Agency will usually accommodate the request, assuming that appropriate security measures are in place or can be put in place before the briefing.

While no intelligence agency relishes a briefing in open session, it might agree to provide one, depending on

which committee is making the request, what the committee's perceived need is, and whether the subject matter of the briefing can reasonably be discussed in public. Similarly, the idea of providing briefings requested by members who have handled intelligence irresponsibly in the past may grate, but most agencies, if pushed, will provide the briefing, albeit taking more care than usual with what they say.

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

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

Preparing. Preparations for Congressional briefings also vary widely. Briefings to committees (as opposed to individual members or staff) ordinarily receive the most attention. If a briefing involves a controversial topic, briefers are more likely to follow a written text that has been coordinated beforehand within the agency concerned and with relevant players in other agencies. Such briefings also are more apt to be previewed by officials at the agency concerned. Senior

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—Former executive branch official

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analysts are more likely to be tapped to do the briefing or be sent to accompany a more junior briefer.

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

If the briefing is to an individual member or committee staff, few analysts will go to the trouble of preparing a script. The degree of their preparation will usually depend on the controversy attached to the issue and how they perceive the sophistication of their audience with respect to it. Often they will “wing it,” based on their knowledge of the issue.

Whether an analyst doing an intelligence briefing is “prepped” on the political lay of the land he or she can expect to encounter will also depend on the controversy attached to the issue being briefed as well as the analyst’s experience and savvy.

In sum, in most intelligence agencies preparations for briefings on the Hill by and large are left to individual analysts and their immediate office chiefs. Congressional affairs staffs try to ascertain in advance whether the briefings being planned will satisfy the requirements of the Hill and whether the presentations are in a form that can be assimilated by a Congressional audience. But what the analyst plans to say and how it is said are typically left to the analytic office concerned.

Conducting. Whether briefing members of Congress or executive branch officials, intelligence analysts are

trained to make factual, objective presentations. They are taught to base their judgments and conclusions on the available evidence. If those judgments and conclusions are premised on certain assumptions, the assumptions are identified. If the evidence needed to reach a conclusion is not available, analysts are expected to say so.

By all accounts, the vast amount of intelligence analysis presented to Congress substantially meets these standards. But there have been occasions, in the view of some observers, when it has not. “Too often,” said one executive branch official, “there is a selective presentation of intelligence to the Hill It may not even be witting. Every bit of evidence that analysts can construe as pointing to [a foreign policy calamity in the making] is pointed out, while little evidence is pointed out leading away from such conclusion.”

As one former executive official noted, this often puts the policymaker in an awkward position: “The Intelligence Community always seems to be saying ‘the sky is falling, the sky is falling.’ Whereas policy-

makers are usually the ones to say ‘not so fast, let me put this in context for you.’ Generally, they will play down the significance of the intelligence. This leads to suspicions on the Hill that policy agencies are trying to interpret intelligence for their own political purposes. Intelligence analysts, on the other hand, are given more credibility because they are seen as independent rather than pursuing the administration’s policy line.”

A former Congressional affairs officer also noted the tendency of analysts to want to present a lucid picture on the Hill, regardless of the quality of the evidence: “Analysts often do not go to the trouble of alerting [members] to the quality of the information that supports their conclusions. This happens particularly when they have a good story to tell. There is a tendency to want to tell that story rather than present the holes or gaps in it.” A Congressional staffer put it this way: “Analysts are too focused on what the intelligence says and not what it does not say. Rarely will they point out to the committee when their evidence is thin.”

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

Intelligence analysts are not in the policy business. They support policy-

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Few analysts have experienced the rough-and-tumble and, at times, the downright nastiness of the political arena.

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makers; they do not make policy, nor do they opine about what policy is or should be. Indeed, it is precisely because they are not in the policy business that their analysis has value.

