



Congress as a Consumer of Intelligence Information

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Summary

This report examines the role of Congress as a consumer of national intelligence and examines several issues that Congress might address during the second session of the 112th Congress.

The President, by virtue of his role as commander-in-chief and head of the executive branch, has access to all national intelligence collected, analyzed and produced by the Intelligence Community. By definition, the President, the Vice President, and certain Cabinet-level officials, have access to a greater overall volume of intelligence and to sensitive intelligence information than do members of the congressional intelligence committees. Moreover, since the intelligence agencies are part of the executive branch, the President has the authority to restrict the flow of intelligence information to Congress and its two intelligence committees.

The Fort Hood Army base shootings in November 2009, followed later that year by the Christmas Day airline bombing plot and the Afghanistan suicide bombing that killed seven Central Intelligence Agency employees refocused congressional attention on a number of intelligence issues, including the role Congress plays as a consumer of intelligence. Each of these cases serves to underscore the sensitivity with which Congress views the executive branch's statutory obligation to keep the legislative branch fully and currently informed of all intelligence activities.

While some Members of Congress reportedly have voiced satisfaction with executive branch efforts to keep them informed about some of these attacks, other Members generally have criticized the White House's notification efforts on national security issues and particularly its efforts to keep Congress apprised of the results of some of its reviews of the Fort Hood shootings.

Congress generally has routine access to "finished intelligence," or to those intelligence products that are published for general circulation within the executive branch. A finished intelligence product is one in which an analyst evaluates, interprets, integrates and places into context raw intelligence. Congress receives the preponderance of its intelligence information through briefings, which generally are initiated at the request of congressional committees, individual members or staff.

Congress does not routinely have access to the identities of intelligence sources, methods employed by the Intelligence Community in collecting analyzing intelligence, "raw" or unevaluated intelligence, or certain written intelligence products tailored to the specific needs of the President and other high-level executive branch policymakers.

Among the issues the 112th Congress may choose to examine is whether the executive branch is meeting its statutory obligation to keep Congress fully and currently informed of all intelligence matters. Congress also may choose to review what the Intelligence Community says is its intention to strike an appropriate balance between protecting intelligence sources while providing intelligence analysts and consumers—including those in Congress—more information about the reliability of those sources.

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Limitations on Congressional Access to Certain National Intelligence

By virtue of his constitutional role as commander-in-chief and head of the executive branch, the President has access to all national intelligence collected, analyzed, and produced by the Intelligence Community. Because the intelligence agencies are part of the executive branch, the President's position affords him the authority—which, at certain times, has been asserted¹—to restrict the flow of intelligence information to Congress and its two intelligence committees, which are charged with providing legislative oversight of the Intelligence Community.²

The issue of restricting the flow of intelligence information to Congress, a perennial point of conflict between the legislative and executive branches, has most recently resurfaced in the wake of the Fort Hood Army base shootings in November 2009, the subsequent Christmas Day airline bombing plot, and the Afghanistan suicide bombing that killed seven Central Intelligence Agency employees later that year. Together, these incidents underscored the degree of sensitivity with which Congress views the executive branch's statutory obligation to keep the legislative branch fully and currently informed of all intelligence activities.

While some Members of Congress reportedly voiced satisfaction with executive branch efforts to keep them informed about some of these attacks, other Members have generally criticized the White House's notification efforts, particularly with regard to the Fort Hood shootings are concerned.

House Intelligence Committee Chairman Reyes reportedly said that he has been “very satisfied” with the Administration's response with regard to information sharing pertaining to the Christmas Day airline bombing attempt. Representative Peter Hoekstra, however, reportedly asserted that the White House has done a poor job of keeping Congress informed of national security issues, generally, and criticized the White House for continuing to “put up roadblocks and hurdles to prevent us from getting information or answers to even basic questions.”³

As a result of its control over intelligence, the executive branch, including the President, the vice president and a small number of presidentially-designated Cabinet-level officials⁴—in contrast to

¹ Reportedly “furious” about what he apparently believed to be unauthorized disclosures of classified information by Congress, President Bush on October 5, 2001, ordered that the provision of classified information and sensitive law enforcement information be restricted to the Republican and Democratic leaders of both the House and Senate, and to the chairmen and ranking members of the two congressional intelligence committees. Until the President issued his order, and in keeping with prior practice, all Members of the intelligence committees had access to most such information. The President agreed to rescind his order after several days, reportedly following a personal telephone conversation between the President and Sen. Bob Graham, then-chairman of the Senate's intelligence committee, and after negotiations between White House staff and Graham. See Bob Woodward, *Bush at War*, pp. 198-199. (Simon and Schuster).

