



**NAVAL  
POSTGRADUATE  
SCHOOL**

**MONTEREY, CALIFORNIA**

**THESIS**

**CONGRESSIONAL INTELLIGENCE OVERSIGHT:  
EVOLUTION IN PROGRESS 1947-2005**

by

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September 2005

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REPORT DOCUMENTATION PAGE			Form Approved OMB No. 0704-0188
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington DC 20503.			
1. AGENCY USE ONLY (Leave blank)	2. REPORT DATE September 2005	3. REPORT TYPE AND DATES COVERED Master's Thesis	
4. TITLE AND SUBTITLE: Congressional Intelligence Oversight: Evolution In Progress 1947-2005			5. FUNDING NUMBERS
6. AUTHOR(S) Major Edwina Clare Reid			8. PERFORMING ORGANIZATION REPORT NUMBER
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Naval Postgraduate School Monterey, CA 93943-5000			10. SPONSORING/MONITORING AGENCY REPORT NUMBER
9. SPONSORING /MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A			11. SUPPLEMENTARY NOTES The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.
12a. DISTRIBUTION / AVAILABILITY STATEMENT Approved for public release; Distribution is unlimited			12b. DISTRIBUTION CODE
13. ABSTRACT (maximum 200 words) From the creation of the Intelligence Community as part of the National Security Act of 1947 to present day, congressional oversight has varied depending on popular interest generated by media reports of scandal or due to perceived failures. Conversely the Intelligence Community has used the varying degrees of oversight as an opportunity to participate in activities outside its charter. This thesis examines the evolution of congressional oversight from virtually non-existent to the current efforts to reform the Intelligence Community. What this study demonstrates is that oversight has primarily been driven in response to an abuse or a failure. It has been popular interest fueled by media involvement that has forced congressional action. This is demonstrated by examining the wave of reform after the publication of the Central Intelligence Agency's abuse of power in 1970, again after the revelation of the Iran-contra affair in 1986 and lastly after the September 11th attacks. The study also uncovers a reoccurrence in the recommended reforms, particularly the recommendation for the creation of a Director of National Intelligence and the need for greater congressional involvement.			
14. SUBJECT TERMS Intelligence, Intelligence Oversight, Intelligence Community, Congress, September 11th			15. NUMBER OF PAGES 91
			16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT Unclassified	20. LIMITATION OF ABSTRACT UL

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**CONGRESSIONAL INTELLIGENCE OVERSIGHT: EVOLUTION IN  
PROGRESS 1947-2005**

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**MASTER OF ARTS IN NATIONAL SECURITY AFFAIRS  
(CIVIL-MILITARY RELATIONS)**

from the

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## **ABSTRACT**

From the creation of the Intelligence Community as part of the National Security Act of 1947 to present day, congressional oversight has varied depending on popular interest generated by media reports of scandal or due to perceived failures. Conversely the Intelligence Community has used the varying degrees of oversight as an opportunity to participate in activities outside its charter. This thesis examines the evolution of congressional oversight from virtually non-existent to the current efforts to reform the Intelligence Community. What this study demonstrates is that oversight has primarily been driven in response to an abuse or a failure. It has been popular interest fueled by media involvement that has forced congressional action. This is demonstrated by examining the wave of reform after the publication of the Central Intelligence Agency's abuse of power in 1970, again after the revelation of the Iran-contra affair in 1986 and lastly after the September 11th attacks. The study also uncovers a reoccurrence in the recommended reforms, particularly the recommendation for the creation of a Director of National Intelligence and the need for greater congressional involvement.

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## ACKNOWLEDGMENTS

There are more people I should thank than space allows, but I will try. First, I want to acknowledge the help and encouragement provided by my advisors CAPT Robert Simeral and Professor Kenneth Dombroski.

I owe a special debt to my husband, who has read this document more times than he is capable of counting. He helped transform my writing from “painful” to “simply boring” (his words, not mine). I thank him for the hours of free time he devoted to helping bring this project to fruition, including keeping my laptop operational, and for all his encouragement during a long eighteen months of separation. I look forward to devoting my time to you and our family.

I also must thank the members of the Air Force IDE community, especially Jennifer Chandler. Your interest and support during my pregnancy made me feel secure and reassured while geographically separated from my husband. Thank you for looking at the pictures and sharing this special time with me. Miss Reilly will always have multiple surrogate uncles and a very special adopted aunt.

It is with deep gratitude that I acknowledge the contribution of the La Mesa/NPS Child Development Center. They cared for my daughter as if she were their own, giving me the peace of mind necessary to complete my studies.

And lastly I must acknowledge the contribution provided by my wonderful daughter, Reilly Sierra Jacobs. You were a long time coming. You are the miracle of my life, my greatest inspiration and my greatest challenge in completing this document. Thank you for teaching me what is truly important in this world. Being your mother will always be the most important thing I ever accomplish.

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## **I. INTRODUCTION: THE EVOLUTION OF CONGRESSIONAL OVERSIGHT FROM IGNORANCE TO INVOLVEMENT (1947-2005)**

*Americans have always had an ambivalent attitude toward intelligence. When they feel threatened, they want a lot of it, and when they don't, they regard the whole thing as somewhat immoral.* – Vernon A. Walters, Former U.S. Ambassador to the United Nations

The purpose of this study is to examine the changes in intelligence oversight since 1947, by focusing on several critical periods that drove the United States Congress to investigate intelligence professionals and the intelligence system. My methodology is to use previous proposed and implemented changes in congressional intelligence oversight as a tool to evaluate the changes recommended in the 9/11 Commission's Report. The thesis will examine four separate periods of intelligence oversight as case studies of reform implementation and will use the resulting lessons-learned to evaluate the future of congressional oversight.

Intelligence oversight is a critical component in ensuring that the Intelligence Community does not overstep its bounds and "acts" more efficiently and cooperatively. As has been demonstrated in other nations, the Intelligence Community, if not properly regulated, has the potential to use its authority and intelligence-gathering tools for political gain. This can transform a benign Intelligence Community from a security tool to a threat to the democracy it is supposed to serve. An examination of the 9/11 Commission's Report and the Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act provides a basis for evaluating how the proposed and implemented changes may weaken or strengthen the U.S. Intelligence Community.

This study will center on the changing emphasis on intelligence oversight. Congressional oversight of the U.S. Intelligence Community has been marked by several distinct periods and levels of involvement. The first period began in 1947 with the creation of the current Intelligence Community by the National Security Act and lasted until the media brought to light a series of abuses in the early 1970s. The second period commenced with the congressional investigations and reforms of 1974-1975 and ended

with the legislation changes adopted in 1980. The third period, 1980 to 2001, was marked by swings in congressional response from ambivalence to outrage at continued abuses. The final and current period addressed resulted from the September 11th tragedy and, as addressed here, includes the 9/11 Commission's investigation and recommendations. In sum, this document will identify common oversight themes and common problems in congressional oversight implementation and will make recommendations.

This thesis will outline the significant developments in each period and the evolution of congressional intelligence oversight in the United States by outlining four broad "ages." In addition, this document will explain what drove congressional oversight in each period and how that oversight shaped the level of intelligence involvement in domestic matters during each period. The first age I call the Age of Trust and Ignorance, which was typified by an absence of interest in the actions of the Intelligence Community. The second period was the Age of Investigation and Reform, in which the Congress was spurred to an oversight role due to a public outcry over allegations of widespread abuse. The third age was marked by an ebbing and flowing of oversight. During this period interest, in oversight could be sparked by scandal. This was the Age of Consolidation. The last age is the Age of Reevaluation. Induced by the public and political outcry after the 9/11 attacks, significant changes to intelligence oversight have been proposed.

#### **A. THE NATIONAL SECURITY ACT**

The Intelligence Community as we know it was founded by the National Security Act of 1947. This legislation converted the World War II Office of Strategic Services to the Central Intelligence Agency (CIA) and aligned existing military intelligence organizations within the Department of Defense (DoD). The National Security Act outlined the roles and responsibilities of the Intelligence Community, and specifically identified that the CIA and the DoD area of concern was foreign intelligence. It was their failure to abide by their foreign intelligence charters that led to fundamental changes in intelligence oversight.

## **B. THE AGE OF TRUST AND IGNORANCE (1947-1974)**

The initial period of intelligence oversight, from the adoption of the National Security Act of 1947 until the chartering of the executive and legislative investigative committees, is commonly known as the “Era of Trust.” The pervasive Cold War threat and a general lack of interest on the part of governmental players led to the assumption that the nations’ Intelligence Community knew best how to protect its citizens and that nonintelligence professionals would only interfere with the performance of those duties.

## **C. THE AGE OF INVESTIGATION AND REFORM (1974-1980)**

While there had previously been on-again, off-again attempts to exert legislative oversight, the effort took on new urgency in the winter of 1974. In December 1974, the *New York Times* made public multiple abuses by the CIA. A *Times* article uncovered the CIA’s “family jewels,” which consisted of 693 pages of legal violations and questionable activities by the agency. The current DCIA, William Colby, upon taking office, had directed the compiling of the “jewels” as part of an internal investigation of possible questionable activities, some of which were leaked to the *New York Times*. These revelations were highly damning for the Intelligence Community’s reputation and drove the Senate and the House to take action. The public outcry from these incidences led to the creation of three separate investigative committees, commonly referred to by the name of their individual chairmen: the Rockefeller commission for the executive branch, the Church Commission in the Senate, and the Pike Commission for the House. As a result of the committees’ findings, Congress enacted significant reforms that impacted not just the CIA, but all intelligence agencies. The first of these changes was the creation of the Hughes-Ryan Act of 1974. It directed that no funds were to be expended by the CIA for nonintelligence operations (covert actions) unless the president determined the operation was required for national security and the appropriate committees (eighteen, at the time) in the Congress were informed in a timely manner.

This age of investigation and reform ended with the Intelligence Oversight Act of 1980, which requires that the heads of intelligence agencies keep the oversight committees “fully and currently informed” of their activities, including “any significant anticipated intelligence activity.” Detailed ground rules were established for reporting covert actions to the Congress, but only in return for the number of congressional

committees receiving notice of covert actions being limited to the two oversight committees. The act also explicitly outlines that military intelligence has no domestic responsibilities.

#### **D. THE AGE OF OVERSIGHT CONSOLIDATION (1981-2001)**

After an initial surge in intelligence oversight, both the Senate and the House settled in for the long haul, as oversight became institutionalized in the Congress and the executive branch came to accept congressional involvement. Thus the abuses that had come to light in the 1970s changed the nature of the relationship between Congress and the Intelligence Community. The period witnessed a transition from what had been a supportive relationship, in which Congress required little information or accountability, to one of distrust and a feeling that the Intelligence Community might actually pose a threat to American democracy. Instead of acknowledging the positive attributes of the Intelligence Community, the congressional committees appeared intent on ferreting out abuses and mistakes. Unfortunately, the issue also became another battleground between the executive branch and Congress over governmental power. This period, which was one of turmoil for the Intelligence Community following the collapse of the former Soviet bloc, ended with further revelations of new abuses by the Intelligence Community. Approximately ten years after the original congressional investigations, the situation was repeated.

In 1986, the world learned that high-ranking members of the Reagan administration were involved in selling arms to Iran and then diverting the funds to support Nicaraguan freedom fighters. As had happened a decade earlier, the media storm forced the executive branch to launch an investigation to answer questions and, it was hoped, to stifle congressional inquiry. The White House directed the Tower Commission to get to the bottom of the issue. But as had happened with the Rockefeller Commission, the executive investigation did not satisfy the Congress. Unlike the previous investigations, this time the House and the Senate formed a joint committee to examine the allegations.

As one author put it, in the period after the Church and Pike Commissions congressional oversight moved from being performance-based to become a group of “cheerleaders for poorly managed, badly structured, and improperly funded intelligence

agencies.” The age of consolidation also witnessed an ebb and flow of intelligence oversight. When intelligence was absent from the media coverage, Congress operated minimal oversight. When problems or mistakes were uncovered, like the failure to predict India’s and Pakistan’s nuclear tests or the Iran-Contra Affair, Congress instigated additional oversight initiatives. Thus this period demonstrated a trend that began with the Hersh report in 1974: without media involvement and public outcry, Congress was unlikely to be proactive in examining the operations of the Intelligence Community.

#### **E. THE AGE OF REEVALUATION (2001 -)**

What is the future of intelligence oversight? The 9/11 Commission has proposed significant changes in the Intelligence Community that could have a meaningful impact on intelligence oversight. The recommendation that has received the most press is the creation of a Director of National Intelligence (DNI), envisioned as the ultimate overseer of the vast Intelligence Community. The power consolidated in this one office could force standardized procedures, budget controls, and communication across all the intelligence agencies. This would require a significant change by the Defense Department (DoD), which currently controls the lion’s share of the Intelligence Community’s budget and is likely to provide stiff resistance to change. Another recommendation, receiving far less media attention, is that Congress must revamp its oversight procedures. The commission recommended the creation of a Joint Intelligence Committee similar to the Joint Committee on Atomic Energy or some other sort of streamlining of congressional oversight procedures. Ironically, the idea of a Joint Intelligence Committee was also made thirty years ago, when the Senate was first considering how to oversee intelligence affairs. The 9/11 investigators also noted that their other recommendations “will not work if congressional oversight does not change too. Unity of effort in executive management can be lost if it is fractured by divided congressional oversight.”<sup>1</sup>

What lessons can we take from previous investigations and reform proposals that will aid in the implementation of the 9/11 Commission’s recommendations? All of the reforms of the 1970s and 1980s failed to prevent further abuses and intelligence failures. Despite increased congressional oversight, the Intelligence Community failed to predict

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<sup>1</sup> *The 9/11 Commission Report* (New York: W.W. Norton & Company, 2004), 420.

the fall of the Shah of Iran, warn of the Indian nuclear test, or the collapse of the former Soviet Union. It will be interesting to see if the proposed 9-11 reforms are able to prevent future intelligence failures, to combat incomplete information, or to penetrate enemy secrecy. Is the United States Congress willing to step into an oversight role that will implicate them in any potential intelligence failures?

#### **F. OTHER EXAMINATIONS**

This is not the first, nor will it be the last, evaluation of intelligence oversight. Peter Gill developed a concept of measuring intelligence embeddedness in society, which can be used to examine an Intelligence Community and evaluate the degree of autonomy and penetration that the security apparatus has attained at different times. The Gill model was based on terminology developed by William Keller in his study of the Intelligence Community's abuse of power between 1950 and 1970. Keller identified four types of security states.<sup>2</sup> Gill adapted Keller's work making it a tool to measure domestic intelligence organizations. In his book *Policing Politics*, Gill defines autonomy as "those processes by which the secret state agencies resist the encroachment of other state agencies and citizens."<sup>3</sup> He defines penetration as "variety of techniques by which the secret state carries out its surveillance and supervision of other agencies and society in general."<sup>4</sup> In the model, an Intelligence Community that has a low degree of autonomy and low penetration into society is described as a Domestic Intelligence Bureau. A political police state is a state in which the Intelligence Community has a medium level of autonomy and a medium level of societal penetration. The final level identified by Gill is the independent security state, in which the Intelligence Community operates with a high degree of autonomy and has a high degree of penetration within the state.<sup>5</sup> A graphic depiction of the Gill Model can be found in Figure 1. The model was further improved by Kenneth Dombroski of the Naval Postgraduate School, Monterey, Calif., who converted it to a scale. The purpose of the model is to answer central question "does the government control the agency, or is the agency essentially autonomous in its targets,

<sup>2</sup> William W. Keller, *The Liberal and J. Edgar Hoover: Rise and Fall of a Domestic Intelligence State* (Princeton, Princeton University Press, 1989), 14-15.