Members of Congress, however, often do not appreciate the principled position analysts occupy and try to draw them into policy discussions. Even if the analyst demurs on the ground that he is not “a policy person,” a member will often press on with “well, just give me your personal opinion, then” or “I know, but you’re the expert. I’ve got 30 minutes to spend on this and that’s it. So you’ve just got to help me.” Or things may turn blatantly political (“So from what you’ve told us, the President’s policy is a lot of baloney. Isn’t that right?”) The analyst may feel the only choice at this point is to appear rude (“I can’t answer that, sir”) or ignorant (“I don’t have an opinion, sir.”) If the briefing is being held in open session, the pressure to respond is even greater.

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

Providing advance notice to policymakers of intelligence to be shared with the Congress:

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

branch (at the White House and the State and Defense Departments) of everything being provided. Nor are there any mechanisms for policy agencies to get “back-briefed” on what transpires on the Hill. Communications occur largely by word of mouth. Most policymakers are aware that the Hill has access to most finished intelligence and frequently receives intelligence briefings.

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

At other times, notice is provided but, for a variety of practical reasons, does not “take.” Notice is usually left until the last minute. Players in other agencies are not consulted or notified until the intelligence agency itself has resolved what its analysts will say to the Hill. Phone calls to policymakers are missed; proposed testimony winds up in the legislative affairs office rather than with the relevant policymaker; or, if it is sent to the policymaker, he or she is too busy to read it.

Even if pertinent policymakers do read what intelligence agencies plan

to brief to the Hill, they may be too busy to weigh in with comments, or, if they are uncertain the briefing will produce a “flap,” simply decide to hope for the best. Some are concerned that, if they comment on the proposed analysis or try to delay it from reaching the Hill, they may be accused of politicizing the process, either by the analyst concerned or by the committee or member who requested the analysis.

The fear of subjecting analysis to political influence also inhibits intelligence analysts from confronting policymakers. While analysts insist that, in giving policymakers advance notice, they do not seek their views or concurrence, they know this is how policymakers frequently will respond to such notifications. If this does occur, it may leave the analyst in a quandary as to how to deal with the policymakers’ comments or complaints within the allotted time frame.

While various bureaucratic mechanisms are being used to cope with the notice problem, in the end nothing short of personal contact between the analysts involved and the affected policymakers or their staffs is likely to be effective. By all accounts, however, making this connection remains a significant practical problem.

Responding to complaints from policymakers:

When policymakers are alerted to intelligence to be provided the Hill, they may register complaints about it, especially if the policymaker sees his or her program, policy, proposal, or initiative going down the drain as a result. Policymakers may question whether the evidence underlying the analysis is accurate or complete,



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

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

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

complaint is that there is a disagreement with the analysis or that it will adversely affect an ongoing initiative, they respond with a polite turn-down. "If you tell us it is wrong," said one intelligence official, "we will fix it. But if you just say you do not like it, it goes."

Failure of Congress to integrate intelligence with other relevant information:

Most of the policymakers interviewed for this article fault Congress for accepting intelligence analysis too uncritically. They note that Congress is often unaware of, and does not take the time to understand, the context of the issue being addressed in intelligence briefings. They complain that

what Congress often hears—particularly when analysts do not have firm evidence one way or the other—is the worst-case scenario and that this skews Congressional perceptions of the issue being briefed. They also fault Congress for too readily accepting the judgments of intelligence analysts without probing the basis for them, leading to conclusions that the policymaker regards as unjustified by the evidence.

Most of the members and staff interviewed for this article acknowledged the need to obtain appropriate "context" in order to evaluate the intelligence they receive, and they conceded that at times this does not happen.¹⁷ Some noted, however, that

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the fault often lies with policymakers who refuse to appear at intelligence briefings to provide “the policy side” of an issue. This happens especially when the committee making the request is not the policymaker’s “committee”—that is, the committee that exercises principal jurisdiction over the department to which the policymaker belongs.

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

Members and staff also acknowledge the frequent failure of members to probe the judgments offered by intelligence analysts. As one member put it, “Many members take what the Intelligence Community says as gospel, when in fact they should look on it as an educated opinion The real problem is, members do not spend enough time probing what they hear from the Intelligence Community. If they spent more time analyzing what they were hearing, they would know more what needs to be fleshed out in order to make their own judgments.”