² The Senate established its intelligence oversight committee, the Senate Select Committee on Intelligence (SSCI), in May 1976. The House of Representatives followed suit in July 1977, creating the House Permanent Select Committee on Intelligence (HPSCI).

³ See Jennifer Bendery, “Democrats Seek Cover on Security,” *Roll Call*, January 14, 2010.

⁴ Central Intelligence Agency website http://www.cia.gov/cia/di/analytica_products_section.html.

Members of Congress⁵—arguably have access to a greater overall volume of intelligence and to more sensitive intelligence information, including information regarding intelligence sources and methods.⁶ Top Administration officials, unlike Members of Congress, also have the authority to more extensively task the Intelligence Community, and its extensive cadre of analysts, for follow-up information. As a result, some contend, the President and his most senior advisors are better positioned to assess accurately the quality of the Intelligence Community’s intelligence than is Congress.⁷

In addition to their greater access to intelligence, the President and his senior advisors also are arguably better equipped than is Congress to assess intelligence information by virtue of the primacy of their roles in formulating U.S. foreign policy. Their foreign policy responsibilities often require active, sustained, and often personal interaction, with senior officials of many of the same countries targeted for intelligence collection by the Intelligence Community. Thus the President and his senior advisors, some contend, are better positioned to glean additional information and impressions—information that, like certain sensitive intelligence information, is generally unavailable to Congress—that can provide them with additional perspective with which to judge the quality of intelligence.

Authorities Governing Executive Branch Control Over National Intelligence

The President is able to control dissemination of intelligence information to Congress because the Intelligence Community is part of the executive branch. The Intelligence Community was created by law and executive order to principally serve the government’s executive branch in the execution of its responsibilities.⁸ Thus, as the head of the executive branch, the President generally is acknowledged to be “the owner” of national intelligence.

The President’s otherwise exclusive control over national intelligence, however, is tempered by a statutory obligation to keep Congress, through its two congressional intelligence committees, “fully and currently informed of all intelligence activities.”⁹ Current law also prevents the

⁵ To the extent that Members of Congress are entitled access to intelligence information, it is by virtue of their elected positions. Members are not subject to background checks, nor are they issued security clearances. Congressional staff who are provided access to classified information are subject to these requirements.

⁶ Michael Hayden, then-Director of the Central Intelligence Agency, reportedly said that Barack Obama, as president-elect, would have access to vastly more intelligence, including ongoing covert operations, than he was privy to as a senator. “Through expanded access, greater than what he had in his briefings as a candidate or as a Senator, he will see the full range of capabilities we deploy for the United States,” Hayden reportedly stated. See Nedra Pickler, “Obama to Begin Intelligence Briefings,” *Associated Press*, November 5, 2008.

⁷ This memorandum does not directly address the quality of Intelligence Community collection and analysis, but rather limits its focus to the degree of access to intelligence information enjoyed by federal government policymakers—including Members of Congress—and the degree to which that access enables them to assess its quality. There exists extensive commentary which does address the quality of the Intelligence Community’s collection and analytic capabilities, including more recently that contained in a report issued by the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction. See WMD Commission, Report to the President of the United States, March 31, 2005 [Hereafter, cited as the WMD Commission Report].

⁸ L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” *Center For The Study of Intelligence*, Central Intelligence Agency, February, 1997, p. 17.