<sup>3</sup> Peter Gill, *Policing Politics: Security Intelligence and the Liberal Democratic State* (London: Frank Cass, 1994), 83.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid, 82-83.

its methods of gathering information and its use of countering methods?”<sup>6</sup> Unfortunately, because of its focus solely on domestic intelligence organizations like the Federal Bureau of Investigations or the British Security Service (MI5) the Gill Model is not well suited for this study.

Penetration				
		High	Medium	Low
Autonomy	High	A. Independent Security State	B.	C.
	Medium	D.	E. Political Police	F.
	Low	G.	H.	I. Domestic Intelligence Bureau

Figure 1. Peter Gill’s Oversight Model (from *Policing Politics*)

Frank J. Smist also did a lengthy study of intelligence oversight, but his focus was to examine congressional oversight within the framework of an “intuitional model” and an “investigative model.” His studies lead him to the conclusion that Congress’s oversight of the U.S. Intelligence Community was investigative in nature until 1976 and the establishment of the Senate and House permanent intelligence oversight committees, at which time the nature of oversight was transformed into intuitional oversight. He defines the difference between the two versions of congressional oversight as “institutional oversight,” which “sees oversight as a cooperative relationship between the

<sup>6</sup> Gill, 79.

legislative and executive branches,” and “investigative oversight” which sees oversight “as involving an adversarial relationship between the legislative and executive branches.”<sup>7</sup> In the second edition of his book, Smist tracks oversight up 1994, where he indicates, “Although structures and missions undoubtedly will evolve, the Intelligence Community and congressional overseers have important tasks to perform as the world inches closer to the twenty-first century.”<sup>8</sup>

Another useful study was conducted by L. Britt Snider, as part of the CIA’s Center for the Study of Intelligence; he examined oversight within the context of information-sharing between the Intelligence Community and Congress. The Snider document discusses oversight changes from 1947 to 1997, but those reforms are outlined to provide an understanding of Congress’s increasing demand for intelligence-sharing. His examination does not examine the various common themes and problems that run through the various ages of oversight.

Kathryn S. Olmstead and Loch K. Johnson both tackle the topic, but within the narrow confines of the congressional investigations of the 1970s. Johnson examines the era from an insider’s point of view in his award-winning *Season of Inquiry*. Olmstead addressed the topic in her book, *Challenging the Secret Government: The Post-Watergate Investigations of the CIA and FBI*. She examines the Church and Pike Commissions in reference to the recent resignation of President Nixon. Olmstead states that “the book shows...the post-Watergate Congress may have been more assertive in many areas, but it was ultimately unwilling to shoulder its responsibilities for overseeing the Intelligence Community.”<sup>9</sup> While a comprehensive review of the age of investigation, it does not delve into the later reform efforts or address new developments post-9/11.

## **G. OVERSIGHT ASSESSMENT TOOL**

Because the Gill model applies primarily to domestic intelligence organizations and their autonomy from all forms of oversight, not just congressional, it is not a good fit for this study; but the Gill Model does provide a foundation for examining intelligence

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<sup>7</sup> Frank K. Smist, *Congress Oversees the United States Intelligence Community 1947-1994* (Knoxville: University of Tennessee Press, 1994), 21-22.

<sup>8</sup> Ibid, preface to the second edition.

<sup>9</sup> Kathryn S. Olmsted, *Challenging the Secret Government: The Post-Watergate Investigations of the CIA and FBI* (Chapel Hill: University of North Carolina Press, 1996), 5.

oversight. Throughout this document congressional oversight will be measured as low, medium, or high and scaled over time, to show relative changes over the various ages of oversight. To better aid the reader to follow the variations of intelligence oversight across the time periods outlined above this study will use a measurement table that will depict the degree of congressional oversight in a given time period. Use of a measurement, while subjective, will aid the reader in understanding the historical impact of these variations. An example of the modified model can be referenced at Figure 2.

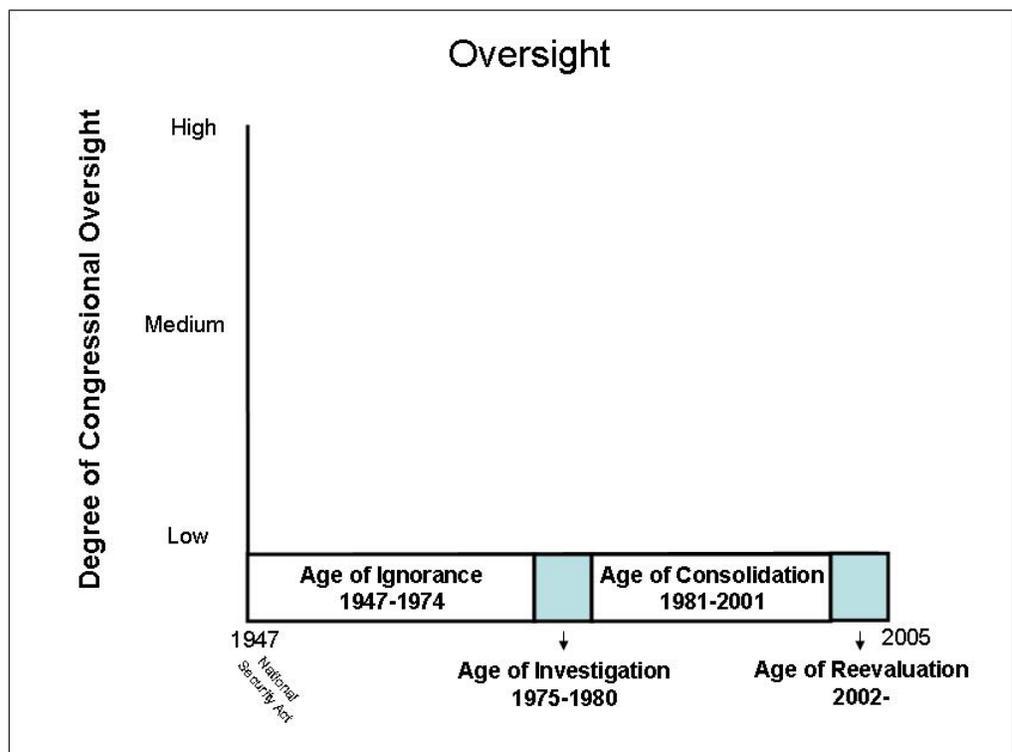


Figure 2. Intelligence Community Measurement Model

## H. CONCLUSION

It could also be said, that by exercising greater control over military intelligence operations, the legislature exhibits what Samuel Huntington would refer to as objective civilian control of the military.<sup>10</sup> The extensive involvement of military intelligence in

<sup>10</sup> Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, Mass, Belknap Press of Harvard University Press, 2003), 83.

civilian information collection has the effect of involving the military in politics, because the collection efforts tend to target only the liberal anti-war elements of a society. By aligning military intelligence efforts to only foreign collection and threats, Congress applied objective control and prevented the autonomy of the military Intelligence Community.

As observed in this thesis, congressional intelligence oversight is an evolutionary process that is still evolving. Initiated in a period of congressional ignorance and avoidance, oversight has become embedded in intelligence operations. Originally a means to abrogate power abuses, oversight has improved intelligence processes, engendered greater public trust in the Intelligence Community, and protected citizens' rights. While the revelation of abuses of power brought the professionalism and appropriateness of intelligence operations into question, Congress's comprehensive investigations restored public faith in the Intelligence Community. Hopefully, the 9/11 Commission's report and recommendations will do the same, but these reforms have begun to encounter the same issues that limited the effectiveness of earlier oversight efforts. It is ironic that several of the 9/11 Commission's recommendations are identical to those made by the Church and Pike commissions almost thirty years earlier. The latest rounds of oversight proposals differ greatly from the foundations of oversight in the 1970s. Begun as a protective measure, oversight now hopes to prevent intelligence failures and miscommunications. Only time will tell if increased congressional involvement in the Intelligence Community can prevent national disasters such as Pearl Harbor and September 11th.

## II. CONGRESSIONAL OVERSIGHT: THE AGE OF TRUST AND IGNORANCE (1947-74)

*It is difficult for me to foresee that increased staff scrutiny of CIA operations would result in either substantial savings or a significant increase in available intelligence information...if there is one agency of the government in which we must take some matters on faith, without a constant examination of its methods and sources, I believe this agency is the CIA.*<sup>11</sup> Senator Richard B. Russell, 1956

After the formation of the Intelligence Community as we know it in 1947, what oversight mechanisms were in place? Initially, oversight originated from the Constitution. Congress's inherent control over intelligence budgets and disbursement of funds was vested in the House and Senate Appropriations Committees and the House and Senate Armed Services Committees. Initial oversight consisted of a few members of each committee having access to intelligence data and budget requests. This arrangement evolved because the vast majority of the intelligence assets and interests were vested within the newly created Department of Defense. From the intelligence communities' creation until the mid 1950s, Congress chose to exercise very little oversight. What little oversight that did occur was limited to a rubber-stamping of proposed budgets. Pat M. Holt relates an early incident involving the CIA, when DCI Dulles presented plans for the CIA headquarters building. The committee chairman receiving the briefing commented that it looked like a very nice building and must cost \$25 million. Dulles countered by saying, "Well, no Mr. Chairman, I'm afraid it's going to cost \$50 million." The response was, "My, my, that will be a nice building."<sup>12</sup> That was the end of the oversight of the issue.

The U.S. Constitution provides for broad checks on the powers of the executive branch. The primary congressional oversight mechanism derives from Section 9, Clause 7, which grants Congress the power to dispense funds. As one expert pointed out, "The power of the purse is the most basic of all congressional powers. Congress can

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<sup>11</sup> Quoted in Smist, 6.

<sup>12</sup> Pat M. Holt, *Secret Intelligence and Public Policy: A Dilemma of Democracy* (Washington, D.C.: CQ Press, 1995), 209.

effectively block any activity of which it disapproves, intelligence or otherwise, by a simple provision stating, ‘notwithstanding any provision of laws, no funds may be expended for X.’”<sup>13</sup> Despite its oversight authority, for many years Congress showed a profound lack of interest in monitoring the Intelligence Community. Congress reluctantly entered into the business of intelligence oversight only after the revelation of a series of intelligence failures in the 1960s and further abuses in the 1970s.<sup>14</sup>

Prior to the 1970s, intelligence oversight was perfunctory and uncoordinated. The responsibility for the oversight of intelligence operations was divided among four separate congressional committees: the House and Senate Armed Service Committees, and the House and Senate Appropriations Committees. While the committees had oversight authority, they made little effort to exercise that authority and no real effort to coordinate efforts between the various organizations. They could require the Intelligence Community to answer for its actions or provide information on forthcoming operations, but they often failed to do so.

There were also subcommittees on intelligence within the Armed Services Committees, but they rarely met. Documentation indicates that in some years the subcommittees met as little as once a year for a couple of hours. During this period, more than two hundred resolutions were introduced to improve congressional oversight, few made it out of committee, and none were passed. Specific intelligence oversight could be as limited as twenty-four hours’ worth of meetings over the course of a year<sup>15</sup>. Congress’s lack of interference and oversight derived from a pervasive belief that Congress could not hinder intelligence activities that it knew nothing about. There was also a general recognition of Congress’s overall lack of understanding of intelligence operations and a belief that whatever the Intelligence Community was doing was required to protect the nation.

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<sup>13</sup> Pat M. Holt, *National Insecurity: U.S. Intelligence After the Cold War*, ed. Craig Eisendrath, (Philadelphia: Temple University Press, 2000), 197.

<sup>14</sup> Pat M. Holt, *Secret Intelligence and Public Policy: A Dilemma of Democracy*, 210.

<sup>15</sup> Loch Johnson, *A Season of Inquiry: The Senate Intelligence Investigation* (Lexington: University of Kentucky Press, 1985), 7-8.

During this period, the U.S. legislature suffered from “a marked lack of curiosity.”<sup>16</sup> For example, when CIA Director (DCIA) James R. Schlesinger attempted to inform a leading senator, John Stennis, a senior member of the Senate Armed Services Committee, about operations overseas, he was told, “No, no, my boy, don’t tell me. Just go ahead and do it, but I don’t want to know.”<sup>17</sup> This typified congressional oversight during the period: a “hands off” approach that ended when the media brought to light a series of abuses.

#### **A. SENATE MAKES AN ATTEMPT AT OVERSIGHT**

While on the surface it appears that Congress did little to enact any sort of oversight prior to the discovery of abuses in the mid 1970s, that is not quite the case. There had been minor initiatives to develop oversight, led by Senator Mike Mansfield of Montana. Beginning in 1952, he regularly introduced legislation designed to create a joint congressional committee to oversee the Intelligence Community, but his efforts were rebuffed. The Congress apparently saw little need to investigate or alter the existing relationship with the Intelligence Community. Only in one year out of several was Mansfield able to get his oversight proposal out of committee to a vote. It was rejected, 27 in favor, 59 against.<sup>18</sup> In opposing the resolution Senator Saltonstall of Massachusetts noted that “at least twice a year” the CIA met with the Armed Services Committee and “at least once a year” with the Appropriations Committee. Additionally, he stated:

It is not a question of reluctance on the part of the CIA officials to speak to us. Instead it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a Member of Congress and as a citizen, would rather not have, unless I believe it to be my responsibility to have it because it might involve the lives of American citizens.<sup>19</sup>

How scant was oversight prior to the congressional investigations? On the whole, the CIA’s appearances on the Hill, even before “its committees,” were relatively rare. As late as 1968, for example, CIA records reflect only one briefing that year to the House

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<sup>16</sup> Holt, *Secret Intelligence and Public Policy: A Dilemma of Democracy*, 210.

<sup>17</sup> Loch Johnson, “The CIA and the Question of Accountability,” *Intelligence and National Security* 12, No. 1 (Jan. 1997), 180.

<sup>18</sup> Holt *Secret Intelligence and Public Policy: A Dilemma of Democracy* (, 211.

<sup>19</sup> *Congressional Record*, 84th Congress, 2d Session, April 9, 1956, 5924.

Armed Services Committee, three to the House Appropriations Committee, and two each to the Senate Armed Services Committee and the Senate Appropriations Committee. Attendance typically was limited to congressional members only, and often no record of the proceedings was kept. Sometimes, reportedly, no questions at all were asked.<sup>20</sup>

Efforts to initiate some sort of oversight popped up occasionally, mostly in response to some sort of intelligence-based failure or public outcry. This happened after the U2 shoot-down over the Soviet Union, after the Bay of Pigs invasion, and after allegations of CIA involvement in the Chilean elections of 1970, among others. But they were rejected for a variety of reasons. The quote below is typical of the congressional mindset of the period.

It is difficult for me to foresee that increased staff scrutiny of CIA operations would result in either substantial savings or a significant increase in available intelligence information . . . If there is one agency of the government in which we must take some matters on faith, without a constant examination of its methods and sources, I believe this agency is the CIA.<sup>21</sup>

## **B. OPERATION CHAOS**

Congressional oversight would have likely remained minimal had the executive branch not misused the foreign intelligence-gathering system domestically for political purposes. What was the impetus for moving the members of the Intelligence Community, who were to be focused on foreign collection, toward domestic operations? Concerned that the FBI under J. Edgar Hoover was not providing him with unbiased information, President Johnson directed the CIA to provide more information on anti-Vietnam War protests. The CIA developed two projects to collect information at college campuses, the hotbed of the protest movement. One was designed to warn CIA recruiters of potential protests and mostly co-opted campus administrations; the other was designed to ferret out information on protests directed at CIA facilities. Both involved infiltrating student organizations, sharing information with local police (sometimes in exchange for needed equipment), and participation in local police activities. The two programs were

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<sup>20</sup> L. Britt Snyder, *Sharing Secrets With Lawmakers: Congress as a User of intelligence*, Center for the Study of Intelligence (<http://www.cia.gov/csi/monograph/lawmaker/1.htm#ft7>), accessed 30 Aug 2005.

<sup>21</sup> Smist, 6.

later merged under the title Operation Chaos. It was at the behest of the executive branch and to support executive agendas that the CIA then became involved in domestic intelligence operations, but they were not the only member of the Intelligence Community to do so.