Intelligence analysts usually cannot be counted on for much help. They may be unwilling or unable to comment, even if asked, about the political context surrounding a given issue. As a result, members often do not receive a complete picture from an intelligence briefing.

This situation has implications not only for policymakers but also for

members themselves, especially when it later turns out that the intelligence analysis was wrong or should have been treated more circumspectly. Members who relied on such analysis in deciding how to cast a controversial vote or in formulating a position on a controversial issue may suffer politically as a consequence. They may, in turn, blame the IC for producing what they see as shoddy analysis or, worse, having deliberately misled them.

Selective use of intelligence for political purposes:

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

Neither branch has done much to discourage the practice. Leakers are rarely identified and even more rarely punished. As one Congressional staffer noted: “People here have the sense that, because no one enforces the rules, they are not to be taken all that seriously. It is like the tendency people have to speed up on a freeway if they never see a cop. Let me tell you, they are not writing any tickets on this freeway.”

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

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

Intelligence agencies, interestingly enough, actually give Congress high marks for protecting intelligence information. Apart from a handful of widely reported but somewhat dated examples, no intelligence agency personnel interviewed for this study could point to instances of compromise by members or their staffs. In any event, no one saw the leak problem as sufficiently serious or

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widespread to warrant executive branch reconsideration of the amount or sensitivity of the intelligence shared with the Hill.

Widespread concern was expressed, however, over the growing number of cases in which members or their staffs demand that information contained in intelligence briefings or reports be declassified or “sanitized”¹⁸ so that the member can make public use of it. According to many intelligence officials, the political motivations behind many of these requests are thinly veiled. Many in Congress apparently have seized on this technique as a way of making selective use of intelligence in a legal way. Intelligence agencies have tried to accommodate such requests, which has only encouraged more of them.

Failure of Congress to assimilate finished intelligence:

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

While both branches recognize the problem, neither has been inclined to do much about it. While the committees would like to do a better job of availing themselves of the finished intelligence, they are too busy to spend much time worrying about it. So long as they are able to request and obtain intelligence briefings whenever they need them, keeping up with developments in the finished intelligence does not claim a high priority. Intelligence agencies

do not appear concerned, either. Indeed, because the committees have, or can request, access to most finished intelligence, they cannot claim they did not know this or were denied access to that. From the standpoint of intelligence producers, if the committees choose not to avail themselves of the finished intelligence that is offered or provided, “that is their problem, not ours.”

Recommendations

Need for Written “Rules of the Road”

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

These rules of the road should be put in the form of understandings to be generally observed, rather than absolutes from which there is never any deviation. They should incorporate the longstanding, time-tested practices that have worked and end those that have not.

Congress, through appropriate representatives, should participate in the development of these written understandings—even those internal to the executive branch—to alleviate any concern that the policies and proce-

dures agreed upon by executive agencies may allow intelligence support to the Congress to be manipulated or politicized. These understandings should be subject to ongoing review and amendment. What does not work should be discarded.

Rules Governing the Provision of Intelligence to Congress

Published intelligence. The eight Congressional committees that share principal responsibility for national security matters should continue to have access to finished intelligence published for general circulation within the government. The agencies that produce finished intelligence should work directly with the staffs of each of these committees to determine specifically what the substantive intelligence needs of the committees are and how best to satisfy them. If, indeed, needs exist that can be predicted at the beginning of each session—for example, intelligence relating to a vote on “most-favored-nation” treatment for China, renewal of the Export Administration Act, or ratification of a particular treaty—intelligence producers ought to factor these requirements into their planning at an early stage.

As a general rule, Congress should be satisfied with having access to the intelligence analysis produced for use by the executive branch and should not be part of the formal process in the executive branch for tasking such analysis. At the same time, Congressional needs ought to be taken into account in that process. Where Congressional committees or individual members request analysis that happens to coincide with the needs of policymakers, intelligence producers

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should try to accommodate such requests within available resources.

