

CHAPTER 2

THE RELATIONSHIP: 1976–2004

The Senate Select Committee on Intelligence: 1976

Within a month of the issuance of the Church Committee's final report, the Senate took up Senate Resolution 400 creating the Select Committee on Intelligence (SSCI), as the Church Committee had recommended. On 19 May 1976, the resolution passed 72–22. It gave the new committee exclusive oversight of the CIA, as well as concurrent jurisdiction with respect to the intelligence activities of other elements of the Intelligence Community. In nonbinding, hortatory language, the resolution said that agencies within the Intelligence Community were expected to keep the new committee “fully and currently informed” of their activities, including any “significant anticipated activities.”

The resolution also provided that the new select committee would authorize appropriations annually for all “intelligence activities” of the government. Notably, in a concession to the leaders of the SASC, this term was defined to exclude “tactical foreign military intelligence activities serving no national policymaking function.”¹ While this was clarified in 1978 to allow the new committee to make recommendations regarding the annual authorization for tactical intelligence, the SASC would retain legislative control over these funds.²

The new Senate committee would be a “select” committee rather than a “standing” committee. Its members would be “selected” by the Senate majority and minority leaders rather than determined in the party caucuses that preceded each new Congress. The committee's chairman and vice chairman would be selected by their respective caucus but could not, at the same time, serve as chairman or ranking minority member of a major standing committee. This was intended to ensure that other committee responsibilities would not distract the leaders of the new committee.

The new committee would have 15 members, no more than eight of whom could come from the majority party; in other words, there would always be a

¹ S Res, 400, § 14 (a).

² Smist, *Congress Oversees*, 106.

one-vote majority regardless of the proportion of the majority to the minority in the full Senate. Of those chosen for membership, eight also had to sit on standing committees with related jurisdictions: two each from Appropriations, Armed Services, Foreign Relations, and Judiciary. Members would be appointed for eight-year terms, after which they would leave the committee. This was intended to ensure members did not serve long enough to become co-opted by the intelligence agencies they were suppose to oversee. It was also expected that by rotating senators onto the committee, over time more would be exposed to intelligence work, and the perception that oversight rested with an elite few would be dispelled.

As mentioned above, the resolution also provided that instead of a ranking minority member the committee would have a vice chairman, chosen from the minority, who would preside in the absence of the chairman rather than having that responsibility pass to the next in line on the majority side. In addition, the new committee adopted rules giving minority members the same access that majority members had to information held by the committee.

The committee was authorized to hire its own staff, provided that every person hired had to receive a security clearance in accordance with DCI-approved standards and “in consultation with the DCI.” This latter phrase was interpreted as providing the DCI an opportunity to comment on the hiring of particular employees without giving the DCI the right to make hiring decisions for the committee. There would not be a majority and minority staff per se, as was typical with most Senate committees; rather there would a “unified” staff to serve both sides of the aisle. The chairman and vice chairman would hire most of the staff (with each controlling certain senior positions). Members would, however, have the right to hire one member of the staff, known as a “designee,” to serve his or her own interest, in addition to carrying out their duties for the committee as a whole. All members of the committee would be permitted an opportunity to review the backgrounds of proposed hires for the staff and to raise objections if they saw a potential problem.

Daniel Inouye (D-HI) was appointed as the first chairman of the SSCI, and Barry Goldwater (R-AZ) was its first vice chairman. Five of its original members—Democrats Walter Huddleston (KY), Gary Hart (CO), Robert Morgan (NC), and Republicans Goldwater and Howard Baker (TN)—had served on the Church Committee, as had 14 of its staff, including staff director William Miller.³ Within two years, the size of the staff had grown to 50, larger than the staffs of most standing committees at the time.⁴

³ Smist, *Congress Oversees*, 84–85.

⁴ CIA draft study, Vol. II, 159.