⁹ Section 501 [50 U.S.C. 413] (a)(1) of the National Security Act of 1947, as amended. [ct (50 U.S.C. 501[a][1]). Some (continued...)]

executive branch from withholding intelligence information from the committees on the grounds that providing such information would constitute the unauthorized disclosure of classified information, or information relating to intelligence sources and methods.¹⁰

In 2004, Congress further strengthened its access claims to national intelligence when it approved intelligence reform legislation explicitly directing that the Director of National Intelligence (DNI) provide the legislative branch access to national intelligence.¹¹ Under previous statute, the head of the Intelligence Community was legally required to provide the legislative branch national intelligence, but only “where appropriate.”¹² Congress never defined, either in statute, report language, or during debate, what it considered to be “appropriate,” essentially ceding to the executive branch the freedom to adopt its own interpretation of congressional intent in this regard. Despite the unqualified directive adopted in 2004, however, its impact on the Intelligence Community, as is so often the case, turns on how aggressively Congress chooses to assert its statutory prerogative.

Despite certain conflicting legal authorities governing congressional access to national intelligence, the U.S. Judicial Branch has not had to address the issue, since no case involving an executive-legislative branch dispute over access to intelligence has reached the U.S. courts.¹³ Absent a court ruling more clearly defining executive and legislative branch authorities in this area, which most observers view as unlikely, the executive branch has contended that it is under no legal obligation to provide Congress access to all national intelligence.¹⁴ By contrast, Congress, through its congressional intelligence oversight committees, has asserted in principle a legal authority for unrestricted access to intelligence information. The Committees, historically, have interpreted the law as allowing room to decide *how*, rather than *whether*, they will have access to intelligence information, provided that such access is consistent with the protection of sources and methods. In practice, however, Congress has not sought *all* national intelligence information.¹⁵ Unless the intelligence committees have asserted a compelling need, the committees generally have not routinely sought access to certain sensitive intelligence information, such as intelligence sources and methods. When the committees have cited a compelling need for such access, Members generally have reached an accommodation with the executive branch, but not always.

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observers have asserted that this language was intended to create an obligation to provide information for oversight purposes rather than establishing a legal requirement that the executive branch provide Congress substantive intelligence information. But they have noted that the congressional intelligence committees have viewed this as a “distinction without a difference,” and that the committees have asserted a need for access to substantive intelligence in order to conduct oversight. See L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” *Center For the Study of Intelligence*, Central Intelligence Agency, February 1997, p. 11.

¹⁰ Section 501 [50 U.S.C. 413] (a)(2)(e).

¹¹ P.L. 108-458, §102A.(a)(1)(D) [50 U.S.C. 403-1].

¹² In 1992, Congress enacted legislation spelling out the duties of the then-titled position of Director of Central Intelligence (DCI), requiring that the DCI provide Congress substantive intelligence information “where appropriate.” See Title VII of the FY 2003 Intelligence Authorization Act.

¹³ L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” *Center For The Study of Intelligence*, Central Intelligence Agency, February, 1997, p. 17.

¹⁴ *Ibid*, p. 17.

¹⁵ *Ibid*, pp. 17-18.

Perhaps, in part, because of these differing legal views, the executive and legislative branches apparently have not agreed to a set of formal written rules that would govern the sharing and handling of national intelligence.¹⁶ Rather, according to one observer, writing in a 1997 monograph:

The current system is entirely the product of experience, shaped by the needs and concerns of both branches over the last 20 years. While some aspects of current practice appear to have achieved the status of mutually accepted “policy,” few represent hard-and-fast rules. “Policy” will give way when it has to.¹⁷

In 2001, and again in 2002, the Senate Select Committee on Intelligence (SSCI) directed that the Director of Central Intelligence¹⁸ prepare a comprehensive report that would examine the role of Congress as a consumer of intelligence, and explore the development of mechanisms that would provide Members tailored intelligence products in support of their policymaking responsibilities.¹⁹ CRS is unaware whether the Director produced such a report.