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

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

Finished intelligence should not normally be furnished to committees or individual members who do not have responsibilities in the national security area. Requests from such committees or members for written analyses should ordinarily be referred to the Congressional Research Service, which produces highly professional analyses using publicly available information,¹⁹ or, if that does not suffice, should be satisfied by intelligence briefings.

Access to finished intelligence tailored to the needs of the President and other senior officials should continue to be limited to situations in

which such analysis is pertinent to an oversight investigation or inquiry. Raw intelligence should not routinely be provided the Hill, but it should continue to be made available for oversight purposes.

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

Where it appears that a member's request for a briefing can be satisfied with unclassified information—for example, to provide background for a visit to a foreign country—intelligence agencies should try to ascertain whether the request can be satisfied by the Congressional Research Service. If the member's needs cannot be met in this manner, intelligence agencies should provide a briefing under the auspices of the pertinent intelligence committee. This will ensure that the briefing is provided in a secure envi-

ronment, provide an opportunity for the member to be educated on the handling of classified information, and subject him or her to the intelligence committee's rules prohibiting disclosure of the information, except in a closed session of the parent body.

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

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

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

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

Intelligence that is neither published nor briefed. A clearer understanding needs to be reached with respect to the obligation of analysts (and their superiors) to bring significant intelligence to Congressional attention, when such information is not included in finished intelligence going to the Hill and is not otherwise being provided in response to a Congressional request. Clearly, if the analyst (or producing agency) concludes that the information is patently unreliable, there should be no obligation to convey it. Moreover, when the information is “interesting” but has little significance in terms of US security or the functions of Congress itself, there should be no obligation to provide it.

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

It should also be understood by both sides that intelligence agencies may choose to use a variety of means and channels for conveying intelligence to Congress. Especially sensitive but highly relevant information might be limited to the Congressional leader-

ship or the leaders of the intelligence committees; less sensitive but highly relevant information might be limited to the leaders of the policy committee(s) concerned; sensitive but less relevant information might be limited to the leaders of the intelligence committees. Committee staff directors could act for their respective bosses in most circumstances.

Congress needs to understand that a decision to convey sensitive intelligence that is not otherwise being reported to it involves a subjective evaluation of its reliability as well as its value to Congress. When an intelligence producer decides not to provide sensitive intelligence because it meets neither test, that decision ought to be accorded reasonable deference on the basis of the facts that were known, or should have been apparent, to the producing agency at the time the decision was made.

The IC needs to understand that, if sensitive intelligence is deemed reliable and the Congressional interest in having such intelligence is strong, someone in Congress ought to be advised. Close calls should be resolved in favor of notice in some appropriate manner. Congress has traditionally been far more agitated if no one on the Hill received word of

significant intelligence than if intelligence agencies simply chose the wrong person(s) to advise.

Rules of the Road on Preparations for Briefing Congress

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

First, when a request for a briefing is received, the analyst assigned to provide the briefing should be advised by the Congressional affairs office on precisely what is expected by the Congressional requester. This happens today, but the guidance often consists of vague instructions conveyed over the telephone or by electronic mail. The Congressional affairs office itself often has an unclear understanding. A more routinized, systematic approach would mean fewer problems.

Analysts who have never given Congressional briefings need to be instructed by their respective Congressional affairs offices. They should be told to avoid being drawn into policy discussions and how to deal with the situations that commonly arise. In this regard, they should be given the same latitude they have with consumers in the executive branch. That is, if analysts are permitted to set forth alternative scenarios for policymakers and opine as to the likelihood or consequences

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

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

A systematic process also should be established to identify any briefing that is likely to be controversial. Briefings should be considered controversial if they present analytic judgments (as opposed to reporting factual material) on a topic where there is dispute in Congress or among the public about what US policy should be. Determining whether this situation exists should, at a minimum, involve a communication between the

analyst(s) involved and the Congressional affairs staff concerned.