Among other things, S Res. 400 also required the new committee to study the desirability of creating a joint committee on intelligence. Acting swiftly to quash this idea, the SSCI found in its first annual report to the Senate in May 1977 that “for the foreseeable future a joint committee does not seem desirable or possible.”⁵ This was to remain its position until the present day.

The House Permanent Select Committee on Intelligence: 1977

Despite the Senate’s action, the House of Representatives did not move immediately to create a counterpart committee. There was no desire on either side of the aisle to repeat the disagreeable experience of the Pike Committee.⁶ In time, however, it became apparent to newly elected House Speaker Thomas P. “Tip” O’Neill (D-MA) that a counterpart to the Senate committee was needed. There needed to be a place where the intelligence now being provided the Senate would also be provided the House. The weekly intelligence briefings that O’Neill himself was receiving were, in his view, not a satisfactory solution. Moreover, there needed to be a place where legislation passed by the Senate could be referred. (The SSCI had developed its first intelligence authorization bill in the spring of 1977 without a corresponding process in the House.)

Thus, on 17 July 1977, at O’Neill’s urging, the House passed House Resolution 658 creating the Permanent Select Committee on Intelligence (HPSCI) by a vote of 227 to 171. The resolution was modeled after the Senate’s but contained important differences.

The committee would be a select committee, chosen by the House Speaker and minority leader and with 13 members (rather than 15 in the Senate). But the composition would reflect the proportion in the House as a whole, rather than having a one-vote difference as in the Senate. Democrats asserted this meant they were entitled to nine seats on the new committee; the Republicans, only four. Republicans challenged these assertions, which caused many who saw the resolution as “blatantly political” to vote against it.⁷ Joining them were a number of liberal Democrats who saw the resolution as a “return to the old days” when an elite few carried out the oversight responsibility in secret.

O’Neill argued that the proposed committee was needed, however, and assured House members that it would operate in a bipartisan manner. “I expect this committee to deliberate and act in a nonpartisan manner,” O’Neill said on

⁵ Smist, *Congress Oversees*, 108.

⁶ *Ibid.*, 214.

⁷ *Ibid.*, 215.

the floor. “This is a nonpartisan committee; there will be nothing partisan about its deliberations.”⁸ On the basis of his assurances, the resolution passed by a comfortable margin.

The resolution, like the Senate’s, provided that members would serve for fixed terms, in this case, six years instead of eight. It also provided for the appointment of “cross-over” members from the Armed Services, Appropriations, Foreign Relations, and Judiciary Committees.

Reflecting the historically more partisan nature of the House, however, the resolution did not adopt the Senate’s concept of creating a “vice chairman” as opposed to a ranking minority member. When the HPSCI chairman is absent, the next in line on the majority side takes control. The rules of the committee also did not provide equal access to the information the committee held. Moreover, there would be separate majority and minority staffs, hired by the chairman and ranking minority member, respectively, rather than a “unified” staff.

The jurisdiction of the HPSCI also differed from that of its Senate counterpart. It would have jurisdiction over tactical intelligence activities, both from the standpoint of oversight and budget authorization. While the House Armed Services Committee retained the right to seek sequential referral of the annual intelligence authorization bill to address tactical intelligence issues, it would not have responsibility for authorizing these funds.

The hortatory language of the Senate resolution directing intelligence agencies to keep the committee “fully and currently informed” also did not make it into the House resolution (perhaps because it was hortatory).

Like the Senate resolution, the resolution establishing the HPSCI also required it to examine the feasibility of a joint committee on intelligence, but, in view of the Senate committee’s earlier rejection of the idea, no action was taken.⁹

Following the vote in the House, O’Neill appointed his longtime friend and colleague, Edward P. Boland (D-MA) as the first HPSCI chairman. Bob Wilson (R-CA) was appointed its first ranking minority member. Within two years, the committee had hired a staff of 20, none of whom had served on the Pike or Nedzi Committees.¹⁰

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With the creation of the select committees, the CIA subcommittees on the armed services and appropriations committees on each side officially dis-

⁸ *Ibid.*, 216.

