



# 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 in the 111<sup>th</sup> 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.

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” intelligence, 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 111<sup>th</sup> Congress may choose to examine are ongoing efforts by the Director of National Intelligence to strike a balance between protecting intelligence sources while providing intelligence analysts and consumers—including those in Congress—more information about the reliability of those sources.

This report will be updated as warranted.

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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. Due to the intelligence agencies being part of the executive branch, the President's position affords him the authority — which, at certain times, has been asserted<sup>1</sup> — 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.<sup>2</sup> As a result, the President, and a small number of presidentially-designated Cabinet-level officials, including the Vice President<sup>3</sup> — in contrast to Members of Congress<sup>4</sup> — have access to a greater overall volume of intelligence and to more sensitive intelligence information, including information regarding intelligence sources and methods.<sup>5</sup> They, 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 arguably are better positioned to assess the quality of the Community's intelligence more accurately than is Congress.<sup>6</sup>

In addition to their greater access to intelligence, the President and his senior advisors also are 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

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<sup>1</sup> Reportedly “furious” about what he apparently believed to be unauthorized disclosures of classified information by Congress, President Bush on Oct. 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 Senate and House, 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).

<sup>2</sup> 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).

<sup>3</sup> Central Intelligence Agency website [[http://www.cia.gov/cia/di/analytica\\_products\\_section.html](http://www.cia.gov/cia/di/analytica_products_section.html)].

<sup>4</sup> 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, as are congressional staff who are provided access to classified information.

<sup>5</sup> Michael Hayden, the 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*, Nov. 5, 2008.

<sup>6</sup> This memorandum does not directly address the quality of Intelligence Community (IC) 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].

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 are uniquely positioned to glean additional information and impressions — information that, like certain sensitive intelligence information, is generally unavailable to Congress — that can provide them with an 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. It was created by law and executive order principally to serve that branch of government in the execution of its responsibilities.<sup>7</sup> 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...”<sup>8</sup> Current law also prevents the executive branch from withholding intelligence information from the committees on the grounds that providing the information to the congressional intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.<sup>9</sup>

In 2004, Congress further strengthened its claim to access to national intelligence when in approving legislation reforming the intelligence community it directed that the Director of National Intelligence (DNI) provide the legislative branch access to national intelligence.<sup>10</sup> Previously, the head of the Intelligence Community was legally charged with providing the legislative branch national intelligence, but only “where appropriate.”<sup>11</sup> Congress never defined, either in statute, report language or during debate, what it considered to be “appropriate,” essentially leaving the executive branch free to adopt its own interpretation of congressional intent in this instance. The impact of the newly enacted, and unqualified directive, is dependent, as is generally the case, upon how aggressively Congress asserts its statutory prerogative.

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<sup>7</sup> L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” Center For The Study of Intelligence, Central Intelligence Agency, Feb., 1997, p. 17.

<sup>8</sup> Sec. 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 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.

<sup>9</sup> Sec. 501 [50 U.S.C. 413] (a)(2)(e).

<sup>10</sup> P.L. 108-458, Sec. 102A.(a)(1)(D) [50 U.S.C. 403-1].

<sup>11</sup> 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.

Despite some conflicting legal authorities governing congressional access to national intelligence, the U.S. Judicial Branch has not addressed this issue, since no case involving an executive-legislative branch dispute over access to intelligence has reached the U.S. courts.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> Unless there has been a compelling need, the intelligence committees generally have not routinely sought access to such sensitive intelligence information as intelligence sources and methods. When they have cited such compelling need for access, the Committees generally have reached an accommodation with the executive branch, but not always.

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.<sup>15</sup> 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.<sup>16</sup>

In 2001, and again in 2002, the Senate Select Committee on Intelligence (SSCI) directed that the Director of Central Intelligence<sup>17</sup> 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.<sup>18</sup> CRS is unaware the Director did not apparently produced such a report.

More recently, the SSCI included language in its version of the fiscal year (FY) 2006 intelligence authorization bill (S. 1803) requiring that the Intelligence Community, upon the request of either the Chairman or Ranking Member of either of the congressional intelligence committees, provide

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<sup>12</sup> L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” Center For The Study of Intelligence, Central Intelligence Agency, Feb., 1997, p. 17.

<sup>13</sup> Ibid, p. 17.

<sup>14</sup> Ibid, pp. 17-18.

<sup>15</sup> Ibid, p. 23.

<sup>16</sup> 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.

<sup>17</sup> 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, Sec. 1001, Subtitle A, Sec.1011.

<sup>18</sup> S.Rept. 107-63, p. 6 (accompanying S. 1428) , and S.Rept. 107-149, p. 10 (accompanying S. 2506).