### **C. THE ARMY STEPS OUT OF LINE**

The issue of oversight began to take on new urgency in the early 1970s. Issues that had previously been ignored or seen as minor deviations began to pile up. One of the first indications that there were significant problems within the Intelligence Community came in January 1970. A former army intelligence officer, Christopher H. Pike, disclosed in the *Washington Monthly* that since the late 1960s the army had been extensively involved in surveillance of U.S. citizens. The media firestorm over this issue forced the civilian army leadership to issue orders prohibiting such investigations, but the orders were vague and not always followed. Investigations discovered that the army's civilian leadership had been attempting to rein in the army surveillance effort since 1968, but had met with stiff resistance within the military community. Since September 1968, Deputy Secretary of Defense Paul Nitze had denied the army's military leaderships' requests to expand the number of intelligence billets to facilitate greater involvement in surveillance. Shortly after this denial, Army Undersecretary David McGiffere expressed concern whether the army's domestic intelligence collection effort was "worth the effort." In early 1969, the undersecretary further expressed his disagreement with the army's collection program and stressed his belief that domestic intelligence collection would best be performed by civilian law enforcement agencies. He instituted a requirement that he be fully informed of any domestic covert or overt surveillance activities. His directives were never fully implemented, partly due to resistance and partly due to an anticipated change in leadership.<sup>22</sup>

Due to the media and political uproar over the 1970 Pike article the army rescinded its collection plan, but the collection effort continued. The new army policy limited the army from collecting information on "unaffiliated" persons and focused collection on "threats" such as "subversion of loyalty, discipline, or morale, of the

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<sup>22</sup> The Select Committee to Study Government Operations, with respect to Intelligence Activities, *Intelligence Activities and the Rights of Americans, Book II*, (<http://www.raven1.net/cointelpro/churchfinalreportIcb.htm>), accessed 6 Sep 04, 15-16.

Department of Defense military or civilian personnel.”<sup>23</sup> A later investigation found that this wording was open to broad interpretation, which furthered the opportunity for abuses. The army was not the only DoD branch to be involved in questionable intelligence practices, but it was the one with the most egregious violations. Despite those abuses, however, congressional oversight did not change. Army civilian intelligence gathering continued until more flagrant and extensive violations were uncovered a few years later. Nonetheless, at the time, the army’s involvement in domestic intelligence gathering did not appear widespread and did not garner the public outrage that would punctuate the oversight efforts begun in 1974.

#### **D. INTELLIGENCE ABUSES AND FAILURES**

What finally fractured the complacent relationship that had marked the early years of congressional intelligence oversight? As was noted in the introduction, the nature of intelligence oversight within the United States changed drastically after December 1974, when the *New York Times* published a report outlining the CIA “Family Jewels.” The “jewels” comprised a 663-page document outlining questionable activities and practices by the CIA. This list had been internally collected at the request of the incoming CIA director, William Colby. The document indicated that the CIA may have been involved in assassination attempts, break-ins, human experimentation, wiretaps, and domestic spying.

The resulting public outcry initiated a wave of investigations designed to establish and document the Intelligence Community’s activities. Both houses of Congress and the executive branch opened investigations. The committees—the Senate Select Committee to Study Government Operations in Respect to Intelligence Activities and the House Select Committee on Intelligence Activities were more commonly named for their leadership: the Senate committee came to as known as the Church Committee, the House investigation, as the Pike Committee. The investigations originally centered on CIA involvement in assassination plots against multiple international political leaders, including Fidel Castro, Vietnam leader Ngo Dinh Diem, General Rene Schneider of Chile, and Francois “Papa Doc” Duvalier. In addition, the Church Committee uncovered evidence that the CIA, FBI, and U.S. Army Intelligence had been involved in

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<sup>23</sup>The Select Committee to Study Government Operations, with respect to Intelligence Activities, 22

surveillance and infiltration of anti-Vietnam-war protest organizations and political organizations that were unfriendly to the administration. The commission found the Intelligence Community had:

- Opened nearly a quarter of a million first-class letters between 1953-1973, producing a CIA computerized index of nearly one and one-half million names.
- At least 130,000 first class letters were opened and photographed by the FBI between 1940-1966, in eight U.S. cities.
- Some 300,000 individuals were indexed in a CIA computer system and separate files were created on approximately 7,200 Americans and over 100 domestic groups during the course of CIA's Operation CHAOS (1967-1973).
- Millions of private telegrams sent from, to, or through the United States were obtained by the National Security Agency from 1947 to 1975 under a secret arrangement with three United States telegraph companies.
- An estimated 100,000 Americans were the subjects of United States Army intelligence files created between the mid 1960's and 1971.<sup>24</sup>

These activities had been undertaken without ever pursuing legal authorization. The investigation of the army revealed military intelligence surveillance of the National Organization for Women, Martin Luther King, Senator Adlai Stevenson, Dr. Benjamin Spock, and many other prominent organizations and leaders, as well as ordinary citizens who had simply expressed political opinions deemed inappropriate by military officials. The investigation concluded that the military had also violated the Posse Comitatus Act of 1878, which expressly forbids the military from being used to “execute the law.”

One aspect of concern in the Senate investigations was the lack of complete contrition on the part of the intelligence-gathering abusers. Many felt that their actions, though a violation of civil rights, were justified by what was seen as a “greater good” for national security. For a example, one witness from the Church Commission’s hearings, concerning illegal mail-opening, testified: “I think this mail that we are talking about has already been intercepted by the Soviet Union and the Russian intelligence service...personally, if I had a letter opened from the Soviet Union, I would not object because I would not mind the FBI knowing what the Russian intelligence service knows.”<sup>25</sup> This is only one example of the consequential ethics being applied to the

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<sup>24</sup> The Select Committee to Study Government Operations, with Respect to Intelligence Activities.

<sup>25</sup> Smist, 73.

situation, in which the ends are used to justify the means. The Senate commission, however, did not agree with and refused to accept such assessments of the situation.

## **E. CONCLUSIONS**

It is important to understand how limited oversight was during the post-war time period until the mid 1970s. Without a sense of where things started, it is difficult to determine the challenges that reform efforts faced or to measure how far oversight has progressed. L. Britt Snyder related how limited oversight was: “[in] the early years, we practically had to beg them to hold hearings. Years would go by sometimes without any hearing at all being held on the Agency’s budget.”<sup>26</sup> For the time period outlined in this chapter, the degree of congressional oversight is rated as low. This assessment is based on how oversight was divided among multiple congressional committees with no one committee having an overall span of control. Also, oversight could be limited to as little as twenty-four hours’ worth of meetings over a full year, but, most important, oversight was limited because Congress had not interest in monitoring the community. The degree of independence granted the Intelligence Community had the potential to subvert the goals of the Intelligence Community from protection of the American populace to being a tool of the political elite. The marking in Figure 3 outlines the status of intelligence oversight throughout the period. That delineation would not change until after the investigations covered in the next chapter.

While Presidents Johnson, Nixon, and others may have tried to use the Intelligence Community to keep tabs on the popular will or to promote their own political goals, other freedoms, particularly those of the press, kept the Intelligence Community from evolving into a political police organization or an independent security agency capable of promoting its own political agenda.

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<sup>26</sup> Snider, 2.

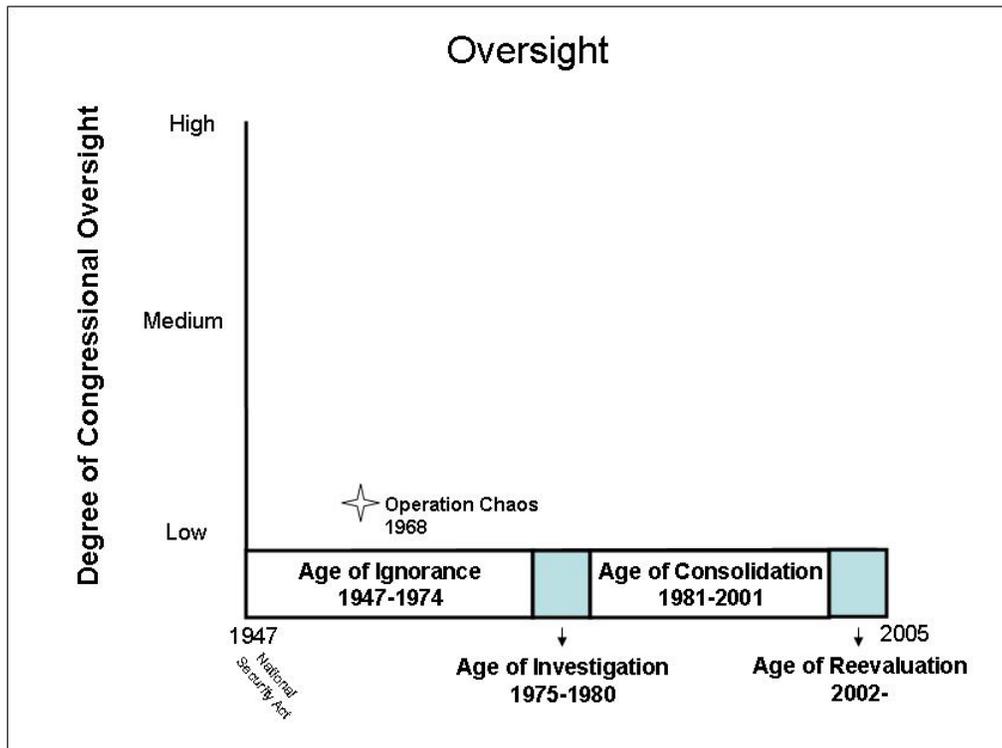


Figure 3. Assessment of Congressional Oversight during the Age of Trust and Ignorance

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### **III. CONGRESSIONAL OVERSIGHT: THE AGE OF INVESTIGATION (1975-1980)**

*In light of the record of abuse revealed by our inquiry, the Committee is not satisfied with the position that mere exposure of what has occurred in the past will prevent its recurrence. Clear legal standards and effective oversight and controls are necessary to ensure that domestic intelligence activity does not itself undermine the democratic system it is intended to protect. – Church Commission Report*

In January 1975, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Commission) was chartered; it concluded its investigation in April of 1976. This was a relatively swift turnaround, especially given the years of research and effort that were to be spent some thirty years later on a similar investigation after 9/11. The Church Commission was chartered with two broad goals: to investigate the alleged abuses of all the intelligence services and to propose legislative and executive corrections. The commission validated many of the allegations that had been laid out in the press for both the CIA and DoD. While the investigation had originally focused on problems with the CIA, the media refocused interest in the military's involvement with the CIA domestic collection program, the U.S. Army's continuing participation in domestic intelligence gathering, and violations by the National Security Agency.

While the Senate was establishing oversight through the investigations and recommendations of the Church Commission, things were not going as smoothly in the House. Initially, the House formed a committee under the leadership of Representative Nedzi, but that committee disbanded after the leadership resigned over a dispute with the membership. The Nedzi Commission was replaced by an investigation headed by Representative Pike of New York. The Pike Commission recommended that the House establish its own permanent intelligence committee and that there should also be closer fiscal controls imposed on the Intelligence Community. In addition, the report recommended that the overall budget figure should be public (a stipulation that, in 2005, is still being recommended and avoided by the Intelligence Community) and that transfers and reprogramming of intelligence funds should be subject to approval by

congressional committees. Moreover, the Pike Commission felt that the General Accounting Office (GAO) should have the same authority to investigate and audit intelligence agencies as it had over other agencies. The commission also recommended the creation of a foreign operations subcommittee in the National Security Council, to deal with covert action, hazardous collection, and a major reorganization of the Intelligence Community, which would separate the Director of Central Intelligence from the CIA and the National Security Agency from the Defense Department. Lastly, the commission recommended that the Defense Intelligence Agency should be abolished. As is well known, none of those measures to reorganize the Intelligence Community were enacted; however, the House did create a permanent intelligence committee in July of 1977.

#### **A. CHURCH COMMISSION FINDINGS**

The Church Commission found that the military had participated in police raids, regularly exchanged intelligence reports, and released military investigative files on civilians and citizen organizations to local law enforcement.<sup>27</sup> The commission uncovered evidence that, even after 1971, when the Defense Department restricted military participation in domestic intelligence collection activity, all three services, the army, the navy, and the air force, had continued their involvement. For example, evidence showed that the air force initiated the tracking of civilian groups in San Diego in anticipation of potential requirements for the 1972 Republican Convention. In addition, the hearings found several army units had directly disobeyed a DoD directive to destroy existing files on “unaffiliated” persons. Instead, they turned over the information to local law enforcement. As the Church Commission’s report concluded, the “extreme breadth of intelligence activity is inconsistent with the principles of our Constitution which protect the rights of speech, political activity, and privacy against un’justified’ governmental intrusion.”<sup>28</sup> The Senate Commission’s report included shocking details which outlined that “the CIA had placed the names of 1.5 million potentially ‘subversive’ Americans in a computer database as a result of its mail-opening program; the agency had also opened files on more than 7,000 Americans during its domestic spying

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<sup>27</sup> The Select Committee to Study Governmental Operations With Respects to Intelligence Activities, 29.

<sup>28</sup> Ibid.,

operation. The CIA and FBI together had opened 380,000 letters, while the FBI had undertaken 500,000 investigations of dissidents without winning any convictions.”<sup>29</sup>

## **B. CHURCH COMMITTEE RECOMMENDATIONS**

The Church Committee issued its report in several installments, each with multiple recommendations. The first report, Foreign and Military Intelligence, included eighty-seven recommendations. In the second report, Intelligence and the Rights of Americans, the committee proposed ninety-six improvements. Given the limited scope of this study, only a few of the more important recommendations are presented here. The most significant proposal directed that the Senate establish a permanent oversight body. In addition, the new oversight body should have budget oversight over the entire Intelligence Community and Senate approval must occur before funds are expended on covert operations. The Church Committee also wanted the National Security Act of 1947 amended to assign roles for the individual members of the Intelligence Community and recommended that the CIA, National Security Agency, Internal Revenue Service, and U.S. Post Office be barred from any domestic intelligence activities. They proposed a ban on political assassination and the use of the Intelligence Community to subvert foreign governments and a prohibition on using the media or clergy to aid in intelligence collection. In part because of the negative circumstances surrounding the Pike Committee report and partly due to a swing in public opinion, many of the Senate’s recommendations floundered. The Senate did establish an oversight committee, but with limited budget power. Many of the other recommendations were incorporated into an executive order.

## **C. PIKE COMMITTEE**

To some degree, the House’s investigation into intelligence abuses was less successful than the similar efforts in the Senate. The original commission under Congressman Nedzi was disbanded due to party politics, and a second committee was formed under the leadership of Otis Pike. The Pike Committee did not issue a formal report, although a version was eventually published in the open press. The committee was allowed, however, to publish its twenty overall recommendations, several of which

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<sup>29</sup> Olmstead, 175.

were repetitive of the Church Commission recommendations. Many would reappear during further congressional investigations.

The commission recommended that the intelligence budget be declassified, and that the executive branch clearly define the role of the National Security Agency. The committee recommended a prohibition against the transfer of monies between the various intelligence entities and a revamping of the role of the DCI, converting that position from one in charge of a single agency to more of a coordinating/controlling authority over the entire Intelligence Community. The DCI would be charged with coordinating all the intelligence agencies under his jurisdiction, eliminating duplication, and evaluating performance and efficiency. It was also anticipated that he would have some budget review authority. The committee recommended that the Defense Intelligence Agency (DIA) be abolished and that its concerns be divided between the CIA and the office of the Secretary of Defense. The committee proposed an Inspector General for the entire Intelligence Community and a codification of classifying and declassifying data. Additionally, panel member Les Aspin recommended splitting the CIA into two organizations, one devoted to analysis, the other to covert operations. Even at this early juncture, committee members recognized that having both the analysis and the covert operations functions within a single organization created a conflict of interest.