Subsequently, both intelligence committees attempted to ensure that the full membership of each committee were kept fully and currently informed of that intelligence viewed by executive branch as being the most sensitive. In the fiscal year (FY) 2006 intelligence authorization bill (S. 1803), the SSCI included language requiring that the Intelligence Community, upon the request of either the chairman or ranking Member of either of the congressional intelligence committees, provide “any intelligence assessment, report, estimate, legal opinion, or other intelligence information,” within 15 days of the request being made, unless the President certifies that the document or information is not being provided because the President is asserting “a privilege pursuant to the Constitution of the United States.”²⁰

Subsequently, both intelligence committees have attempted to address so-called Gang of Eight notifications, which are notifications of especially sensitive covert actions that by statute can be limited to the chairmen and ranking minority members of the two congressional intelligence committees, the Speaker and minority leader of the House, and Senate majority and minority leaders if the President determines that doing so is essential in order to protect vital U.S. interests. In its version of the FY2010 Intelligence Authorization bill, the House Intelligence Committee replaced the current Gang of Eight statutory provision, by adopting a statutory requirement that each of the intelligence committees establish written procedures as may be necessary to govern such notifications.

The Senate Intelligence Committee, in its version of the FY2010 Intelligence Authorization bill, left the Gang of Eight statutory structure unchanged, adopting instead, language requiring that the

¹⁶ Ibid, p. 23.

¹⁷ Ibid, p. 23. With regard to an “experience-based” system and providing the congressional intelligence committees with operational intelligence, the executive branch generally limits the provision of such information to the Committees’ Chairmen and Ranking Members. This limitation despite there being in law only one provision—Section 503 of the 1947 National Security Act as amended—permitting the Executive to do so, and only the limited cases pertaining to the notification of covert action activity.

¹⁸ In 2004, Congress eliminated the position of Director of Central Intelligence and established a new position, the Director of National Intelligence (DNI), to head the Intelligence Community. See P.L. 108-458, the Intelligence Reform and Terrorism Prevention Act of 2004, §1001, Subtitle A, §1011.

¹⁹ S.Rept. 107-63, p. 6 (accompanying S. 1428), and S.Rept. 107-149, p. 10 (accompanying S. 2506).

²⁰ In the 109th Congress, S. 1803, §107. Congress did not approve the FY2006 Intelligence Authorization Bill.

full membership of the intelligence committees be informed of all covert actions and that all members of the two intelligence committees be notified when the executive branch notified the Gang of Eight of any covert action activities.

The enacted version of the legislation, P.L. 111-259, provided that in cases where findings or notifications are not made available to all members of the intelligence committees, within 180 days the President shall notify all committee members that notification has been provided only to the Gang of Eight, and provide all intelligence members a general description of the activity planned.

Congressional Access to Intelligence Information Not Routinely Provided in Four Areas

The executive branch generally does not routinely provide with Congress four general types of intelligence information:

1. the identities of intelligence sources;
2. the “methods” employed by the Intelligence Community in collecting and analyzing intelligence;
3. “raw” intelligence, which can be unevaluated or “lightly” evaluated intelligence,²¹ which in the case of human intelligence,²² sometimes is provided by a single source, but which also could consist of intelligence derived from multiple sources when signals²³ and imagery²⁴ collection methods are employed; and
4. certain written intelligence products tailored to the specific needs of the President and other high-level executive branch policymakers. Included is the President’s Daily Brief (PDB), a written intelligence product which is briefed daily to the President, and which consists of six to eight relatively short articles or briefs covering a broad array of topics.²⁵ The PDB emphasizes current intelligence²⁶

²¹ Unevaluated raw intelligence consists of intelligence that has not been analyzed; lightly evaluated raw intelligence can include, for example, a brief description of the credibility of the source providing the information.

²² Human intelligence, or “HUMINT,” is espionage (i.e., spying), which consists largely of sending agents to foreign countries, where they attempt to recruit foreign nationals to spy. See Mark L. Lowenthal, *Intelligence: From Secrets to Policy*, *CQ Press*, 2003, p. 74.

²³ Signals Intelligence, or “SIGINT,” refers to the interception of communications between two parties, but also can refer to the pick-up of data relayed by weapons during tests and electronic emissions from modern weapons and tracking systems. See Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Second Edition), *CQ Press*, 2003, p. 71.

²⁴ Imagery Intelligence, or “IMINT,” also referred to as photo intelligence, is generally considered to be a picture produced by an optical system akin to a camera, but can also refer to images that can be produced by infrared imagery and radar. See Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Second Edition), *CQ Press*, 2003, pp. 63-64.