“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.”<sup>19</sup>

## **Congressional Access to Intelligence Information Not Routinely Provided in Four Areas**

The executive branch generally does not routinely share 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,<sup>20</sup> which in the case of human intelligence<sup>21</sup> sometimes is provided by a single source, but which also could consist of intelligence derived from multiple sources when signals<sup>22</sup> and imagery<sup>23</sup> 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 in the last category 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.<sup>24</sup> The PDB emphasizes current intelligence<sup>25</sup> and is viewed as highly sensitive, in part, because it can contain intelligence source and operational

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<sup>19</sup> In the 109th Congress, S. 1803, Sec. 107. Congress did not approve an FY2006 intelligence authorization bill.

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> 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 the Intelligence Community as being that intelligence which: addresses day-to-day events; apprises 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](http://www.intelligence.gov/2-business_cycle5.shtml)].

information. Its dissemination is thus limited to the President and a small number of presidentially-designated senior administration policymakers.<sup>26</sup>

## **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 disclosure of information that the Intelligence Community generally considers to be the most sensitive in its possession. As more individuals are briefed about sources, it is contended, the greater is the risk that this information will be disclosed, inadvertently or otherwise. Such leaks could jeopardize current or future access to possibly valuable intelligence, and endanger the lives of intelligence sources providing the information.
- Executive branch officials similarly point to security-related concerns in explaining why Congress is not routinely provided intelligence methods, particularly collection methods. As in the case of source protection, officials argue that effective intelligence collection demands that the methods — human and technical — used to collect the intelligence be protected by limiting the number of individuals witting of those methods.
- Officials, in part, also cite security concerns in withholding raw intelligence. Because raw intelligence sometimes is derived from a single source, the source is arguably more vulnerable to identification and ultimate exposure. Even when intelligence is collected from multiple sources, as is sometimes the case when signals and imagery intelligence collection efforts are employed, knowledge of those collection methods can sometimes be determined from the underlying raw intelligence.
- They 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 placed in 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.<sup>27</sup>
- Finally, executive branch officials restrict congressional access to written intelligence products — including the PDB — that are tailored to the needs of individual policymakers. They assert that it would be inappropriate to provide these products to Congress because they 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.<sup>28</sup>
- Although PDB consumers have access to all such intelligence, it should be noted that intelligence sources, methods and operational information historically have been tightly

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<sup>26</sup> 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.

<sup>27</sup> L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” Center For The Study of Intelligence, Central Intelligence Agency, Feb., 1997, p. 26.

<sup>28</sup> Ibid, p. 25.



restricted within the executive branch, as well. Intelligence Community analysts, for example, have rarely if ever had access to such information. To the limited extent that they have, their access has been based largely upon their need to know the information for the purposes of conducting analysis.<sup>29</sup>

- 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.<sup>30</sup> Their comments suggest that they dispute whether Congress is less capable than is the Executive in its ability to evaluate and safeguard sensitive intelligence.<sup>31</sup>

## **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 intelligence products tailored to high-level policymakers — including PDBs — it is noteworthy that Congress occasionally has sought and obtained such intelligence information from the executive branch.

For example, while investigating Central Intelligence Agency (CIA) covert action operations in Nicaragua in the 1980s, the intelligence committees requested and were provided the identities of certain intelligence sources. The committees also sought and obtained access to certain raw intelligence. On other occasions, committee members have requested and obtained raw intelligence in order to verify certain Intelligence Community judgements contained in various National Intelligence Estimates (NIE).<sup>32</sup>

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<sup>29</sup> 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 judgements. 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>].

<sup>30</sup> L. Britt Snider, "Sharing Secrets With Lawmakers: Congress as a User of Intelligence," Center For The Study of Intelligence, Central Intelligence Agency, Feb., 1997, p. 26.

<sup>31</sup> 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.

<sup>32</sup> L. Britt Snider, "Sharing Secrets With Lawmakers: Congress as a User of Intelligence," Center For The Study of Intelligence, Central Intelligence Agency, Feb., 1997, p. 12. An NIE expresses the coordinated judgements 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.