Why wasn't the Pike Report ever formally published? The failure to publish was due in part to executive wrangling, disagreement within the House as to the content, and Congressman Pike's agreement with the Ford administration. Kathryn Olmstead also cites a growing lack of congressional interest in oversight as part of the reason the report was suppressed. Fearful of being accused of endangering national security, the House decided to allow the president to determine the report's release, thereby relinquishing its responsibility for any potential release of classified information. The executive, to prevent the damning information in the report from being made public (despite press leaks of much of the information), denied its publication. (Note: We have not seen a similar limitation of release of findings in the post-9/11 period.)

It may have been the difficulties surrounding the publication of the Pike Commission report that pushed the Congress back into its reluctance to perform needed

intelligence oversight. The publication of the report in the *Village Voice*, in direct violation of congressional mandates, led to a new media firestorm, negative public opinion, and further congressional investigations. The victim of this situation was the much-needed oversight and the well-founded proposed reforms.

#### **D. THE HUGHES-RYAN AMENDMENT**

So what changes to oversight were enacted during the 1974-1980 time period? Congress's first move to enact an intelligence oversight measure was the Hughes-Ryan Amendment, which amended the Foreign Assistance Act of 1961. An immediate reaction to the *Times*' publication of the intelligence abuses, the act would require that "no appropriated funds could be 'expended by or on the behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended for obtaining necessary intelligence.'"<sup>30</sup> It further called for presidential approval of any covert action and for the executive to report those activities to the appropriate congressional committees in a timely fashion. Congress considered "timely" to be within days of the activities. The Hughes-Ryan Amendment was important: it demonstrated to the executive that the legislature had a role in intelligence oversight and, given proper motivation, was willing to exercise that role. The amendment garnered some criticism because the original amendment had called for notification of eight separate committees. Members of the Intelligence Community feared that the Congress lacked the sensitivity to keep such information classified. They also had genuine concerns about briefing a large number of members on such highly sensitive activities. Their fears were somewhat eased therefore by the establishment of the Senate and House Select Committees on Intelligence, which limited reporting to those committees.

#### **E. EXECUTIVE REACTION TO CONGRESSIONAL FINDINGS**

President Gerald Ford summed up the executive branch's feelings about the congressional reforms, when he stated "the sensationalized public debate over legitimate intelligence activities endangered the nation...it ties our hands while our potential enemies operate with secrecy, with skill and with vast resources. An investigation must be conducted with maximum discretion and dispatch to avoid crippling a national

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<sup>30</sup> Elizabeth Rindsoph Parker and Bryan Pate, *Rethinking Judicial Oversight Of Intelligence*, unpublished draft, 4.

institution.”<sup>31</sup> In response to its own investigation and the recommendations of the two congressional committees, the White House issued a series of Executive Orders, one by each of the three presidents in office from 1975 to 1981. The first was issued during the Ford administration, likely in an effort to stave off further congressional demands for oversight of intelligence operations.

On February 18, 1976, President Ford issued Executive Order 11905, United States Foreign Intelligence Activities, which specifically delineated the domestic and foreign responsibilities assigned to the various intelligence agencies and designated an executive-level oversight board. It also directed inspector generals within the various community organizations to be responsible for regular reporting of questionable oversight activities. Executive Order 11905 was superseded on January 24, 1978, by EO 12026, issued by President Jimmy Carter, which directed the commission of an Oversight Board and the board to report to the president at least quarterly. It also vested the individual intelligence organization’s internal inspector generals with the responsibility for monitoring and reporting intelligence oversight issues, a provision to “keep the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate fully and currently informed concerning intelligence activities, including any significant anticipated activities which are the responsibility of, or engaged in, by such department or agency.”:

1-602. National Foreign Intelligence Program Budget. The Director of Central Intelligence shall, to the extent consistent with applicable law, have full and exclusive authority for approval of the National Foreign Intelligence Program budget submitted to the President...develop the consolidated National Foreign Intelligence Program budget and present it to the President through the Office of Management and Budget...shall have full and exclusive authority for reprogramming National Foreign Intelligence Program fund. <sup>32</sup>

In December 1981, President Ronald Reagan issued the final Executive Order to be issued on the subject. The Reagan Executive Order outlined the roles and

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<sup>31</sup> Olmstead, 147.

<sup>32</sup>Presidential Proclamations., “United States Intelligence Operations,” *Executive Order 12036* (<http://www.fas.org/irp/offdocs/eo/eo-12036.htm>), accessed 15 August 2005.

responsibilities of the various intelligence agencies and somewhat relaxed some of the restrictions on covert operations outlined in the Carter document. This document has stood the test of time, as it has not been superseded. It directs the various intelligence heads to cooperate with the Congress and to perform such reporting as is required by Title 50 and by the Foreign Assistance Act of 1961, and in accordance with the National Security Act of 1947 (as amended). Despite the congressional recommendations and the directives in all three EOs, the DCI's overall budget authority was limited to making recommendations to the president and control of the budget for his own organization. Legislation to change the intelligence budgetary system has never been passed.

#### **F. THE OVERSIGHT ACT OF 1980**

The Intelligence Oversight Act of 1980 required the heads of the intelligence agencies to keep the oversight committees “fully and currently informed” of their activities, including “any significant anticipated intelligence activity.” Detailed ground rules were established for reporting covert actions to Congress, in return for a limitation of the number of congressional committees receiving notice of covert actions to the two oversight committees. This act established the SSCI and the HPSCI as the primary congressional intelligence oversight mechanisms and required the Intelligence Community provide Congress with prior notification of “significant anticipated activities.” The act also provided for a more limited version of congressional reporting. In the event that the president was reluctant to inform the full membership of the two oversight committees of a pending operation, he could inform just eight members of Congress: the majority and minority leader of both chambers and the majority and minority leaders of the oversight committees. The Intelligence Oversight Act of 1980 superseded the Hughes-Ryan Amendment of 1974.

#### **G. ROLE OF THE MEDIA**

It is noteworthy that none of the intelligence problems of the 1960s and 1970s were uncovered by internal oversight mechanisms. Rather, all were brought to light by the media and the legislative branch's investigations. After allegations of illegal intelligence activities were revealed in a series of *New York Times* articles, the executive branch directed the director of central intelligence to investigate the claims. DCI Colby's investigation indicated that all the abuses were in the past and that there was no need to

pursue the matter further. In addition, an investigation of the previously disclosed army intelligence abuses had been perfunctory and had failed to modify the military's behavior. Given that the allegations of abuses followed so closely on the Watergate conspiracy, there was a reluctance to trust the executive to police itself. In part due to this reason, the Senate was not easily dissuaded from investigating and thus formed its own investigative commission. The media exposure of the Intelligence Community's illegal antics and the public outrage over those activities forced the legislature and the executive departments to take action and begin a more active oversight role. By thoroughly investigating the abuse allegations and by instituting oversight mechanisms Congress was able to heal some of the wounds and begin to repair the damaged reputation of the Intelligence Community.

#### **H. MEASURING CHANGES IN OVERSIGHT**

In the post investigation era, Congress demonstrated a greater interest in intelligence and intelligence operations. Numbers from the CIA History Staff Study demonstrate, that in 1975, prior to the creation of the intelligence oversight committees, the agency was required to present 188 substantive briefings and provide 204 classified intelligence products to Congress. Conversely, in 1979, the CIA provided 420 briefings and approximately 1,800 products<sup>33</sup>. During the Age of Investigation, oversight was at a high point. The Church and Pike commissions spent months examining the Intelligence Community and proposed sweeping reforms. The era witnessed the establishment of both permanent oversight committees. The Church Commission proposed 183 separate improvements to oversight and intelligence operations. The two committees had spent months delving into all aspects of the Intelligence Community. They had uncovered assassination plots, mail openings, and use of the IRS against dissident communities, among other abuses. This took oversight from the low level of involvement of the 50s and 60s to a high level. That commitment of oversight began to wane in the months after the Church Commission's final report.

After the Church and the Pike commissions' concluded their investigations and Congress established the Senate and House Select Committees on Intelligence, the reform movement seemed to run out of steam. In 1978, the Senate proposed a National

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<sup>33</sup> Snyder, 12.

Intelligence Reorganization and Reform Act, a bill that would have established a director of national intelligence (DNI), as well as outlining roles, responsibilities, and restrictions on intelligence agencies' "special activities." The bill was shelved after protest within the Congress, generated by the Intelligence Community, that it would hinder operations. A streamlined version of the bill was introduced in 1980, but that bill also failed to reach a vote. Eventually, only three provisions of that reform effort were adopted: 1) modification of the Hughes-Ryan Amendment of 1974 to limit the number of committees requiring notification of intelligence operations from seven to the two intelligence select committees; 2) partial release of the Intelligence Community from Freedom of Information Act requirements; and 3) the creation of criminal punishments for the intentional unauthorized disclosure of the identities of intelligence agents.<sup>34</sup> Oversight had reached a high point in 1975-76 with three simultaneous commissions delving into the Intelligence Community and its operations. By the end of the Age of Investigation congressional attention had turned to other matters and oversight was falling from its earlier highpoint. These changes are depicted graphically in Figure 4.

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<sup>34</sup> Ray S. Cline, *The CIA Under Reagan, Bush and Casey: The Evolution of the Agency from Roosevelt to Reagan* (Washington, D.C.: Acropolis Books, 1981), 301.

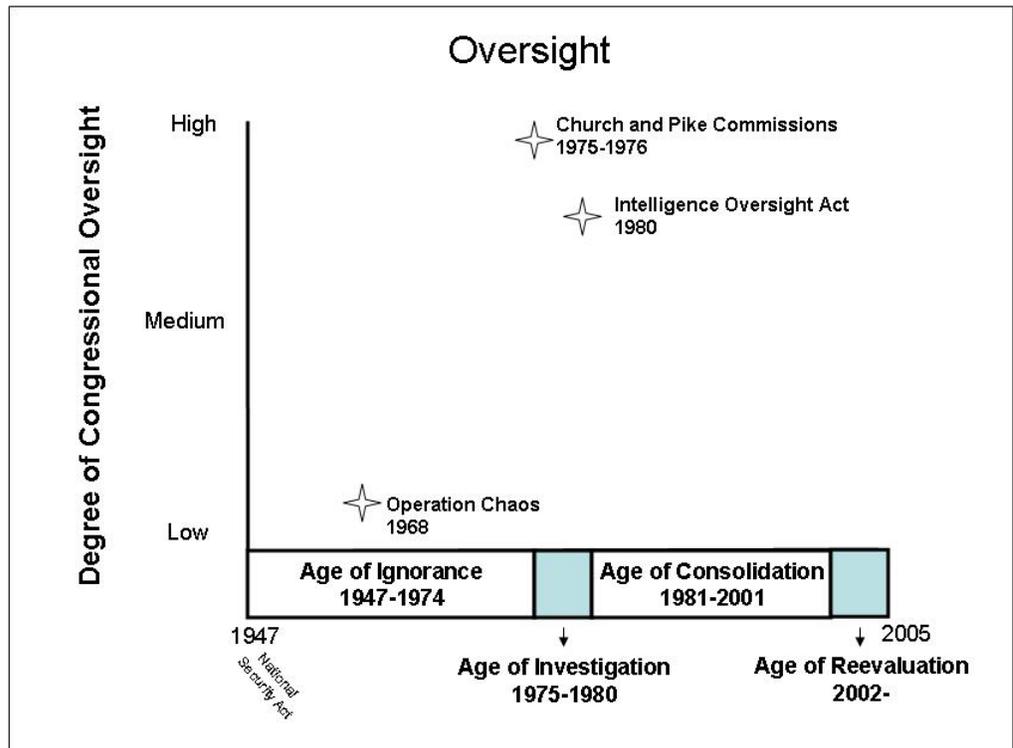


Figure 4. Assessment of Intelligence Oversight during the Age of Investigation

## I. CONCLUSIONS

The reforms of the 1970s established a system of checks and balances. No longer would the Intelligence Community be responsible solely to the executive branch that it served. Congress had put in place checks to ensure that accountability to the American people was entrenched in the system. The lack of congressional controls had allowed the Intelligence Community and the executive it served to evolve from a tool to protect its citizens from internal and external threats to a threat itself. Keller's study of this period comes to the conclusion that by the time of the age of investigation, the Intelligence Community, particularly the domestic elements had evolved into "more a political police and an independent security state within the state."<sup>35</sup> The Intelligence Community was used to advance presidential political goals, by spying on dissidents and those who could be considered as threats to the administration and operated without any sort of check of

<sup>35</sup> Keller., 191.

executive power, by the legislative or by the judicial branch. Because the intelligence system was not accountable outside of its own realm, it had evolved from a security organization into a state of independent intelligence operations. This period demonstrated that despite the span of control granted the Intelligence Community, it could be force to answer to the American public. As Loch Johnson so accurately summed up the situation, “What brought the intelligence nightmares to an end was the disinfecting sunlight of investigations by the media...”<sup>36</sup>

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<sup>36</sup> Johnson., “The CIA and the Question of Accountability”, 177-178.

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#### IV. CONGRESSIONAL OVERSIGHT: THE AGE OF CONSOLIDATION (1981-2001)

*“The agency’s stronger for it [oversight], the Congress is supportive to a degree that it would not be if it didn’t have that kind of responsibility” – Former DCI Colby<sup>37</sup>*

The era of consolidation began with the faint whisper that maybe the regulation and reform era of the 1970s had gone too far, and that all of the investigations had inhibited the nation’s security, not helped it. This age opened on the heels of the Intelligence Community’s failure to predict the overthrow of the shah of Iran and the disastrous rescue mission of the Iranian hostages. There was also public concern about security lapses and media revelations of covert identities, which while not caused by the congressional investigations, were linked to them by the Ford administration and the press. This era witnessed a Congress that felt its intelligence reform efforts had gone far enough and a shift in oversight from one of watchdogs to one of advocates. The general feeling was that measures had been established to deal with potential abuses and the Intelligence Community had been set straight on the role it was expected to play.

During this time, the release of classified materials became a major concern. As congressional oversight expanded, so too did congressional access to classified information and materials. Early lapses in security generated concern that Congress was not conscientious enough about keeping the nation’s secrets safe. Some members of Congress failed to adequately protect classified information and, in some cases, members used their access to leak information in ways that would enhance their own careers or would damage the administration. This period was also marked by general concerns about the Intelligence Community’s involvement in covert actions, also known as “special activities.” In the Iran-Contra affair, congressional oversight confronted executive privilege. Additionally, Congress initiated efforts to improve intelligence operations through the investigations and recommendations of the Boran-McCurdy

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<sup>37</sup> Olmstead, 181.

initiative, the Aspin-Brown Commission, and the Intelligence Community in the 21st Century project.

#### A. IRAN-CONTRA

In December 1982, Congress flexed its oversight muscle and checked the power of the executive branch by passing the Borland Amendment, fulsomely titled “A bill to amend the Intelligence Authorization Act for Fiscal Year 1983 to prohibit United States support for military or paramilitary operations in Nicaragua and to authorize assistance, to be openly provided to governments of countries in Central America, to interdict the supply of military equipment from Nicaragua and Cuba to individuals, groups, organizations, or movements seeking to overthrow governments of countries in Central America.” As the text explained, the motivation was to provide

an amendment to prohibit covert assistance for military operations in Nicaragua and to authorize overt interdiction assistance. The overt interdiction assistance consists of assistance furnished by the President on terms he may dictate to any friendly country in Central America to enable that country to prevent the use of its territory for the transfer of military equipment from or through Cuba or Nicaragua or any other country. The assistance must be overt. For this overt aid \$30,000,000 is provided for FY '83 and \$50,000,000 is provided for FY '84.<sup>38</sup>

The amendment, which specifically prohibited the federal government from providing covert aid to Nicaragua, was passed by a vote of 227 to 194. It was intended to prevent the members of the Reagan administration from aiding the Contra movement “for the purposes of overthrowing the government of Nicaragua.”<sup>39</sup> The executive branch and the CIA managed to avoid that proscription, however, by finding legal loopholes. They interpreted the operations not as attempts to overthrow the Nicaraguan government, but merely as harassing that government. Those involved also chose to use contractors, rather than CIA employees, to perform operations, thereby allowing them to say that the federal government was not involved. In addition, the administration claimed that because the amendment was part of an intelligence bill, the prohibition on helping the

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<sup>38</sup> U.S. Congress, House, *House Appropriations Bill of 1982, Borland Amendment* (<http://thomas.loc.gov/cgi-bin/bdquery/z?d098:HZ0046>), accessed 30 Aug 2005.