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

- A senior analyst should be selected to do the briefing or, at a minimum, to accompany the junior analyst to the Hill. Analysts who have strong personal differences with the assessments being briefed should ordinarily not be selected for these assignments.
- Thorough internal coordination of the proposed presentation should take place. Analysts should not be sent to give briefings on controversial subjects that their superiors would not be prepared to give. Where time permits, dry runs of the briefing should be conducted.
- The analyst conducting the briefing should be “educated” as needed by the Congressional affairs staff on what sorts of reactions and questions the analyst may encounter at the briefing, so that he or she can be prepared to handle them. If members being briefed have already taken positions on the issue involved, or have expressed concerns about the issue, the analyst providing the briefing should be made aware of these factors in order to facilitate a coherent discussion when the briefing occurs.

- Coordination should occur with the other briefers, if any, from the IC, whether by telephone, videoconference, or face-to-face meetings. The purpose of such coordination should be to identify likely areas for questioning and to ensure that appropriate policymakers are aware of the briefings.

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

Rules for Executive Branch Coordination Of Intelligence Support to Congress

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

As a starting point, the National Security Council staff should iden-

tify those five or six national security issues of particular significance to the incumbent administration on which it wants to be notified before intelligence on these issues is given to the Hill. The NSC staff should provide this list at the start of each session of Congress. If it is not immediately forthcoming, the IC should request it. Relevant Congressional affairs staff and analysts should also be made aware of this list.

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

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

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undermine their
policies or proposals,
intelligence agencies
need to have the
intestinal fortitude to
withstand their
complaints.
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analytic work is sound, it should be provided to the Hill and the complaining policymaker so informed.

If a policymaker asks that analysis be delayed in going to the Hill, the intelligence agency ought to ask why. If the timing simply does not “suit” the policymaker or if more time is needed to formulate a rejoinder, delay is not justified. But if there are demonstrable problems that might be created—for example, if the United States has promised a foreign government to treat a matter confidentially and needs time to consult this government before briefing Congress—greater latitude should be shown. If the delay is expected to be substantial, however, the Congressional requestor should be consulted about the situation.

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

of the script and such other information as may be necessary to understand what transpired.

Need for Greater Effort to Integrate Intelligence into Congressional Decisionmaking

Congress, like consumers of intelligence in the executive branch, needs to be able to place the intelligence it receives into context. Unlike executive branch consumers, however, few of its members enter office as experts in national security affairs, and fewer still have the time or inclination to become experts.

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

Lawmakers have access to the same types of information and expertise, should they seek it, but this does not occur naturally. The flow of information to members is haphazard and unfocused. Even the work done in particular committees will ordinarily not encompass all aspects of a particular national security issue—that is, diplomatic, military, intelligence, and domestic considerations. For those who have access to the intelligence, the tendency is to place too much reliance on this aspect of the decisionmaking process. This tendency can lead to undesirable

consequences for particular members when the intelligence proves to be wrong; it also may ultimately undermine the relationship these members have with the IC.

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

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

Beyond the briefing process, committee staffers should be designated to develop appropriate context for their members when significant national security issues are concerned. This might entail establishing networks of contacts at pertinent policy agencies (including the military), with other committee staffs, the Congressional Research Service, private think tanks in the United States and abroad, the academic community, the media, and

other institutions—networks that could be quickly tapped into when context was needed on a given issue. To some extent, such networking occurs today, but whether and how well it is done depends on how much time, energy, and ingenuity a staffer devotes to the task. Higher priority and greater management attention should be given to this kind of committee staff work.

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

The Need to Discourage Political Use of Intelligence

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

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

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

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

Disclosures might also be prevented by having intelligence briefings for individual members who were not assigned to a committee with national security responsibilities channeled through the intelligence committees of their respective Houses.

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

Conclusion

Congress relates to the IC by annually providing funds for intelligence, by performing oversight of intelligence, and by receiving and using intelligence.