⁹ *Ibid.*, 237.

¹⁰ *Ibid.*, 232.

banded. The armed services committees continued to have concurrent oversight jurisdiction over the Defense Department (DoD) elements of the Intelligence Community, and the defense appropriations subcommittees on each side assumed responsibility for the Agency's annual appropriation, typically clearing one or two professional staff to handle the account. For several years after the select committees were created, in fact, the staff of the defense appropriations subcommittee of the HAC played an unusually active role where oversight was concerned. In time, however, as it became apparent that the select committees had a far larger, more sophisticated capability to do oversight, the defense appropriations subcommittees began deferring almost entirely to them.

All four committees, however—the armed services and appropriations committees in both houses—continued to play important roles in terms of the Agency's funding. Because funds for the Agency were contained in the DoD budget account, there had to be agreement each year between the intelligence committees and the armed services committees on the amount to be authorized for the CIA within the defense authorization. Similarly, there needed to be an appropriation for the Agency within the annual defense appropriation bill. In theory, the appropriations committees could not appropriate more than what the authorizing committees authorized, but they might appropriate less. So, they were not to be taken for granted. Perhaps of even greater importance, supplemental appropriations bills—which the Agency frequently relied upon over its history to fund its overseas operations—did not receive an authorization. While the intelligence committees were typically given an opportunity to weigh in on them, they did not officially act on them. So maintaining the support of the defense appropriations subcommittees would remain crucial for the Agency.

The organizational arrangements for intelligence oversight that each house adopted in the mid-1970s did not significantly change until 2004, nor were they seriously challenged from within. When political control of the House or Senate changed during this period, obviously the leadership of the HPSCI and SSCI would also change. Some committee chairmen established subcommittees; others did not. The number of members on each committee also fluctuated over time, as did the size and composition of their respective staffs. But the basic organizational structure of two select committees with members serving fixed terms did not change for 26 years.

What did change over this period were the policies and procedures that governed the relationship. As seen in chapter 1, until the select committees were created, relations between the Agency and the Congress were, for the most part, ad hoc and informal. (The only law on the books that addressed the relationship was the Hughes-Ryan Amendment enacted in 1974.) Congress would make requests for information, and the Agency would deal with them. Each

interaction was handled as the circumstances required. Obviously, the Agency's overriding concern was keeping its principal overseers satisfied, but it also wanted to build support for itself within the Congress where it was possible to do so (see chapter 3). Balanced against these considerations was the Agency's concern for the security of its operations and the direction it received from the White House.

With the creation of the select committees, however, new legal obligations were imposed on the relationship, and over time these obligations changed and multiplied. Some came at the initiative of the executive branch; most came at the initiative of the Congress. Some were instituted in response to events that demonstrated shortcomings in the existing process; some were an effort to prevent such problems from arising. However the changes came about, the Agency's relationship with Congress increasingly came to be carried out within a formal framework, based upon law and regulation, rather than a framework built upon personal relationships. This evolution is described in the pages that follow.

1977–80: The Committees Prove Themselves

The first four years of the select committees' existence corresponded roughly with the presidency of Jimmy Carter, who took office pledging cooperation with them. Carter's vice president, Walter Mondale, had served on the Church Committee and had been instrumental in the creation of the follow-on committee. He wanted it to succeed.

The leaders of the new committees reciprocated with assurances that they intended to operate in a cooperative way. HPSCI Chairman Boland proclaimed, "This will not be an inquisition like the Church and Pike committees."¹¹ Daniel Inouye, his counterpart on the SSCI, pledged that the country's security would not be compromised by the work of the committee and that the committee would work to "restore responsibility and accountability to U.S. intelligence activities." In a letter to DCI Turner, Inouye said the committee viewed the Intelligence Community as "legitimate and needed" and pledged to work with Turner to strengthen it.¹²

As tangible evidence of their intent, both committees hired key staff with intelligence backgrounds. The HPSCI, for example, hired as its first staff director, Thomas Latimer, who had served in the Intelligence Community and had been a special assistant on intelligence matters to the secretary of defense.