<sup>39</sup> Rhodiri Jefferys-Jones, *The CIA and American Democracy* (New Haven: Yale University Press, 1989), 236.

contras did not apply to other federal organizations such as the National Security Counsel.

Prohibited from funding the contras through federal means, the Reagan administration looked to other means to raise money for their support. An elaborate scheme evolved in which arms brokered through Israel were sold to Iran with the profits funneled to the contras. Out of this was born the Iran-contra affair, which presented a problem on several levels. It demonstrated willingness by the executive branch to ignore the will of the Congress, and the arms sales to Iran violated the United States' stated neutrality to the ongoing Iran-Iraq war.

The Iran-contra affair might have slipped by unnoticed and unknown if it had not been for oversight protections afforded by the international media. In November 1986, the Lebanese press disclosed the arms deals and their connection to the contra movement. This ignited a wave of investigations and allegations reminiscent of the Nixon/Watergate era. In January 1987, in response to the allegations, Congress established two Select Committees charged with conducting a comprehensive investigation of the Iran-contra affair. These were the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, and the House Select Committee to Investigate Covert Arms Transactions with Iran. The committees found that the executive had deliberately avoided congressional reporting requirements for "special activities" and that the CIA in particular had manipulated intelligence data to subvert "democratic process."<sup>40</sup> Iran-contra was a violation of the rules established by the Hughes-Ryan amendment and Executive Order 12333 to inform the congress in a timely manner of any covert action. In her book, *Challenging the Secret Government*, Kathryn Olmstead argues that it was the legislative reforms of the 1970s that made criminal the Reagan administration's activities. The Hughes-Ryan Amendment took activities like Iran-contra out of the realm of executive privilege and made them crimes.<sup>41</sup> The change Iran-contra denoted was that there were now mechanisms in place to check this type of executive activity, if not always the will.

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<sup>40</sup>Rhodiri Jefferys-Jones, 246.

<sup>41</sup> Olmstead., 180.

The Iran-contra affair was a direct challenge to the legislative oversight system. The Reagan administration had violated the guidelines emplaced by Congress. Thus Congress decreed that, from that date on, certain members were to be informed of all covert actions, the reporting must be timely and presidential “findings” (determinations to use covert actions) must be in writing. Three presidents further codified the requirement to notify Congress in Executive Orders. During the Iran-contra investigations, Congress discovered that the White House had not only failed to pass on any information but, in some instances, had also failed to document its decisions. Indeed, one presidential finding specifically directed the Director of Central Intelligence not to report a covert action to the Congress. The investigative committee consensus was that the administration had deliberately sought loopholes to prevent congressional reporting.

The National Security Act requires the reporting of arm sales of over one million dollars. Two of the Iranian sales exceeded \$10 million. When asked why those activities were not reported to Congress in keeping with the National Security Act, the answer was that, since no single item exceeded \$1 million, the act did not apply. The activities clearly demonstrated that the Reagan administration did not want to restrict the operations, even though they violated both the law and congressional directives. The president and high-ranking members of his administration completely disregarded the Congress’s role in checking executive power. Congress concluded that Iran-contra did not result from inadequate oversight powers, but rather it was due to the administration’s deliberate attempts to bypass and effectively negate those powers. In the end, the investigation committee concluded that Iran-contra “resulted from a failure of individuals to observe the law, not from deficiencies in existing law or in our system of governance.”<sup>42</sup> Just as the investigations of the Church and Pike commissions and their recommendations had shaped Congress’s agenda for the following couple of years, the results of the Iran-Contra investigations drove the select committee’s program.

## **B. EXECUTIVE REACTION TO THE CONGRESSIONAL FINDINGS**

During the early 1980s the executive branch continued to react to the Congress’s findings in the Iran-contra affair and its calls for oversight. The Reagan administration

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<sup>42</sup> US Congress, *Report of the Congressional Committees Investigating the Iran-Contra Affair*, 100th Congress, 1st Session, 13 November 1987, 423.

promulgated two new Executive Orders: EO 12333, which outlined the functions of the nation's intelligence agencies, and EO 12334, which reestablished the Intelligence Oversight Board. The president indicated that the orders were intended "to remove the aura of suspicion and mistrust that can hobble our nation's intelligence efforts." As John Oseth points out, while EO 12333 outlined the conduct of intelligence operations, as did EO 12036, which it replaced, it does not use the word "restrictions." Oseth further categorizes the document as far more positive than two previous EOs, demonstrating an "affirmative attitude now dominant in the administration."<sup>43</sup>

Just as when the allegations of domestic abuse arose, the Executive Branch hoped to stave off Congressional inquiry by establishing its own commission. The Tower Commission was chartered to investigate the Iran-Contra allegations. It documented the allegations and provided recommendations to prevent similar problems from occurring in the future. As a result, President Reagan initiated a three-prong program: "I'm taking action in three basic areas: personnel, national security policy, and the process for making sure that the system works." The administration hired new personnel for the chief of staff, national security advisor, and director of the CIA (DCIA). Reagan also ordered a comprehensive review of covert operations and covert policies. Lastly, he overhauled the National Security Council's processes as per the Tower Commission's recommendations. As for congressional oversight, Reagan stated, "I am also determined to make the congressional oversight process work. Proper procedures for consultation with the Congress will be followed, not only in letter but in spirit."<sup>44</sup> Congress has not always been fully informed as that promise indicates, however. As one House intelligence committee member, Norman Mineta, put it, "we are like mushrooms, they keep us in the dark and feed us a lot of manure."<sup>45</sup>

### **C. INTELLIGENCE OVERSIGHT AND THE END OF THE COLD WAR**

The end of the Cold War presented new challenges for the Intelligence Community and its overseers. Thus, in the early 1990s, Congress started another wave of

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<sup>43</sup> John M. Oseth, *Regulating U.S. Intelligence Operations: A Study In Definition of the National Interest* (Lexington: University of Kentucky Press, 1985), 154.

<sup>44</sup> Ronald Reagan, Speeches, *Iran Arms and Contra Controversy*, 4 March 1987. (<http://www.thereaganlegacy.com/version2/speechesdetails.asp?SID=38>), accessed 31 Aug 2005.

<sup>45</sup> Jones., 236.

intelligence reform. Both houses of Congress set forth reform measures intended to redirect the Intelligence Community in the post-Cold War era and to realign the intelligence structure in a manner similar to the Goldwater-Nichols restructuring of the Department of Defense. This effort came to be known as the Boren-McCurdy initiative. Although the House and Senate proposals differed, they also had several recommendations in common:

- The creation of a director of national intelligence (DNI) with budget authority and temporary transfer of personnel
- The creation of two deputy directors of national intelligence (DDNIs)
- The creation of a separate director of the CIA, subordinate to the new DNI, to manage the agency's day-to-day collection and covert action capabilities
- The consolidation of analytical and estimative efforts of the Intelligence Community under one of the deputy DNIs
- The creation of a National Imagery Agency within the Department of Defense (DoD) to collect, exploit, and analyze imagery
- The authorization of the director of DIA to task defense intelligence agencies (DIA, NSA, and the new Imagery Agency) with collection requirements; and to shift functions, funding, and personnel from one DoD intelligence agency to another.<sup>46</sup>

Unfortunately, this legislation did not pass, although some aspects of the Boren-McCurdy initiative later appeared in the Intelligence Authorization Act of 1994. That legislation gave the DCI broader powers to coordinate intelligence collection activities and created the deputy DCI positions. Responsibility for the failure of this reform effort is often placed on the Department of Defense and its supporters on the Armed Services Select Committees, which blocked the legislation that would have diminished DoD authority. The DoD was particularly concerned that the legislation would have moved budgetary authority to the DNI, resulting in a potential loss of DoD command over military intelligence personnel. This same issue would arise again in 2004.

#### **D. BIPARTISAN EXAMINATION OF INTELLIGENCE**

Another wave of oversight/reform commenced in the mid 1990s with two simultaneous investigations. One was undertaken as a commission formed jointly by the

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<sup>46</sup> Richard A. Best., *Proposals for Reorganization 1949-2004*, *Congressional Research Service*, Library of Congress, updated 24 Sept 2004, (<http://www.fas.org/irp/crs/RL32500.pdf>), accessed 30 Aug 2005.

executive branch and the Senate: the Commission on Roles and Capabilities of the Intelligence Community, which became known as the Aspin-Brown Commission. The commission invited participation from the House Permanent Select Committee for Intelligence Oversight (HPSCI), but was turned down. The House elected instead to form its own commission, known as The Intelligence Community in the 21st Century (IC21), which will be covered later.

Chartered in September 1994, the Aspin-Brown Commission was designed to examine the intelligence problems surrounding Somalia (according to Loch Johnson), the community's direction at the end of the Cold War, and how to deal with the backlash from the Aldridge Ames scandal (according to L. Britt Snyder) and was to propose reforms. It was made up of members of Congress, the executive branch, and others of their choosing. Both the Senate and the White House had assessed the need to evaluate the Intelligence Community and had determined that a single commission representing both the executive and the legislature would avoid the cost and the duplication of two commissions investigating the same topic. The committee decided on four main tasks to determine:

1. What are the intelligence needs of the United States in the post-Cold War world?
2. What are the intelligence capabilities required to collect, analyze, and disseminate such information?
3. To what extent do the existing capabilities compare with those needed to satisfy future requirements for intelligence?
4. To the extent that existing capabilities fall short, what changes—organizational, managerial, programmatic, or budgetary—should be made?<sup>47</sup>

While getting ready to publish their final report, members were urged to “Remember the underlying reason for the commission,” which Senator Warner stressed was “to restore confidence in intelligence.” Representative Goss agreed: “We shouldn't paint such a black picture. I'm not trying to whitewash, but let's tone this down.”<sup>48</sup> Now that is pretty friendly oversight. The commission did recommend releasing the overall budget figure, but could not agree on whether to cut or to stabilize intelligence spending.

<sup>47</sup> Loch K. Johnson, *The Aspin-Brown Intelligence Inquiry: Behind the Closed Doors of a Blue Ribbon Commission*, *Studies in Intelligence*, Vol 48, No3 (<http://www.cia.gov/cis/studies/vol48no3/article01>), accessed 30 Aug 2005.

<sup>48</sup> Ibid.

At the same time, the HPSCI began a parallel effort. It is during this investigation that we see a shift in the focus of congressional oversight. Where before the effort had been to rout out misdeeds or to establish roles and structures, this new effort was more intent on shoring up the morale of a community rocked by spy scandals. The shift in the congressional interpretation of its role as overseer is tell-tale in Senator Durenberger's comment that "The purpose [of oversight] is to help intelligence, not to have an audit team sitting on the back of the [CIA] operations department."<sup>49</sup>

#### **E. THE INTELLIGENCE COMMUNITY FOR THE 21ST CENTURY**

Although invited to participate in the Aspin-Brown examination of intelligence operations, the HPSCI preferred to undertake its own investigation, dubbed the Intelligence Community for the 21st Century (IC21), into the future of the Intelligence Community. Many of the findings and recommendations from IC21 mirror those of the Aspin-Brown Commission. However, in a major shift from all previous and future committees the IC21 did not propose the establishment of a joint congressional committee.

There is no compelling reason to convert the current system to a joint committee. Congress's record regarding safeguarding highly classified information is not perfect, but does not warrant this step. Creating a joint committee would also require either the House or the Senate to alter its current arrangements for intelligence oversight, which has not had significant support in the past. Finally, and most importantly, creating a joint committee for intelligence would continue to heighten the view that intelligence is something other than an accepted function of government, which tends to increase rather than complement oversight issues and problems.<sup>50</sup>

Instead, the IC21 commission proposed to do away with some of the aspects of the congressional committees as "Select" committees. The HPSCI investigation agreed that intelligence committee members should be appointed separately, but disagreed with the term limits. It felt that term limits caused excessive turnover, especially of the chairmanship, and that the loss of intelligence-wise members was harmful to oversight.

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<sup>49</sup> Olmstead, 181.

<sup>50</sup> U.S. Congress, House, *IC21: The Intelligence Community in the 21st Century Staff Study by the Permanent Select Committee on Intelligence House of Representatives*, One Hundred and Fourth Congress (<http://www.access.gpo.gov/congress/house/intel/ic21/ic21015.html>), accessed 30 Aug 2005.

Overall, the IC21 concluded that “effective oversight and an informed Congress are now considered among the expected norms of our system of government. We believe that oversight, if carried out seriously and with a modicum of support from intelligence agencies, not only helps ensure greater executive branch effectiveness and propriety, but can also be a substantial force in rebuilding a sorely needed consensus to support intelligence agencies, programs and activities.”<sup>51</sup> This investigation demonstrated a shift in intelligence oversight from an adversarial to more of an advocacy relationship. A quote from the IC21 report shows a strong indication of the shift within the Congress from an overseer-watchdog to an overseer-supporter: “Intelligence, unlike other federal programs, has no natural constituency; therefore, Congress plays a vital role in building public support.”<sup>52</sup>

#### **F. MEASURING INTELLIGENCE OVERSIGHT**

How did the reforms of the 1970s and the consolidation of Congress’s oversight power affect the Intelligence Community’s position in society? Oversight was not nearly as intrusive as during the Church Commission period. There was one significant investigation into abuse and it revealed a fundamental weakness in congressional oversight: Congress is dependent on the Intelligence Community to tell them the truth about its activities. Oversight during the Iran-contra period is rated as medium. While outraged by the allegations and prompted to investigate, the results of the investigation did not motivate Congress to change its degree of oversight. The report concluded that processes in place were sufficient, but it was the executive branch’s acceptance of congressional controls that had been challenged. In the remainder of the period, investigative oversight became less prominent as the emphasis shifted from Congress as an intelligence watchdog to Congress as an intelligence supporter. The Aspin-Brown and IC21 committees actively sought ways to boost the Intelligence Community morale. Additionally, the reason oversight was depicted with a downward emphasis was the inability in the Age of Consolidation for Congress to pass legislation enacting their proposed reform measures. Also, the medium level of congressional involvement is not intended to be interpreted as a negative. It is likely that it is the appropriate level of

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<sup>51</sup> U.S. Congress, House, *IC21: The Intelligence Community in the 21st Century Staff Study by the Permanent Select Committee on Intelligence House of Representatives*

<sup>52</sup> *Ibid.*

involvement for day-to-day community oversight. Between 1980 and 2001, Congress was certainly more engaged than in the “era of trust,” and the Intelligence Community and the executive came to accept that involvement. But it would be unreasonable and intrusive to expect Congress to maintain the constant vigilance and probing inquiries of the late 1970s. A graphic depiction of this relationship can be found in Figure 5.