Intelligence committee staffers, occasionally, have successfully obtained access to PDBs, and PDB articles, during the course of conducting investigations and general oversight.<sup>33</sup> The Bush Administration, however, appears to have been more reluctant to share such information than have some of its predecessors. In 2002, for example, President Bush rejected a request by the Congressional Joint Inquiry investigating the September 11<sup>th</sup> terrorist attacks to review the August 6, 2001, PDB, which contained an article titled *Bin Ladin Determined To Strike in U.S.*<sup>34</sup> 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.<sup>35</sup>

While denying Congress access to certain PDB articles, the Bush Administration has provided such access — albeit limited — to two commissions: the 9/11 Commission<sup>36</sup> and the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (hereafter, cited as the WMD Commission).<sup>37</sup>

## **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.<sup>38</sup> A finished intelligence product is one in which an analyst evaluates, interprets, integrates and places into context raw intelligence.<sup>39</sup>

Although congressional access is limited to such finished products, the volume of such products provided to Congress has increased over time.<sup>40</sup> Between 1947, when the National Security Act

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<sup>33</sup> Ibid, p. 25.

<sup>34</sup> The Joint Congressional Inquiry, established in the legislative branch (P.L. 107-306, Title VI, Sec. 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.

<sup>35</sup> Senate Select Committee on Intelligence, U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq, S.Rept. 108-301, July 9, 2004, p. 3.

<sup>36</sup> The 9/11 Commission received access to about four 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.

<sup>37</sup> 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.

<sup>38</sup> L. Britt Snider, “Sharing Secrets With Lawmakers: Congress as a User of Intelligence,” Center For Study of Intelligence, Central Intelligence Agency, Feb., 1997, p. 24.

<sup>39</sup> U.S. Intelligence Community web page [[http://www.intelligence.gov/2-business\\_cycle5.shtml](http://www.intelligence.gov/2-business_cycle5.shtml)].

An NIE represents an example of a finished intelligence product.

establishing the CIA was enacted, and the mid-1970s, the executive branch shared relatively little intelligence with Congress, and access to it was quite limited. But after two special congressional investigative committees headed by former Senator Frank Church and Representative Otis Pike launched investigations of the Intelligence Community in the mid-1970s, the executive branch permitted the Community to increase the volume of intelligence information it provided to Congress.<sup>41</sup>

## **DNI Efforts to Improve Intelligence Source Transparency**

The Intelligence Community continues to strive 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 National Intelligence Estimate on Iraq turned out to be inaccurate.<sup>42</sup> In its 2004 report on the U.S. Intelligence Community's prewar intelligence assessments on Iraq, the Senate Select Committee on Intelligence (SSCI) criticized the Community for not providing more information about its sources. The Committee concluded that source protection policies within the Intelligence Community direct or encourage "reports officers"<sup>43</sup> to exclude relevant detail about the nature of their sources.<sup>44</sup> 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.<sup>45</sup>

The DNI in 2007 promulgated a new policy intended to provide more such source information to intelligence analysts. In a directive to the Intelligence Community, the DNI called for "consistent

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<sup>40</sup> 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.

<sup>41</sup> L. Britt Snider, "Sharing Secrets With Lawmakers: Congress as a User of Intelligence," Center For Study of Intelligence, Central Intelligence Agency, Feb., 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.

<sup>42</sup> 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).

<sup>43</sup> An intelligence reports officer is generally a subject matter expert who evaluates intelligence.

<sup>44</sup> 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.

<sup>45</sup> *Ibid.*

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."<sup>46</sup> Doing so, the DNI asserted, would enable "consumers to better understand the quantity and quality of information underlying the analysis."<sup>47</sup>

Some observers have suggested that because of the new policy, the IC is now more fully and thus, accurately characterizing the reliability of its sources. Some of these same observers assert that the DNI may have gone too far by requiring such precise sourcing that analysts are restricted in interjecting their own informed views in the final product because of the new emphasis being placed on source information and its evaluation. Critics, however, contend that the DNI's directive has had a limited impact and that it is still difficult for analysts to better judge the reliability of certain intelligence 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.<sup>48</sup>

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 it is determined that such information is particularly sensitive, only the chairmen and ranking members of the two intelligence committees will be briefed, or in lieu of the committee leadership, the committees' majority and minority staff directors.<sup>49</sup> Or, based upon the executive branch's perspective that it is not legally obligated to provide Congress access to all intelligence, it could choose not to share the sensitive information with anyone in Congress.

## **Issues for the 111<sup>th</sup> Congress**

Congress, particularly the two congressional intelligence committees, could continue to assess the suitability of source transparency, requiring 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 to determine the degree to which the community's analysts view certain intelligence sources and to more easily identify any disagreements between collectors and analysts as to source credibility.

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<sup>46</sup> Intelligence Community Directive Number 206, Sourcing Requirements for Disseminated Analytic Products, Oct. 17, 2007.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid, p. 26.

<sup>49</sup> Ibid, p. 27.

Finally, in those cases where the credibility of sourcing is of particular importance — for example, those situations involving the possibility of war — the intelligence committees could 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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