¹¹ CIA draft study, Vol. II, 226.

¹² *Ibid.*, 160.

To handle budget matters, the HPSCI hired James Bush, who had handled the intelligence budget at DoD. At the SSCI, Daniel Childs, who had headed the Program and Budget Division of the Intelligence Community Staff, was hired as budget director.¹³

Despite the evident goodwill in both branches, however, profound misgivings lay beneath the surface. Could committees of Congress, inherently political institutions, do hands-on oversight of intelligence activities without revealing them? At this point, no other country in the world had seen fit to entrust their legislatures with such an intrusive role. Prior to the Church and Pike Committees, intelligence information had been briefed to the Hill, but not left on the Hill, for the simple reason there was nowhere to store it. Heretofore, the number of congressmen and senators with access to Agency information at any given time had totaled 10 or 12. Now there would be 28 on the intelligence committees alone. Moreover, they would be supported by sizable staffs that had nothing else to do but look at the intelligence business. Heretofore, the limited number of congressional staff supporting the CIA subcommittees had had major responsibilities for the full committees they worked for, leaving them little time to delve into the Agency's activities.

Agency records, in fact, reflect a widespread unease among its senior officers brought about by the demands of the new committees. At a DCI morning meeting in December 1977, for example, one officer noted the large number of requests the committees were making and complained that many were ill-conceived. He went on to express the fear that the new committees may be slipping into an adversarial role vis-à-vis the Agency.¹⁴

While the new committees did make increasingly greater demands on the Agency, they did not aggressively challenge restrictions on their access to Agency information, at least in the beginning. Particularly when their demands touched on sensitive information that had heretofore never been shared with the Congress, the new committees were ordinarily willing to limit the number of people who had access to such information and/or to have the Agency retain such information rather than provide hard copies for the committees.¹⁵

Indeed, both committee chairmen understood that congressional oversight of intelligence could only work if the committees demonstrated both the capacity and the intent to protect the classified information that was shared with them. Accordingly, the leadership of both houses took great care to appoint "responsible" members.¹⁶ Both committees also established secure

¹³ Childs returned to the CIA in 1982 to serve as its comptroller.

¹⁴ CIA draft study, Vol. II., 162.

¹⁵ *Ibid.*, 228–29.

¹⁶ Smist, *Congress Oversees*, 93–95, 100, 224–28.



Senator Daniel Inouye (l), first chairman of the Senate Select Committee on Intelligence, and Representative Edward Boland, first chairman of the House Permanent Select Committee on Intelligence. Each was instrumental to the successful inauguration of his respective committee.

(Photos courtesy of the US Senate Historical Collection and the Office of the Clerk of the US House of Representatives.)

offices, committee rooms, and storage areas in which to carry on their operations. They also adopted procedures and policies, comparable to if not more stringent than those in the executive branch, for handling and storing classified documents.¹⁷

As important, both chairmen recognized that operating their respective committees out of the public spotlight and in a bipartisan way made it less likely that members might be tempted to leak information for partisan advantage. By doing their work behind closed doors and maintaining a low-profile in public, both sought to demonstrate to the Intelligence Community, as well as their parent bodies, that they intended to operate in a responsible manner to protect the secrets entrusted to them.

In time, the confidence of the executive branch in the ability and intent of the oversight committees to protect the classified information that was shared with them grew. Moreover, it became clearer what kinds of information the committees needed to do their jobs, and what sorts they ordinarily could get by without. Where issues of access did arise, they were resolved in some fashion, either by limiting the number of people with access or the manner in which access was provided.

¹⁷ CIA draft study, Vol. II, 160, 226.