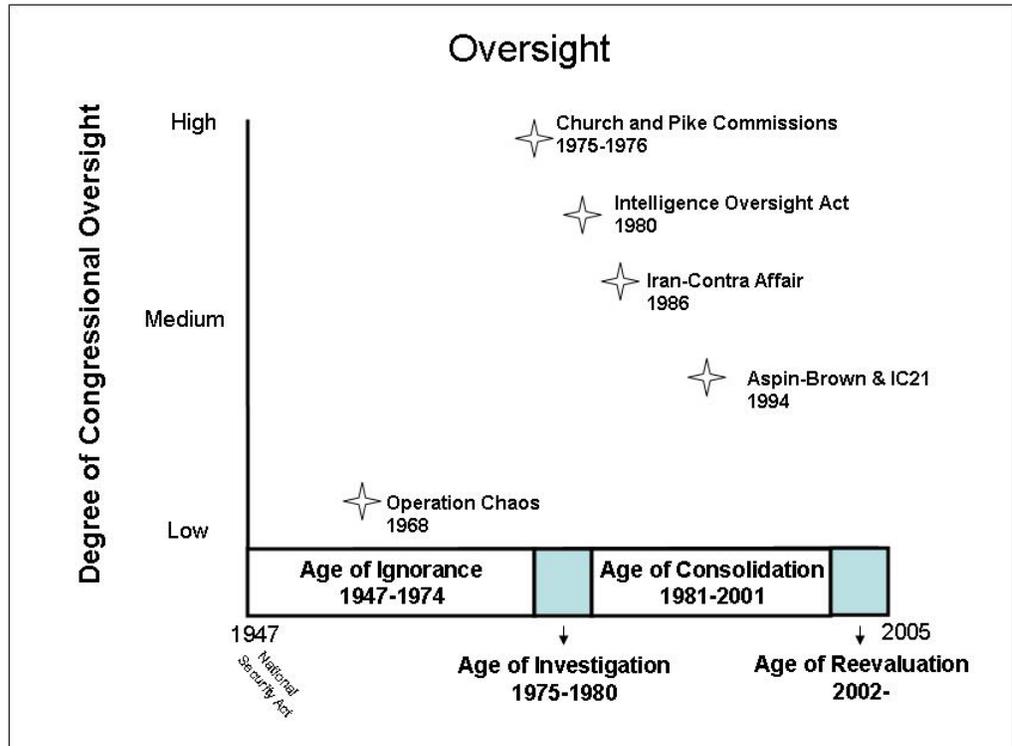


Figure 5. Assessment of Oversight during the Age of Consolidation

## G. CONCLUSIONS

This period demonstrates the continued need for oversight, because the executive actively sought means and methods to avoid congressional controls. While the executive’s activities were not domestically based, they demonstrated a willful disregard for oversight requirements. An evaluation of intelligence oversight might have looked very different had the investigations of the early 1980s not demonstrated continued congressional interest in oversight. One of the most disturbing aspects of the Iran-contra inquiry was the discovery that the Reagan administration had been planning to establish independent funding for “special activities” outside the congressional budgetary process.

Had that occurred, the executive branch would have possessed an independent funding source for covert operations with no possibility of a check by the legislature. Had not the Congress chosen to exercise its oversight prerogative, we could have witnessed an Intelligence Community with the financial freedom to bypass congressional oversight.

What does this time period show about intelligence oversight? The oversight period between 1980 and 2001 demonstrates the maturing of the oversight process. We see an executive that tests the system to determine its limits, but that also accepts correction when caught out-of-bounds. The period also demonstrates a shift in the congressional mindset. Oversight began as a punishment for misdeeds; it evolved into an accepted support and necessary evaluation of intelligence operations. While it is understandable that the executive and the Intelligence Community would prefer to operate without having to answer to Congress, there is grudging acceptance of the oversight role and acknowledgement that, overall, it has made the Intelligence Community stronger and likely aided in reestablishing its credibility. The Iran-contra affair revealed an inherent weakness in congressional oversight. Oversight of security systems is only as effective as the information provided to the overseers by the community itself. Intelligence oversight is dependent on the Intelligence Community and the executive abiding by the rules created by Congress. If either the Intelligence Community or the executive chooses to conceal information, there is little recourse, except the media. The age of consolidation demonstrated a growing if grudging acceptance of oversight. In the words of former DCIA Colby, “The agency’s [CIA] stronger for it. The Congress is supportive to a degree that it would not be if it didn’t have that kind of responsibility.”<sup>53</sup>

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53 Olmstead, 181.

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## V. CONGRESSIONAL OVERSIGHT: AGE OF REEVALUATION (2001 - )

*In the perfect world, I believe we could create a domestic intelligence service that would have sufficient oversight that it would not infringe on our civil liberties.... I am very fearful that such an agency would have potential to infringe on our civil liberties. And therefore, I think we would have to take extraordinary steps to have active oversight of such an agency.” – Richard Clark in testimony to the 9/11 Commission.*

The post September 11th, 2001 time frame in regard to intelligence oversight is best termed as the age of Reevaluation. The last few years have been marked by reevaluation, reforms, and redirection. In the post-September 11th time period, there have been major investigations and many proposals, as well as some of the same type of wrangling experienced in the earlier ages of oversight. Most worrisome, there have also been early reports of possible abuses. Unlike the previous investigations, this time period has not focused on abuse, but on failure. There were instances of intelligence failures in the 1980s and 1990s, but nothing that resulted in a major loss of American lives and, other than the bombing on 25 February 1993 at the World Trade Center, none were domestic.

It is natural to seek a cause, a reason, for a tragedy or a disaster. Where did the system go wrong? What could have been done to prevent such a tragedy from occurring? What can be done to prevent it from happening again? It is important to find something that can be corrected, to assure ourselves that by changes and reforms such a disaster as September 11 will never happen again. The current age of oversight is focused on ensuring that oversight can prevent similar disasters befalling the nation. The future of oversight can be determined by looking at the findings of the various commissions and their recommendations. Only time will tell if the findings and the recommendations of the various organizations will establish the security they seem to promise.

## A. CONGRESSIONAL INTELLIGENCE COMMITTEES INVESTIGATE

In February 2002, the House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI) formed the first ever joint-committee inquiry commission. The commission has three primary goals:

- To conduct a factual review of what the Intelligence Community knew or should have known prior to 11 September 2001;
- To identify and examine systemic problems that may have impeded the Intelligence Community from learning of or preventing the attacks; and
- To make recommendations to improve the Intelligence Community's ability to identify and prevent future international terrorist attacks.<sup>54</sup>

In December 2002 the commission delivered its final report. The unclassified version is 858 pages long. It identifies five factual findings, sixteen systemic findings, and three related findings and makes nineteen recommendations. The report concludes that "No one will ever know what might have happened had more connections been drawn between these disparate pieces of information. We will never definitively know to what extent the Community would have been able and willing to exploit fully all the opportunities that may have emerged. The important point is that the Intelligence Community, for a variety of reasons, did not bring together and fully appreciate a range of information that could have greatly enhanced its chances of uncovering and preventing Usama Bin Ladin's plan to attack these United States on September 11th, 2001."<sup>55</sup>

What the congressional oversight committees' report does reveal is what the commission termed "systemic" problems within the Intelligence Community that, if left uncorrected, "will continue to undercut the U.S. counterterrorism effort"<sup>56</sup> and essentially jeopardize future security. The congressional report indicates that even if the major proposed reforms had been implemented prior to 9/11, they may not have prevented the tragedy. The commission made multiple recommendations for changes to the Intelligence Community, including the creation of a DNI, improvements to budgets,

<sup>54</sup> The House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001* ([http://www.fas.org/irp/congress/2002\\_rpt/911rept.pdf](http://www.fas.org/irp/congress/2002_rpt/911rept.pdf)), p.33, accessed 31 Aug 2005.

<sup>55</sup> The House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence *Findings of the Joint Inquiry into the Terrorist Attacks of September 11, 2001* ([http://www.fas.org/irp/congress/2002\\_rpt/findings.html](http://www.fas.org/irp/congress/2002_rpt/findings.html)), accessed 31 August 2005.

<sup>56</sup> Ibid.

better interagency cooperation and intelligence sharing, support to homeland defense, changes in intelligence collection, prioritization, and improved linguistic capabilities. It also advised that the executive needs to update current Executive Orders to document security classification and aid in the sharing of intelligence, especially with state and local officials.

The report's fourteenth recommendation deals directly with the two congressional committees' oversight responsibility: "Congress should maintain vigorous, informed, and constructive oversight of the Intelligence Community." And "the best way achieve that goal" is to direct the National Commission on Terrorist Attacks upon the United States (9/11 Commission) to examine a whole list of issues, including the intelligence budget, oversight committee membership, oversight committee structure, classification concerns, and "how Congressional oversight can best contribute to the continuing need of the Intelligence Community to evolve and adapt to changes in the subject matter of intelligence and the needs of policy makers."<sup>57</sup>

## **B. THE 9/11 COMMISSION**

Despite the investigation undertaken by the two select committees, there continues to be a great push to establish a more public investigation into the 9/11 attacks. In late 2002, Congress created the National Commission on Terrorist Attacks upon the United States (9/11 Commission) as part of the Intelligence Authorization Act of 2003. It was chartered to "make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and immediate response to, the attacks."<sup>58</sup> President Bush initially felt that "the best place" for this type of investigation was with the intelligence committees, but he eventually supported the legislation to establish the bipartisan commission proposed by Congress. The commission places most of the blame for failure to prevent the airline hijackings and their subsequent use as weapons of mass destruction on the Intelligence Community. Their investigation uncovered major problems in intelligence sharing, Intelligence Community

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<sup>57</sup> The House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence *Recommendations of the Joint Inquiry into the Terrorist Attacks of September 11, 2001* – ([http://www.fas.org/irp/congress/2002\\_rpt/recommendations.html](http://www.fas.org/irp/congress/2002_rpt/recommendations.html)), accessed 31 August 2005.

<sup>58</sup> \_\_\_\_\_, Public Law 107-306, *Intelligence Authorization Act of 2003* (<http://www.9-11commission.gov/about/107-306.htm>), accessed 31 Aug, 2005.

focus, and oversight prohibitions. Quotes from the report sum up the various issues. The Commission found:

- An almost obsessive protection of sources and methods by the NSA, and its focus on foreign intelligence, and its avoidance of anything domestic would, as will be seen, be important elements in the story of 9/11.
- During the 1990s, tension sometimes arose, as it did in the effort against al Qaeda, between policymakers who wanted the CIA to undertake more aggressive covert action and wary CIA leaders who counseled prudence and making sure that the legal basis and presidential authorization for their actions were undeniably clear.
- Secrecy, while necessary, can also harm oversight. The overall budget of the Intelligence Community is classified, as are most of its activities. Thus, the intelligence committees cannot take advantage of democracy's best oversight mechanism: public disclosure. This makes them significantly different from other congressional oversight committees, which are often spurred into action by the work of investigative journalists and watchdog organizations.<sup>59</sup>

### C. THE 9-11 COMMISSION RECOMMENDATIONS

The 9/11 commission report is 585 pages long and examines in detail the events preceding the attack on September 11<sup>th</sup>, as well as the actions taken on that day. The report contains forty recommendations, only a few of which directly relate to the Intelligence Community or oversight of that community. There are five recommendations that directly concern the Intelligence Community and its overseers.

- The current position of Director of Central Intelligence should be replaced by a National Intelligence Director.
- Information procedures should provide incentives for sharing, to restore a better balance between security and shared knowledge.
- The president should lead a government-wide effort to bring the major national security institutions into the information revolution
- Congressional oversight for intelligence and counterterrorism is now dysfunctional. Congress should address this problem. We have considered various alternatives: A joint committee on the old model of the Joint Committee on Atomic Energy is one. A single committee in each house of Congress, combining authorizing and appropriating authorities, is another.
- Congress should create a single, principal point of oversight and review for homeland security.<sup>60</sup>

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<sup>59</sup> 9/11 Commission, *The 9/11 Commission Report* ([http://www.9-11commission.gov/report/911Report\\_Ch3.htm](http://www.9-11commission.gov/report/911Report_Ch3.htm)), accessed 31 August 2005.

<sup>60</sup> Ibid.

At this point, some progress has been made on the above recommendations. Congress, through the Intelligence Reform and Terrorism Prevention Act, created, and the president appointed, a Director of National Intelligence (DNI). Unfortunately, he does not have the budget powers or the personnel controls the 9/11 commission envisioned and recommended. This raises concerns about whether the office will be as influential as was hoped. Former commission member John Lehman stated, “Our recommendations are not a Chinese menu. They are a whole system. If all of the important elements are not adopted, it makes it very difficult for the others to succeed.”<sup>61</sup> The failure to vest the DNI with the powers the commission intended lies solely with the Department of Defense, which has a vested interest in keeping the majority of the intelligence budget under its own control. Currently, 80 percent of the Intelligence Community’s budget is under DoD control. This creates a major disincentive within the DoD support community for any substantive change. Unfortunately, without this type of change, problems that led to 9/11 may persist, as 9/11 commission member, Senator Bob Kerrey, noted, “I know that Secretary [of Defense Donald] Rumsfeld is going to oppose this, and if they win one more time, if the [Department of Defense] wins one more time, then next time there’s a dustup and there’s a failure, don’t call the director of Central Intelligence up here. Kick the crap out of [the defense department] because they’re the one with the statutory authority over the budget.”<sup>62</sup>

#### **D. 9/11 COMMISSION COMMENTS ON OVERSIGHT**

One of the most significant 9/11 commission recommendations, but one that has received far less press than the creation of the DNI or the problems related to information sharing, was aimed directly at Congress.

Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need. The United States needs a strong, stable, and capable congressional committee structure to give America’s national intelligence agencies oversight, support, and leadership...Tinkering with the existing structure is not

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<sup>61</sup>Zachary Coile, 9/11 Panel Dismayed by Bush’s Reaction, *San Francisco Chronicle*, (<http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2004/08/04/MNGUO82C7B1.DTL>), accessed 31 August 2005.

<sup>62</sup> Ibid.

sufficient. Either Congress should create a joint committee for intelligence, using the Joint Atomic Energy Committee as its model, or it should create House and Senate committees with combined authorizing and appropriations powers. Whichever of these two forms are chosen, the goal should be a structure—codified by resolution with powers expressly granted and carefully limited—allowing a relatively small group of members of Congress, given time and reason to master the subject and the agencies, to conduct oversight of the intelligence establishment and be clearly accountable for their work. The staff of this committee should be nonpartisan and work for the entire committee and not for individual members.”<sup>63</sup>

Essentially, the commission found that the current oversight structure, with the House and the Senate having differing degrees of budgetary control, as well as the problem incurred with sharing the span of control with the appropriations committees and the armed services committees was dysfunctional. This language suggests that the commission may agree with a previous House recommendation to loosen the controls on the time limits imposed on a select committee. The Intelligence Community in the 21st Century report recommended removing term limits on the intelligence committees to allow greater continuity and maximize expertise. This recommendation was likely born out of the great turnover in committee chairmanships, a direct result of the term limits.

Despite the 9/11 Commission’s specific emphasis that the American goal of greater security cannot happen without effective congressional oversight and that Congress is not capable of providing that oversight with its current rules and structure, there has been no modification of the existing oversight structure and no new design of congressional oversight. The irony here is that the Church Commission made the same recommendations in the 1970s and also recommended that the new oversight mechanism be designed along the lines of the Joint Atomic Energy Committee. Essentially, as long as oversight functions are divided between the House and the Senate, the process will be fatally flawed. Unfortunately for members of Congress, the greater their involvement in oversight, the more they open themselves to the political fallout when intelligence failures or abuses occur. By maintaining a distant oversight role, Congress has been able to investigate and move to correct problems without being blamed when the system fails.

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<sup>63</sup> 9/11 Commission Report, Chapter 13

Another significant weakness of legislative oversight is, as Frank Smist put it, “It has no political benefit. In fact, it is a vast political detriment. The time it takes up. You get no benefits from serving on the intelligence committee. There are no pork barrel benefits to be obtained and no state issues involved.”<sup>64</sup>. The same is true today. Membership on the select committees is unlikely to benefit members and could be seen as a detriment if there are further intelligence problems, especially if the failures or problems can be linked back to a lack of oversight or direction. The work performed by the Senate Select Committee on Intelligence, and that proposed for any new oversight committee, would significantly aid national security. But due to security requirements, members are unable to advertise their contributions when running for reelection or attempting to validate their service in Washington. This issue will have a great impact on whether or not Congress steps up to a more demanding role in oversight.