²⁵ National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, July 22, 2004, p. 254. (Hereafter, cited as the 9/11 Commission Report.) The PDB format does change to suit the preferences of each President. See Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, (Second Edition), *CQ Press*, 2003, p. 48.

²⁶ See the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction Commission, *Report to the President of the United States*, March 31, 2005, p. 181. Current intelligence is defined by (continued...)

and is viewed as highly sensitive, in part, because it can contain intelligence source and operational information. Its dissemination is thus limited to the President and a small number of presidentially-designated senior Administration policymakers.²⁷

Reasons for Congress Not Receiving Routine Access to Certain Intelligence

- In not providing Congress routine access to source identities, executive branch officials cite the need to protect against “leaks” or unauthorized disclosures of information that the Intelligence Community generally considers to be its most sensitive. The argument is made that as more individuals are briefed about sources, the greater is the risk that this information will be disclosed, inadvertently or otherwise. Consequently, such disclosures, it is asserted, could endanger the lives of sources, or, at the very least, jeopardize current or future access to those intelligence sources.
- Executive branch officials point to similar security-related concerns in explaining why Congress is not routinely provided information on intelligence methods, particularly collection methods. As in the case of source protection, officials argue that effective intelligence collection demands that intelligence collection methods—human and technical—must be protected.
- Officials also attribute security concerns, in part, as the reason for generally withholding raw intelligence from the legislative branch. Raw intelligence, it is argued, is sometimes necessarily derived from a single source, thus making the source more vulnerable to identification and ultimate exposure. Moreover, it is asserted, even when intelligence is collected from multiple sources, as it sometimes is when signals and imagery intelligence collection efforts are employed, knowledge of these collection methods can be determined from the underlying raw intelligence.
- Intelligence Community officials generally cite two additional reasons for restricting congressional access to raw intelligence. First, they contend that it would be “dangerous” if a Member of Congress were to gain access to, and possibly make policy decisions based upon, raw, unevaluated intelligence that has not been analyzed and placed into proper context. Second, they argue that, as a practical matter, Congress lacks the physical capacity to securely store the volume of raw intelligence the Intelligence Community generates.²⁸

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the Intelligence Community as being that intelligence which: addresses day-to-day events; appraises intelligence consumers of new developments and related background; warns of near-term consequences; and signals potentially dangerous situations that may occur in the near future. See U.S. Intelligence Community web page http://www.intelligence.gov/2-business_cycle5.shtml.

²⁷ According to the 9/11 Commission, the exact number of policymakers who receive the PDB varies by Administration. In the Clinton Administration, up to 25 officials had access to the PDB. By contrast, the Bush Administration, prior to the 9/11 terrorist attacks, limited the distribution of the PDB to six officials. See 9/11 Commission Report, p. 254 and p. 533.

²⁸ L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” *Center For The Study of Intelligence*, Central Intelligence Agency, February, 1997, p. 26.

- Finally, executive branch officials generally restrict congressional access to written intelligence products—including PDBs—that are tailored to the needs of individual policymakers. They assert that it would be inappropriate to provide such products to Congress, because these products are tailored to the specific needs of individual policymakers, and often include information about the policymaker’s contacts with foreign counterparts, as well as the reactions of those counterparts.²⁹
- Although PDB consumers have access to all such intelligence, intelligence sources, methods, and operational information historically have been tightly restricted, even within the executive branch. Intelligence Community analysts, for example, often have access to such information, only on a need-to-know basis.³⁰
- While congressional intelligence officials have not routinely requested access to the types of intelligence information discussed above, they have questioned the executive branch’s security concerns with regard to certain raw intelligence, noting that it generally is more widely available to executive branch officials.³¹ They have disputed whether Congress is less capable than is the Executive in its ability to evaluate and safeguard sensitive intelligence.³²

Exceptions to The Practice of Not Routinely Sharing Certain Intelligence With Congress

Although Congress generally has not had access to information pertaining to intelligence sources and methods, raw intelligence, or to intelligence products tailored to high-level policymakers—including PDBs—notably, Congress occasionally has successfully obtained such intelligence information from the executive branch.