On the whole, the committees carried out their duties during this period in a workmanlike manner. In 1978, they developed and put through Congress the first in a succession of intelligence authorization bills and were instrumental in the passage of other legislation the administration desired (see chapter 5). They also carried out oversight inquiries into the Agency's performance of its collection and analytical missions that displayed increasing sophistication (see chapters 7 and 8).

Senator Inouye also reopened the issue of GAO audits, pressing both the Agency and GAO to negotiate ground rules allowing audits to be reinstated. These efforts continued sporadically during 1977 and 1978, making occasional headway but never coming to fruition.¹⁸

When the Carter administration issued a new executive order (E.O. 12036) on intelligence activities in 1978, it officially recognized the existence of the two oversight committees and directed that they be kept "fully and currently informed" by the departments and agencies that made up the Intelligence Community.¹⁹ This was, in fact, the first time that such a legal obligation had been imposed on US intelligence agencies, reflecting the increasing level of confidence the administration had in the two committees.

The Intelligence Oversight Act of 1980

The last year of the Carter administration provided an even clearer demonstration of how far the congressional oversight process had come. The committees proposed to establish, as a matter of law, the obligations of the Intelligence Community toward each committee, an initiative that was in itself unusual and might well have been resisted by the executive branch, had the committees been unable to prove themselves. As it was, President Carter ultimately accepted the committees' proposal and signed it into law.

The Intelligence Oversight Act of 1980, as the law was known, established general reporting requirements for the Intelligence Community vis-à-vis the two oversight committees. The basic obligation imposed by the new law was the same one Carter had imposed on intelligence agencies earlier by executive order: to keep the two committees "fully and currently informed" of their activities. The new law made clear, however, that these activities included "significant intelligence failures" as well as "significant anticipated activities." Thus, while the committees' approval was not required to initiate such activities, the law contemplated they would be advised in advance of "signifi-

¹⁸ *Ibid.*, 304.

¹⁹ See § 3-401, Executive Order 12036.

cant activities” being undertaken by the Intelligence Community. Where covert actions were concerned, the law provided that where prior notice was not given, the president would inform the committees “in a timely fashion” and provide a statement explaining why prior notice had not be given. Most important as far as the Agency and the Carter administration were concerned, the law limited the reporting of covert actions to the two intelligence committees, reducing the number of committees that had been receiving such reports under Hughes-Ryan from eight to two.

Also important to the Carter administration, the new law provided that when the president determined it “essential . . . to meet extraordinary circumstances affecting vital interests of the United States” notice of intelligence activities (including “significant anticipated activities”) could be given to the leaders of the House and Senate, as well as the leaders of the two intelligence committees—the so-called gang of eight—rather than to the full membership of the two committees.

Finally, the new law provided that the intelligence agencies were obliged to provide any documents in their possession that either committee might request and, further, that information could not be withheld on the grounds that giving it to the committee would constitute an unauthorized disclosure of intelligence sources and methods. At the same time, the law recognized that disclosures to the committees may take into account the need to protect “sensitive intelligence sources and methods or other exceptionally sensitive matters” from unauthorized disclosure. The committees interpreted this language as providing latitude in terms of *how* access to sensitive information would be provided, not *whether* it would be provided.

The Intelligence Oversight Act of 1980 was a civil statute in that it contained no criminal penalties for failing to comply with its provisions. However, it established legal obligations vis-à-vis the two oversight committees that could, and did, form the basis upon which intelligence agencies as well as their employees would be held accountable in the future.

The Mining of the Nicaraguan Harbors and the Casey Accords: 1984

When Ronald Reagan became president in 1981, his administration increasingly turned to covert action as a means of carrying out its foreign policy agenda. His choice for DCI, William J. Casey, was determined to make the Agency a player again on the world stage, and covert action was his chosen means for doing so. But Casey’s aggressive use of covert action often brought him into conflict with the congressional oversight committees (see chapter 9)

and, on one occasion, resulted in a formal change to the existing oversight arrangements.