#### **E. OVERSIGHT AND THE PATRIOT ACT**

On October 26, 2001, President Bush signed the Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 into law. The PATRIOT Act gives sweeping new powers to both domestic law enforcement and international intelligence agencies and eliminates the checks and balances that previously gave courts the opportunity to ensure that such powers are not abused. Most of the checks and balances were put in place after previous misuses of surveillance powers by the intelligence agencies were uncovered. For example, the media revealed in 1974 that the FBI and foreign intelligence agencies had spied on more than 10,000 U.S. citizens, including Martin Luther King Jr. It is important to note, that while the USA PATRIOT Act increases police power to conduct domestic surveillance, it does not change the role of the military or the foreign intelligence bodies in relation to domestic intelligence gathering. Since 9/11 and the implementation the USA PATRIOT Act, there have been major changes in intelligence operations within the United States. Military air surveillance assets have been used to aid in forest fire observation and proposed as a survey tool after Hurricane Katrina. Also, DoD intelligence personnel now work with the FBI and other law enforcement centers. While military intelligence agencies may not be directly involved in information

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<sup>64</sup> Smist, 24.

collection, they are, at the very least, aware of collection activities and have access to collection performed on American citizens and businesses. These are technical violations of the prohibitions put in place in the 1970s. So far these deviations have not been challenged; it appears that most citizens are willing to sacrifice personal privacy in order to improve domestic safety. This may or may not change. As the public becomes more comfortable with domestic terrorist threats, they may also become more concerned about the current and potential loss of privacy.

Congress passed the USA PATRIOT Act on 25 October 2001, just six weeks after the devastating attacks of September 11th. It was signed into law the next day. Title IX is the section of the document that impacts intelligence operations. It includes eight segments that pertain to intelligence, two of which are relevant to intelligence oversight.

- Sec. 904. Temporary authority to defer submittal to Congress of reports on intelligence and intelligence-related matters
- Sec. 905. Disclosure to Director of Central Intelligence of foreign intelligence-related information with respect to criminal investigations<sup>65</sup>

These two provisions formally relax Congress's powers of intelligence oversight. As discussed previously, there has also been a blurring between the domestic intelligence function, which in the past was the sole responsibility of the FBI, and the international intelligence responsibilities shared by the DoD, CIA, and State Department. Some provisions of the PATRIOT Act are due to expire in December 2005.

#### **F. POSSIBLE OVERSIGHT ABUSES IN 2005**

In the post-9/11 era, the primary concern has become: how to protect the United States from terrorist activities while maintaining the personal liberties we have come to expect. Less than five years after the PATRIOT Act and other major efforts to reform the Intelligence Community, new abuses have begun to surface. As reported in the *San Jose Mercury News* members of the California National Guard stand accused of conducting domestic surveillance activities at a peace rally held on Mother's Day 2005. The accusations are uncomfortably similar to those of the early 1970s. The *Mercury News*, obtained evidence that the California National Guard monitored an Iraq War Protest on

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<sup>65</sup> USA PATRIOT Act (<http://www.epic.org/privacy/terrorism/hr3162.html>), accessed 31 August 2005.

Mother's Day in Sacramento, California. The event was cosponsored by Code Pink: Women for Peace; Raging Grannies, a group focused on nonviolent protest for peace and social change; and Gold Star Families for Peace, an organization made up of families of soldiers killed in Iraq. The rally called on the government to bring the troops home. According to "davisenterprize.com" about thirty-five people attended the event. What is of concern here is the allegation of domestic intelligence collection by the military. The newspaper attained proof of the monitoring through e-mails concerning the event that were forward to high-ranking National Guard officials. In one of them, Colonel Jeff Davis wrote, "Forwarding same to our Intell. folks who continue to monitor." After the press learned of the incident, the National Guard unit looked into the event and stated that the "monitoring" in this case was limited to watching televised newscasts of the event. What is possibly of more concern is that, after Colonel Davis's retirement this summer, all documentation of the incident was erased from his computer hard drive. "The Guard erased Davis's computer hard drive on the very day California State Senator Joseph Dunn (D) indicated he was launching an investigation and called on the Guard not to destroy any evidence related to the intelligence unit."<sup>66</sup> The Guard claims that the destruction of hard-drive data is standard procedure when a member retires.

The possible abuse of intelligence oversight by the California National Guard has reinitiated a debate about what role the military and other intelligence organizations should play in domestic intelligence collection activities, and also, what personal liberties Americans are willing to sacrifice in order to ensure protection from terrorists. Another question may be, how much or how many personal liberties are Americans willing to sacrifice, especially, as the London underground bombings demonstrate, we cannot be protected from everything all the time. On July 8, 2005, Brigadier General John Alexander, acting adjutant general, wrote in defense of the National Guard's actions: "We were not in any way engaged in surveillance activities during the May 8, 2005

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66 Camille T. Taiara, "Monitoring Malcontents: Why Do the Governor's Critics Keep Finding Themselves Targets of Strange Policy Scrutiny?", *San Francisco Guardian* ([http://www.sfbg.com/39/41/news\\_governator.html](http://www.sfbg.com/39/41/news_governator.html)), accessed 31 August 2005

Mother's Day Demonstration of any group." He added, "We took reasonable steps to monitor media coverage of this upcoming event."<sup>67</sup>

While those activities have received some attention from the press, they have not garnered the public outrage evoked by the *New York Time's* publication of the Pentagon Papers or the *Time's* article revealing the CIA's "Family Jewels." Critics of the California Guard's actions point out that "for years, smoke has been pouring out of the National Guard headquarters, and Sen. Dunn just dialed in the fire alarm. The military has no role in law enforcement. It is there to protect our borders."<sup>68</sup>

#### **G. MEASURING OVERSIGHT THE AGE OF REEVALUATION**

During the final period examined in this study, congressional oversight is rated as high. This time period witnessed a huge upswing in congressional oversight. Not only did Congress launch its own investigation into the September 11th attacks, but it also created the 9/11 Commission to provide a bipartisan assessment of the activities leading to the disaster and the response to the attacks. The Intelligence Community was specifically targeted as an area needing reform. This generated the most oversight and inquiry into the Intelligence Community since the revelation of the CIA's "family jewels" and the creation of the Church and Pike Commissions, and, on the measurement scale found in Figure 6, it spiked another high in the degree of congressional oversight. Like the early period of investigation, this high intensity of oversight will be limited in duration. Congress will not maintain the same depth and coverage beyond a limited time frame required to enact critical reforms. At some point, Congress's attention will shift to more critical issues. In this case, that diversion may have already presented itself in the need to examine why there was such an inadequate response to the disaster that struck the Gulf Coast in the wake of Hurricane Katrina. Congress is moving toward investigating; who or what agency, or agencies, or what officials or branches of government are responsible? This disaster may shift the emphasis from the remaining 9/11 reforms.

Peter Gill does note a word of caution for when the United States departs from a high level of congressional oversight; He sees the potential for an Intelligence

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<sup>67</sup> Sean Holstege, "State Senate Widens Guard Spying Probe," *The Oakland Tribune* [http://www.insidebayarea.com/dailyreview/localnews/ci\\_2872495](http://www.insidebayarea.com/dailyreview/localnews/ci_2872495)), accessed 20 Jul 2005.

<sup>68</sup> Sean Holstege , California State Senator McClintock.

Community with greater power to perform domestic observations coupled with a decrease in stringent oversight as a recipe for a reemergence of the abuses that started the first wave of reform.<sup>69</sup>

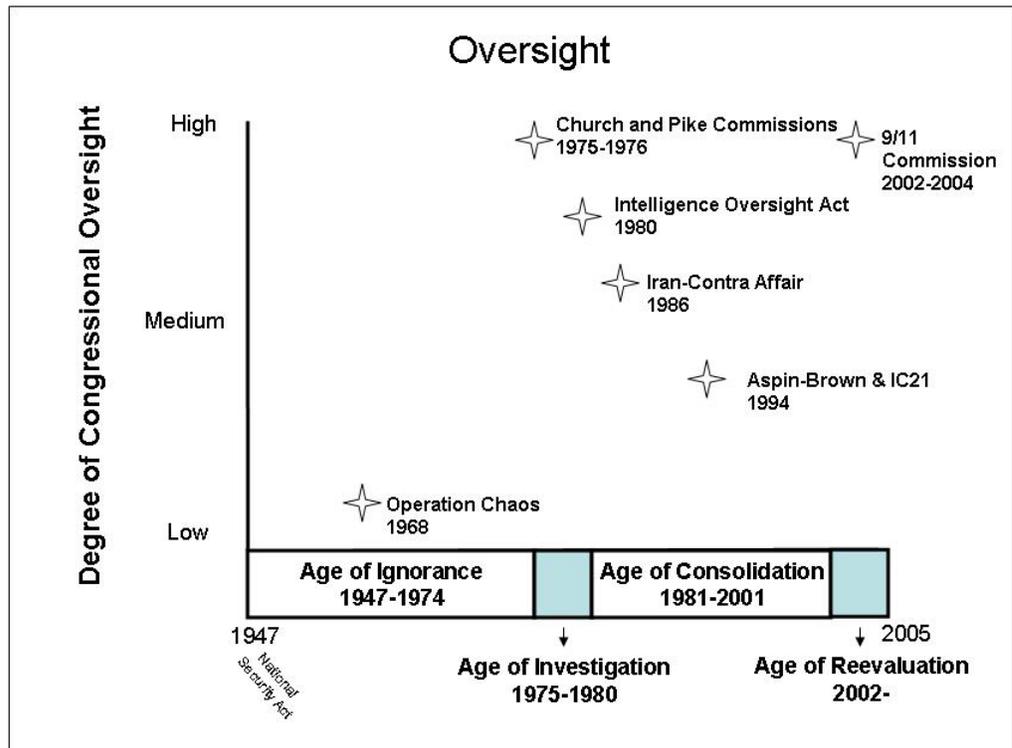


Figure 6. Assessment of Intelligence Oversight during the Age of Reevaluation

## H. THE FUTURE OF OVERSIGHT

The creation of a director of national intelligence has the potential to greatly impact intelligence oversight. The 9/11 commission recommended that

“The National Intelligence Director would submit a unified budget for national intelligence that reflects priorities chosen by the National Security Council, an appropriate balance among the varieties of technical and human intelligence collection, and analysis. He or she would receive an appropriation for national intelligence and apportion the funds to the appropriate agencies, in line with that budget, and with authority to reprogram funds among the national intelligence agencies to meet any new priority (as counterterrorism was in the 1990s). The National Intelligence

<sup>69</sup> Peter Gill, *Securing the Globe: Intelligence and the Post-9/11 Shift from ‘Liddism’ to ‘Drainism,’* *Intelligence and National Security*, vol. 19, No. 3, Autumn, 468.

Director should approve and submit nominations to the president of the individuals who would lead the CIA, DIA, FBI Intelligence Office, NSA, NGA, NRO, Information Analysis and Infrastructure Protection Directorate of the Department of Homeland Security, and other national intelligence capabilities.”<sup>70</sup>

Congressional leaders have attempted to limit the power of the new national intelligence director. Not only has Congress thwarted attempts to provide the DNI primary budget responsibility, it also attempted to limit his power to transfer intelligence personnel. The personnel-transfer restriction, which failed to pass, would have subjected the DNI to congressional approval to perform simply acts of his own office.

The DNI must be able to directly oversee intelligence collection inside the United States, yet law and custom counsels against giving such a plainly domestic role to the head of the CIA (9/11 Commission Report). Simply by virtue of the responsibilities invested in the office, he or she will have a profound role in intelligence oversight. While the DoD has managed to prevent the DNI from gaining the budgetary responsibility the 9/11 commission envisioned, his power to nominate and transfer senior members of the Intelligence Community, should enable the DNI to compel their compliance with oversight requirements. Also, since the first line of oversight protection lies within an organization, in the internal inspector general function, the DNI has the opportunity to direct the leadership and the policies that will enforce the rules throughout the Intelligence Community.

The 9/11 attacks ushered in a new era of oversight. Previously, oversight was focused primarily on preventing intelligence-system abuses and realigning functions in a post-Cold War world. Given the events of 9/11 and the miscalculations associated with the Iraqi weapons of mass destruction estimates, we foresee an oversight policy designed to prevent mistakes. While this is a lofty and noble goal, it may not be attainable. The general hope is that, through oversight, reforms, and new policies, the United States can prevent tragedies such as 9/11, but if the London bombings can teach us anything, it is that no matter how well prepared we are, we will always be vulnerable.

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<sup>70</sup> 9/11 Commission Report, 412.

## **I. CONCLUSIONS**

The post 9/11 period has, at least temporarily, increased congressional oversight. Once again, Congress was asked to play a stronger role in the monitoring and direction of the Intelligence Community. Only time will tell if the legislature accepts this expanded role. While there have been turf battles within the executive branch over the changes proposed by the 9/11 Commission, the Intelligence Community itself is not fighting the changes. Perhaps the community has come to accept the reforms, since they were also proposed several times before. What has changed has been the role of the intelligence agencies whose focus is on foreign intelligence. There has been a blurring of the line prohibiting involvement in domestic operations. As satellites and aircraft are now used to collect intelligence over the United States and as intelligence is now shared between domestic and foreign intelligence operations, there has been a dramatic change in the Intelligence Community's role and that increases the need for adequate congressional scrutiny to ensure that the previous abuses are not repeated.

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## VI. CONGRESSIONAL OVERSIGHT: WHERE DO WE GO FROM HERE

*“We can ask 20 questions, and if we haven't asked exactly the right question, and we don't ask the 21st question, we don't get the information that I think this committee needs.”* – Rep. Peter Hoekstra, R-Mich., Chairman of the House Intelligence Committee<sup>71</sup>

In examining the history of intelligence oversight reforms, it may be important to keep in mind words of Justice Louis Brandeis. He reminded Americans that our founding fathers did not seek “to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among the three departments, to save the people from autocracy.”<sup>72</sup> This is equally true in the world of intelligence operations. The division of that secret world, while inefficient, can also prevent the concentration of power and the types of abuses witnessed since the intelligence communities’ foundation from destroying our democracy.

Congressional oversight has grown since the blissful ignorance of the 1950s and 1960s and the outrage and indignation following the inquiries of the Iran-contra affair and domestic intelligence abuses. But the history of oversight has revealed a fundamental weakness. As expressed by former House Intelligence Committee Chairman Lee Hamilton, “There is no way that oversight works unless you tell them [the overseers] the truth.”<sup>73</sup> This may demonstrate the greatest weakness in our oversight system: at some point Congress needs someone to tell it the truth. We are on the cusp of a new epoch of oversight. The Intelligence Reform and Terrorism Protection Act of 2004, which President Bush signed into law on December 19, 2004, enacted many of the reform proposals generated over the years. How effective those reforms will be, only

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<sup>71</sup> Katherine Schrader, Lawmaker: Intel Agencies Not Giving Info, *San Francisco Chronicle* (<http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2005/07/28/national/w150855D83.DTL>), accessed 1 Sept 2005.

<sup>72</sup> Johnson, 200.

<sup>73</sup> Smist, 268.

time will tell. What are some of the trends or common issues that run through our country's almost sixty-year history of congressional intelligence oversight? The past thirty years of inquiry, investigations, and reevaluation demonstrate several trends in intelligence oversight. They include a congressional reluctance to institute substantial change, reoccurrence of the same reform requirements, and common problems in implementation.