²⁹ Ibid, p. 25.

³⁰ In the wake of the Intelligence Community’s much-criticized October 2002 National Intelligence Estimate (NIE) on the status of Iraq’s weapons of mass destruction, the Intelligence Community is now more rigorously evaluating the credibility and authentication of intelligence sources, from whom information is derived and used to form and support NIE judgments. Moreover, former Central Intelligence Agency (CIA) Deputy Director for Intelligence Jami Misick, in a speech to analysts in March, 2004, said, “Analysts can no longer be put in a position of making a judgment on a critical issue without a full and comprehensive understanding of the [intelligence] source’s access to the information on which they are reporting... We are not brushing aside the Agency’s [CIA] duty to protect sources and methods, but barriers to sharing information must be removed ... If you [the analyst] work the issue[,] you need to know the information. Period.” She also stated that then-Director of Central Intelligence George Tenet had instructed senior CIA officials to devise a “permanent and lasting” solution to the problem of failing to adequately share intelligence source information with analysts. See a copy of Misick’s speech at <http://www.fas.org/irp/cia/product/021104miscik.pdf>.

³¹ L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” *Center For The Study of Intelligence*, Central Intelligence Agency, February, 1997, p. 26.

³² With regard to protecting classified information, the executive and legislative branches each have criticized the other for failing to adequately guard against unauthorized disclosures of classified information. Neither branch, however, has suggested it is without fault. Rather, the debate, as often as not, has centered, to varying degrees, on the relative number of unauthorized disclosures that can be traced to each branch, the degree of sensitivity of such disclosures, and whether each branch has been sufficiently aggressive in its attempts to identify and penalize the perpetrator.

For example, while investigating Central Intelligence Agency (CIA) covert action operations in Nicaragua in the 1980s, the intelligence committees requested and obtained the identities of certain intelligence sources. The committees also sought and gained access to certain raw intelligence. On other occasions, committee members have successfully requested raw intelligence in order to verify certain Intelligence Community judgments contained in various National Intelligence Estimates (NIE).³³ Intelligence committee staff also has been granted access to PDBs, and PDB articles in the course of conducting certain investigations and oversight.³⁴

Generally, however, various Administrations, sooner or later, have been reluctant to share certain intelligence information. In 2002, for example, President Bush rejected a request by the Congressional Joint Inquiry investigating the September 11th terrorist attacks to review the August 6, 2001, PDB, which contained an article titled *Bin Ladin Determined To Strike in U.S.*³⁵ The Bush Administration also denied a request by the SSCI to review PDBs relevant only to Iraq's weapons of mass destruction capabilities and links to terrorists as part of the Committee's review of the Intelligence Community's prewar intelligence assessments on Iraq.³⁶ (The Bush Administration, however, did provide limited access to PDBs to two commissions: the 9/11 Commission³⁷ and the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (hereafter, cited as the WMD Commission).)³⁸

Critics also have faulted President Barack Obama in this regard, asserting that he and his Administration has failed to keep Congress informed of certain national security issues and specifically criticizing the Administration for not briefing the intelligence committees on the Fort Hood shootings.³⁹

³³ L. Britt Snider, "Sharing Secrets With Lawmakers: Congress as a User of Intelligence," *Center For The Study of Intelligence*, Central Intelligence Agency, February, 1997, p. 12. An National Intelligence Estimate expresses the coordinated judgments of the Intelligence Community, and thus represents the most authoritative assessment by the Director of National Intelligence with respect to a particular national security issue. It is considered to be an "estimative" intelligence product, in that it addresses what intelligence analysts believe may be the course of future events.

³⁴ *Ibid.*, p. 25.

³⁵ The Joint Congressional Inquiry, established in the legislative branch (P.L. 107-306, Title VI, §§601-602), was known formally as the Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001 [the Joint Inquiry's full report is available at <http://www.9-11commission.gov/report/index.htm>. Leadership of the Joint Inquiry unsuccessfully sought access to the August 6, 2001, PDB. After several days of discussions with executive branch representatives, Members decided not to pursue the request. The 9/11 Commission did gain access to this particular PDB article, and it was later declassified. See 9/11 Commission Report, p. 533 and p. 261 for the declassified text of the article.