Where funding and oversight are concerned, Congress relates to the IC in much the same way Congress relates to other departments and agencies of the executive branch. The third aspect of the relationship, however, while played out in the same contentious, complex crucible, has at its heart a different purpose: to help the Congress carry out its own responsibilities. Thought of in this way, intelligence-sharing is different from other aspects of the IC's rela-

tionship with Congress; it also is qualitatively different from the functions performed by other executive agencies. (Is there another element of the executive branch whose charter includes providing assistance to the Congress in the performance of its own duties?)

By the same token, this particular function of supporting the Congress with information bearing on policy issues at times creates tensions with other elements of the executive branch that are unaccustomed to having other departments and agencies (openly) undermine their policies and proposals on the Hill.

One would think enough self-interest exists on each side of this political triangle to drive the parties toward a mutual accommodation where intelligence-sharing is concerned. Congress has an interest in seeing that its needs are met and that information is not being improperly withheld. Intelligence agencies have an interest in ensuring that Congressional require-

ments do not outstrip their resources, that their information is protected, and that their independence from the political process will be respected. The rest of the executive branch has an interest in seeing that the intelligence support rendered Congress is, to the extent possible, consistent with the executive's own needs.

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

NOTES

1. Section 103 (c) of the National Security Act of 1947 (50 U.S.C. 103-3).
2. Interview with Walter Pforzheimer, 15 October 1996. Whether the executive should share intelligence with the Congress might have been seen as raising a separation-of-powers issue.
3. From 1947 until the present, CIA funding has been authorized by the annual defense authorization bill developed by the two armed services committees and has been appropriated in the annual defense appropriations bill developed by the two appropriations committees.
4. Not infrequently, these committees would choose not to publish the

- names of the members who served on the CIA subcommittee.
5. According to an unpublished CIA study of relations with Congress, no records could be located at the CIA that indicated these committees had been briefed on CIA's involvement in covert actions during the early 1950s.
 6. Hersh, Seymour. "Huge CIA Operation Reported in U.S. Against Antiwar Forces," *The New York Times*, 22 December 1974, p. 1.
 7. Sec. 1-601(c) of Executive Order 12036, 24 January 1978. The same language was included in section 1.5(s) of Executive Order 12333, issued 4 December 1981, which is still in effect.
 8. See Title IV of the Intelligence Authorization Act for fiscal year 1981 (50 U.S.C. 501(a) (1)).
 9. Reflected in unpublished CIA study.
 10. See title VII of the Intelligence Authorization Act for fiscal year 1993.
 11. Section 103 of the National Security Act of 1947, as amended.
 12. More than 30 Congressional committees have electronic access to an unclassified computer service, FBIS Online, operated by the Foreign Broadcast Information Service of the CIA, which provides access to foreign media and other information derived from publicly available sources.
 13. These include the Senate Appropriations Committee (SAC), the Senate Foreign Relations Committee (SFRC), the Senate Armed Services Committee (SASC), the SSCI, the House Appropriations Committee (HAC), the House International Relations Committee (HIRC), the House National Security Committee (HNSC), and the HPSCI.
 14. Statistics supplied by the Office of Congressional Affairs, CIA.
 15. Gates, Robert M. "The CIA and American Foreign Policy," *Foreign Affairs*, Spring 1988, pp 224-225.
 16. Reflected in unpublished CIA study.
 17. One member did express a preference for receiving intelligence briefings without policy officials trying to provide "context." This member also thought Congress needs to hear "the worst case" from intelligence analysts if members are trying to weigh the consequences of a particular course of action.
 18. This is accomplished principally by removing references to intelligence sources and methods and recasting the analysis in more general terms.
 19. It is apparent that the CIA and perhaps other intelligence producers need to establish a working relationship with the Congressional Research Service, inasmuch as both are providing information support to the Congress. Many requests now referred to intelligence agencies, such as briefings in advance of foreign trips or meetings with foreign dignitaries, could be satisfied (indeed, *should* be satisfied) with publicly available information. A mechanism for handing off such requests to the Congressional Research Service ought to be created.