#### **A. COMMON REFORM THEMES**

There are several common themes or ideas that reoccur over the various ages of oversight. The most prominent has been the call for a director of national intelligence with budget, personnel, and coordinating authority. This recommendation is in the Church and Pike commission reports, in the Aspin-Brown and IC21 investigations, in the 9/11 Commission Report, and in the HPSCI and SSCI investigations into 9/11. Several times before, the Congress has attempted to create a DNI with central control over the vast intelligence empire, but until recently, all efforts have failed. Since the idea of a DNI was first proposed, several executive orders and the McCurdy legislation after the Iran-contra affair all attempted to create the office, or to vest additional powers in the director of the Central Intelligence Agency that would allow that person to act in a more central role. All attempts failed, primarily due to stonewalling by the Defense Department and its supporters, who feared that a loss of budget and personnel control would put tactical and operational military activities at risk. It was not until the Intelligence Reform and Terrorism Prevention Act of 2004 that the position of DNI was established, and even that was a struggle. The Pentagon, through the auspices of Congressman Duncan Hunter, a Republican from California, was able to delay a vote on a reform bill until an agreement was worked out between the congressional leadership and the White House. Hunter felt that the reform bill “was elevating for the DNI but detrimental to the defense secretary . . . a change that would make war fighters not sure to whom they report and translate into confusion on the battlefield.”<sup>74</sup> The agreement allowed DoD to maintain much of its control over the intelligence budget and “preserve the chain of command” for military intelligence. Monetarily, this is significant, with the

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<sup>74</sup> Charles Babington and Walter Pincus, Intelligence Overhaul Bill Blocked: House Conservatives Deal Blow to President, Speaker in Rejecting Compromise, *Washington Post*, November 21, 2004 (<http://www.washingtonpost.com/wp-dyn/articles/A381-2004Nov20.html>), accessed 1 September, 2005

amount of the intelligence budget controlled by the Pentagon estimated at 80 percent or roughly \$30 billion, divided between the Defense Intelligence Agency, the National Security Agency, and the National Geospatial-Intelligence Agency (formerly known as the National Imagery and Mapping Agency).<sup>75</sup> DoD concerns were well voiced by Bruce Berkowitz, in the on-line Hoover Digest,

Proposals to yank intelligence organizations out of the Defense Department also overlook the role they play in combat operations today. The ability to feed electronic data to units on the battlefield through digital pipelines is essential for the kind of network-style warfare that has proved so effective in Iraq and Afghanistan. Combat forces use more of this data than anyone else. It seems odd that anyone would want to drag several intelligence organizations out of the Defense Department simply to create a new mega-organization whose main mission would be . . . supporting the Defense Department.<sup>76</sup>

The Department of Defense argued that removing budget control from its purview would impact the intelligence chain of command and unity of effort and add an unnecessary level of interference between those that generate intelligence and those who use it. Chairman of the Joint Chiefs of Staff General Richard Myers voiced his concerns in a letter to Congressman Hunter, saying that it was imperative that the DoD “maintains this vital flow of resources through the secretary of defense to the combat-support agencies.”<sup>77</sup> While valid, this assessment overlooks the important role that the various agencies within the Intelligence Community play in keeping policymakers and national leadership informed of potential threats. It does underscore, however, the concerns within the DoD and congressional leadership related to changes in budgetary and personnel control.

Another common theme throughout the various intelligence investigations was the call for a joint committee on intelligence oversight. The Intelligence Community of

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<sup>75</sup> Intelligence Agreement, House Action Reports, *Congressional Quarterly Publication*, No. 108-25/December 7, 2004 (<http://www.cq.com/graphics/har/2004/12/07/har20041207-1447254-confsumm1207.pdf>), accessed 1 September, 2005.

<sup>76</sup>Bruce Berkowitz, “Intelligence Reform: Less is More,” *The Hoover Digest* (<http://www.hooverdigest.org/042/berkowitz.html>), accessed 31 August 2005.

<sup>77</sup> Rowan Scarborough, Hunter Used Myers Letter to Defeat Senate Bill, *The Washington Times*, November, 24 2004 (<http://www.washtimes.com/national/20041123-122228-5141r.htm>), accessed 5 September 2005.

the 21st Century investigation was the only commission that did not feel this was the best way to organize congressional oversight and even that group recognized the need to examine committee manning and term limits. While the 9/11 commission agreed that a joint committee would be one way to reorganize, it also recognized that it was not the only way. What the commission did find was that the current structure is “dysfunctional.” President Bush agreed. When signing the Intelligence Reform and Terrorism Prevention Act, he stated, “The 9/11 Commission also made several recommendations about Congress itself. I strongly agree with the commission’s recommendation that oversight and intelligence--oversight of intelligence and of the homeland security must be restructured and made more effective. There are too many committees with overlapping jurisdiction, which wastes time and makes it difficult for meaningful oversight and reform.”<sup>78</sup> Unfortunately, this is where the recent reform movement seemed to run out of steam. It is unknown if we will witness substantive reform in the way Congress conducts oversight.

Declassifying the intelligence budget is another reoccurring theme that runs throughout the various investigations. Most of the investigative commissions felt that the overall budget numbers should be released, while members of the Intelligence Community raised concerns that the overall number tracked over time could be an indicator of intelligence priorities and investments in new systems. Concerns aside, the Intelligence Reform and Terrorism Prevention Act directed: “The President shall disclose to the public for each fiscal year after fiscal year 2005 the aggregate amount of appropriations requested in the budget of the President for such fiscal year for the National Intelligence Program.”<sup>79</sup>

## **B. COMMON PROBLEMS**

Since the onset of intelligence oversight, there have not only been common themes, but also common restrictions. As much as the Congress, and sometimes the executive branch, pushed for a single centralized director of intelligence with budgetary

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<sup>78</sup> George W. Bush., President’s Remarks on Intelligence Reform (<http://www.whitehouse.gov/news/releases/2004/08/20040802-2.html>), accessed 1 September 2005.

<sup>79</sup> National Intelligence Reform Act of 2004 (<http://thomas.loc.gov/cgi-bin/query/F?c108:6:./temp/~c108pKKg3f:e195906:>), accessed 1 September 2005.

control, there has been a corresponding community resistance predominately within the Department of Defense. The goal of the director's office is to provide a top layer of oversight, which appears to most outside the community as the logical location for that type of communitywide coordination. The position as envisioned will, hopefully maximize budgets, and provide a consolidation of intelligence efforts. The goal is that budget and analytical control will prevent duplication of effort. Unfortunately, for the Department of Defense, the proposal not only shifts major funding from their control, but also raises fears that intelligence assets will be focused on national problem sets, which could leave operational and tactical intelligence users bereft of resources. To date, DoD has had enough supporters within the Congress to stave off any efforts to move its intelligence allocation to the control of a central office. Essentially, these forces successfully argued that placing control of these intelligence functions outside of the DoD would violate the central principle of unity of command.

Congressional reluctance may be the most profound factor preventing the pursuit of meaningful oversight. All significant and successful oversight efforts have been prompted by media disclosures coupled with public outcry. Oversight is not a job that the Congress has vigorously pursued. This reluctance has many causes. The secrecy surrounding the Intelligence Community is a major factor: it makes it difficult for congressional leaders to disclose their role to their constituents and is a double-edged sword. Some in the Congress do not want to know secrets. They do not want the burden of trying to remember where and when they heard data, what can be discussed, and what will get them into trouble as a leak. Intelligence has not always been associated with political favors. It is difficult to return to a senate or congressional district and get reelected when candidate cannot recount how their membership on an intelligence committee benefited their district. Kathryn Olmstead noted that playing a lead role in the 1970s investigations did not prove favorable politically for either Frank Church or Otis Pike. Church, originally thought to be Carter's likely running mate, felt his participation in the investigation had ruined his chances for the vice-presidency. What was worse, despite the very public role he had played and his significant contribution to intelligence reform, he failed in his reelection bid in 1980. Pike, thought to have aspirations for the Senate or a committee chairmanship returned to Congress for an additional term before

retiring from public office.<sup>80</sup> Additional difficulty is the size and complexity of the Intelligence Community. It is difficult for intelligence professionals to understand and manage, let alone congressional overseers with little or no intelligence background. Thus, there is a steep learning curve associated with oversight of the Intelligence Community. Lastly, members do not want to be tainted when there is a failure or an abuse. Congress has successfully remained outside of the blame for intelligence problems. Their investigations and reforms aid in returning credibility to the community, but their separateness and possession of deniability when it comes to responsibility causes blame to be focused solely on the Intelligence Community itself, rather than partly on the overseers or the executive leadership.

As of the writing of this study, there has been no meaningful progress in congressional oversight reform. The scope of the problem is underscored by the response to the 9/11 Commission's Report and the efforts to reform the Intelligence Community. After the release of the report, nine separate committees generated reform proposals. Former Secretary of Homeland Security Tom Ridge reported having to testify before the congress "no less than 140 times" in a single year.<sup>81</sup> This demonstrates the scope of the problem that the current oversight structure presents for effective, coordinated, and unified control. While the current system has been found to be "dysfunctional" and congressional reform "may be among the most difficult and important,"<sup>82</sup> it has also been the area that has made the least progress.

### **C. OBSERVATIONS**

Much like the 1940-1950s period when America seemed willing to give up some personal liberties in order to ensure peace and prosperity, the USA PATRIOT Act and the limited outcry from the most recent published abuses of domestic intelligence-gathering seem to indicate that Americans are mostly concerned with terrorism and security and therefore are willing to sacrifice personnel liberties. This is a slippery slope, or more likely, a pendulum swing. As the United States settles into the realities of a "War on Terrorism" that is unlikely to have a clear or quick end, along with the probability that

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<sup>80</sup> Olmstead, 192.

<sup>81</sup> Congress, Reform Thyself too, *The Christian Science Monitor* (<http://www.csmonitor.com/2004/0812/p08s02-comv.html>), accessed 2 September 2005.

<sup>82</sup> 9/11 Commission Report, 436.

more cases of illegal domestic intelligence collection will arise, the reaction will change. Once our population feels that the security gained is not in proportion to the liberties lost, the public outcry and media discussion will force a new round of investigations, hearings, and committees. This in turn will refocus attention on intelligence oversight once again, and once again, Congress is likely to recommend a joint committee, a more active role, and will reiterate the existing prohibitions and protections.

Just as in previous eras of oversight, we can expect the congress to step back from its reform efforts with a sense that their measures have gone far enough and may actually inhibit the Intelligence Community. The current reform effort is likely to lose steam prior to all of the recommendations being enacted. Congressional oversight will return to its autopilot setting until the next intelligence abuse or failure that is great enough to warrant public outcry and demand for changes.

The unfortunate history of intelligence oversight demonstrates that it is only a priority when the public makes it a priority. Congress gets lost in other issues and day-to-day operations and neglects oversight of the Intelligence Community until the media focuses public attention on oversight issues. Our Intelligence Community would likely benefit from consistent and persistent oversight and a Congress that is involved to the point of understanding its role and responsibility for the conduct of the Intelligence Community. The current ebb and flow of oversight makes it difficult for the Intelligence Community to anticipate congressional requirements.

#### **D. EXECUTIVE ORDERS**

In light of 9/11, it is time to reevaluate the direction the Intelligence Community was given in Executive Order 12333 and to update as appropriate. For example, the EO directs that “Maximum emphasis should be given to fostering analytical competition among appropriate elements of the Intelligence Community.” But in the wave of change after 9/11, the community has been told to move away from competition and to focus on cooperation. At a minimum, a new EO should address the changes in responsibilities, the role of the DNI, the establishment of the Department of Homeland Security and changes in domestic intelligence collection as a result of the USA PATRIOT Act. Previous EOs have specifically directed the DoD and CIA to focus solely on foreign collection, but in the aftermath of 9/11 both began to have a closer involvement in domestic intelligence.

Today, members of the CIA and DoD intelligence communities are staffing terrorism centers with the FBI. The Department of Defense is involved in imagery collection over the United States. As recently as 5 September 2005, CNN reported a planned use of military unmanned aerial vehicles to survey the damage wrought by Hurricane Katrina. Under existing laws these activities violate intelligence oversight prohibitions.

#### **E. RECOMMENDATIONS**

Why are these issues so important? A discussion with a former Office of Special Investigations Officer reveal issues our FBI, CIA and DOD intelligence professionals currently face. They don't know where to draw the line. As she related, in the years since 9-11, she has observed or participated in multiple conversations with co-workers in which someone expressed the need to monitor anti-war demonstrations in their local community. These officers had been trained in intelligence oversight, but through patriotism, good intentions, or confusion over the blurring of roles with the advent of homeland defense, they were willing to undertake actions that violate current oversight rules. It would be in the best interest of both American citizens and all intelligence professionals if the president issued an executive order covering oversight in the age of homeland defense. It would also be prudent for the individual agencies and their inspector generals to engage in regular oversight briefings and to conduct case studies based on the new situations facing intelligence professionals. There is a great potential for well-intentioned individuals to violate current oversight protections if they do not receive regular and updated guidance.

A new executive order is the lynch pin to preventing misunderstandings and potential abuses of power. The current EO is over thirty years old and was drafted to address concerns of a different era. What we need now is concrete guidance on what is appropriate, what can be expected from the newly formed segments of government, and how older elements are expected to respond to new and dynamic missions. With such guidance, department inspector generals can design new training and address the new issues they confront. If, as the 9/11 report speculates, the oversight rules were part of the problems that prevented intelligence sharing and adequate monitoring of potential threats, then that is all the more reason to reexamine existing guidance and update it to reflect current needs and goals.

## F. CONCLUSIONS

“As we have seen, Congress, the press and the public were uneasy about going too far—about examining too closely all the dark secrets in the nation’s musty corners. Ultimately, many Americans were tired of the controversy and the constant batter of the nation’s institutions.”<sup>83</sup> These words were written in reference to the investigations of the 1970s, but could equally apply now. It appears that the American public has grown weary of the investigations into the problems reported by 9/11 committees. It is likely they would have grown tired sooner had not Operation Enduring Freedom, Operation Iraqi Freedom, and the George W. Bush administration kept the issues alive.

As long as the American public, media, and even the Congress expect the Intelligence Community to be almost clairvoyant in its assessments, the community will continue to experience waves of oversight and investigation. It is interesting to note, especially in countries that have been subjected to repeated, regular terrorist activities, whether domestic or foreign, that there does not appear to be the same expectation of perfect performance by the Intelligence Community that we see in the United States. Unfortunately, publication of the intelligence budget could make the Intelligence Community’s situation more difficult if the American population begins to believe that the cost associated with maintaining the community does not equate to its performance. This situation would be compounded, because the community, for security reasons, is rarely able to broadcast its successes but has not always been equally capable of hiding its failures.

According to Loch Johnson, for “most of their history, the nation’s intelligence agencies have enjoyed immunity from close oversight by outside supervisors.”<sup>84</sup> Has congressional oversight then been completely unsuccessful? No, while oversight has not necessarily lived up to its potential or been as widespread as legislators or supporters would have hoped, it has been generally beneficial to the Intelligence Community. While the track record for congressional oversight has been somewhat spotty, going from virtually nonexistent to occasionally disinterested, it has helped the community overall.

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<sup>83</sup> Olmstead, 182-3.

<sup>84</sup> Johnson, 201.

Former DCI Robert M. Gates underscored the impact of congressional oversight when he wrote,

...some awfully crazy schemes might well have been approved had everyone present [in the White House] not known and expected hard questions, debate and criticism from the Hill. And when, on a few occasions, Congress was kept in the dark, and such schemes did proceed, it was nearly always to the lasting regret of the presidents involved.<sup>85</sup>

So, while congressional oversight has not been perfect, Congress is dependent on the executive or the media to inform it of egregious violations. Though oversight provides only limited political clout, it is still recognized as a vital government function.

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<sup>85</sup> Robert M. Gates, *From the Shadows: The Ultimate Insider's Story of Five Presidents and How They Won the Cold War* (New York: Simon & Schuster, 1996), 559.

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