³⁶ Senate Select Committee on Intelligence, U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq, S.Rept. 108-301, July 9, 2004, p. 3.

³⁷ The 9/11 Commission received access to about 47 years of articles from the PDB related to Bin Ladin, al Qaeda, the Taliban, and key countries such as Afghanistan, Pakistan, and Saudi Arabia, including all the Commission requested. The White House declined to permit all commissioners to review these documents. The Commission selected four representatives, including its chairman, vice chairman, and executive director to review the documents. The executive director prepared a detailed summary, which was reviewed by the White House for constitutional and especially sensitive classification concerns, and then made available to all commissioners and designated commission staff. See 9/11 Commission Report, p. 533.

³⁸ The WMD Commission was provided limited access to a number of PDB articles relating to Iraq's WMD programs. See WMD Commission Report, p. 18.

³⁹ See Jennifer Bendery, "Democrats Seek Cover on Security," *Roll Call*, January 14, 2010.

Congress Generally Has Routine Access to Most “Finished Intelligence”

Congress generally receives access to most finished intelligence products that are published for general circulation within the executive branch.⁴⁰ A finished intelligence product is one in which an analyst evaluates, interprets, integrates, and places into context raw intelligence.⁴¹

Although congressional access is limited to finished intelligence products, the volume of such products provided to Congress has increased over time.⁴² Between 1947, when the National Security Act establishing the CIA was enacted, and the mid-1970s, the executive branch shared relatively little intelligence with Congress, and congressional overall access to intelligence information was quite limited. But after two special congressional investigative committees headed by former Senator Frank Church and Representative Otis Pike, respectively, investigated the Intelligence Community in the mid-1970s, the executive branch permitted the Intelligence Community to increase the flow of intelligence information to Congress.⁴³

DNI Efforts to Improve Intelligence Source Transparency

The Intelligence Community says it continues in its efforts to strike an appropriate balance between protecting its intelligence sources while providing intelligence analysts and consumers—including those in Congress—more information about the reliability of those sources.

The issue of source protection gained prominence when it became clear that critical sourcing for the 2002 NIE on Iraq turned out to be inaccurate.⁴⁴ In its 2004 report on the U.S. Intelligence Community’s prewar intelligence assessments on Iraq, the Senate Select Committee on

⁴⁰ L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” *Center For Study of Intelligence*, Central Intelligence Agency, February, 1997, p. 24.

⁴¹ U.S. Intelligence Community web page http://www.intelligence.gov/2-business_cycle5.shtml. An NIE represents an example of a finished intelligence product.

⁴² CIA, for example, one of 15 agencies comprising the Intelligence Community, estimates that in 2004 it provided Members of Congress more than 1,000 briefings and 4,000 publications, including finished intelligence, books, maps, etc. Other Community agencies also provide the congressional intelligence committees various finished intelligence products.

⁴³ L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” *Center For Study of Intelligence*, Central Intelligence Agency, February, 1997, p. iii. According to Snider, most of the voluminous number of finished intelligence reports provided to the congressional intelligence committees is read by no one. (p. 25 of Snider’s monograph). He cites intelligence members and staff who say they are too busy to read all the finished intelligence reports that are provided daily, and some who state that it is not worth their time, or the time of the Member, to do so. Although the context of the comments is not entirely clear, they could, among other possibilities, represent a commentary on the quality of some of the intelligence products received by the two intelligence committees, or simply indicate that the products in every instance simply do not address the particular issues of concern to a Member or staff.

⁴⁴ The Central Intelligence Agency subsequently declared one its principal sources of information on Iraq’s weapons of mass destruction program—known as “Curveball”—a fabricator. For a detailed account of Curveball’s role, see Bob Drogin, *Curveball* (New York: Random House, 2007).

Intelligence (SSCI) criticized the Intelligence Community for not providing more information about its sources. The Senate Committee concluded that source protection policies within the Intelligence Community direct or encourage “reports officers”⁴⁵ to exclude relevant detail about the nature of their sources.⁴⁶ As a result, according to the Committee, Intelligence Community analysts are unable to make fully informed judgments about the information they receive, relying instead on nonspecific source lines to reach their assessments. Moreover, relevant operational data is nearly always withheld from analysts, putting them at a further analytic disadvantage, the Committee stated in its final report.⁴⁷

The DNI in 2007 promulgated a new policy intended to provide more source information to intelligence analysts. In a directive to the Intelligence Community, the DNI called for “consistent and structured sourcing information for all significant and substantive reporting or other information upon which the product’s analytic judgments, assessments, estimates, or confidence levels depend.”⁴⁸ Doing so, the DNI asserted, would enable “consumers to better understand the quantity and quality of information underlying the analysis.”⁴⁹

Some observers have suggested that because of the new policy, the Intelligence Community is now more fully and, thus, more accurately characterizing the reliability of its sources. Some of these same observers, however, assert that the DNI may have gone too far by requiring such precise sourcing that analysts may find themselves being hampered in interjecting their own informed views in the final intelligence product because of the new emphasis being placed on source information and its evaluation. Critics, however, contend that the DNI’s directive has had limited impact and that it is still difficult for analysts to judge the reliability of certain intelligence sources because of their lack of access to information about sources.

Congress Also Has Access to Intelligence Information Through Briefings

Although Congress receives numerous written intelligence products, it receives the preponderance of its intelligence information through briefings, which generally are initiated at the request of congressional committees, individual members, or staff.⁵⁰

Such briefings can include a discussion of more sensitive information pertaining to intelligence sources and methods, particularly when the briefings involve the congressional intelligence committees. But even then, if the executive branch determines that such information is particularly sensitive, it will brief only the chairmen and ranking members of the two intelligence committees, or in lieu of the committee leadership, the committees’ majority and minority staff

⁴⁵ An intelligence reports officer is generally a subject matter expert who evaluates intelligence.

⁴⁶ See U.S. Congress, the Senate Select Committee on Intelligence, U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq, S.Rept. 108-301, 108th Congress (2nd sess.), p. 33.

⁴⁷ Ibid.

⁴⁸ Intelligence Community Directive Number 206, Sourcing Requirements for Disseminated Analytic Products, October 17, 2007.

⁴⁹ Ibid.

⁵⁰ Ibid, p. 26.

directors.⁵¹ Based upon the executive branch's perspective that it is not legally obligated to provide Congress access to all intelligence, an Administration could choose not to share certain sensitive information with Congress at all.

Issues for the 112th Congress

Congress, particularly its two congressional intelligence committees, could decide to explore ways to better ensure that it is kept fully and currently informed of all intelligence activities, as required under statute. In this regard, the FY2010 Intelligence Authorization Act (P.L. 111-259) gave the full membership of each committee access to intelligence information deemed to be extremely sensitive by the executive branch and which previously had been limited to committee and Senate and House leadership although the statute permits the President to limit notification but provide all members of the intelligence committees a general description of the activity.⁵²

Congress could also assess the suitability of source transparency, and could require that the DNI revisit the issue if it is determined that further changes are necessary to make sourcing more transparent for consumers.

The congressional intelligence committees could also make a more concerted effort to require that analysts and collectors make joint presentations during certain hearings and briefings, in order to be better able to determine the degree of credibility Intelligence Community analysts attach to certain intelligence sources and to be able to more easily identify any disagreements between collectors and analysts as to source credibility.

Finally, in those cases where the credibility of sourcing is of particular importance—for instance, those situations involving the possibility of war—the intelligence committees might opt to explore with the executive branch appropriate mechanisms that would allow at minimum, committee leadership to gain access to more detailed sourcing information.

In general, Congress has the option of exploring various mechanisms that would permit it to achieve more equal footing with executive branch policymakers as a consumer of intelligence. It also could explore ways that it could become a better and more disciplined consumer and thus better able to assess the quality of the Intelligence Community's analysis and collection.

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⁵¹ Ibid, p. 27.

⁵² P.L. 111-259, §331.

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