In April 1984, it came to light in a press article that pursuant to a previously approved presidential finding and express authorization from the White House, the Agency had been involved in mining the principal harbors in Nicaragua in an effort to curtail commerce and pressure the Sandinista regime.

While Casey contended afterwards that both intelligence committees had been informed of these activities, the leadership of the Senate committee at the time, Senators Goldwater and Daniel Moynihan (D-NY), respectively, insisted they had not. If Casey had mentioned it, they contended, he had not called sufficient attention to it. In the end, Casey provided a grudging apology and agreed that henceforth he would more clearly spell out what the Agency was doing pursuant to an approved covert action finding. This commitment, which Reagan agreed to, was reduced to writing and became known as the “Casey Accords.” It provided, among other things, that covert action findings would be accompanied by “scope papers” that would elaborate on the precise activities contemplated by the finding and include a risk/gain assessment of each such activity. In addition, when new activities were contemplated pursuant to an approved finding that might be politically sensitive or otherwise had gone to the president for an approval, the committees would be informed.²⁰

Term Limits as an Issue for the SSCI: 1984

Since the resolution creating the SSCI in 1976 provided that its members had to leave the committee after eight years, when that deadline arrived in 1984, Senator Goldwater became concerned that nine or 10 of its members, including himself, would be forced to leave at the same time, having “far-reaching, negative consequences for Senate oversight of the Intelligence Community.”²¹ Goldwater communicated these concerns to a special Senate committee that had been established to study the Senate committee system, arguing that membership on the oversight committee required far more sophistication and knowledge than “we dreamed when we wrote Senate Resolution 400.” But Goldwater could not get a consensus on this issue from his own committee and, in the absence of its backing, chose not to pursue the matter further.²²

²⁰ CIA draft study, Vol. III, 65; Woodward, *Veil*, 358–59; Smist, *Congress Oversees*, 122–23.

²¹ CIA draft study, Vol. III, 72.

²² *Ibid.*, 72–73.

GAO Again: 1984

The issue of GAO's relationship with the Agency also resurfaced in 1984. By this point, both committees had come to regard GAO not as an organization to supplement their oversight but as a potential competitor to their oversight. When GAO requested three National Intelligence Estimates (NIEs) from the Agency that related to work it was doing for another committee, the Agency took the position, which the oversight committees supported, that as an element of Congress, GAO had to work through the intelligence committees to obtain information from or about the Agency. The Agency would provide the NIEs to the committees, but it would be up to them whether they were shared with GAO.²³

Continued Wrangling over Covert Action Notification: 1985–86

Despite the "Casey Accords," Casey and the committees continued to butt heads over the notification process for covert action. The committees complained that it was taking too long for them to receive findings and notifications, that they were not getting the actual texts of findings, and that the Agency was overusing the option of giving notice to the "gang of eight" rather than the full committees. They also had a special concern that CIA was transferring US military equipment to support its activities without advising them.²⁴

Casey, for his part, chafed under what he saw as the unreasonable demands of the committees, which he believed unacceptably hampered the president and the DCI in their handling of foreign affairs. To deal with the problem from his standpoint, in the spring of 1985 Casey proposed to both committees new procedures to govern the notification process: he would notify the committees of all findings and memorandums of notification approved by the president by means of written "advisories" that would go to the leaders of the intelligence committees and the appropriations committees, provided that he reserved the right to brief these leaders orally when the operation was particularly sensitive. Moreover, when the president specifically directed, he could limit notice to the congressional leadership (the majority and minority leaders of the Senate and the Speaker and minority leader of the House) rather than the committees and could withhold notice from them altogether until such time as the president directed him to provide it.²⁵

²³ *Ibid.*, 18.

²⁴ *Ibid.*, 108.

²⁵ *Ibid.*

Both committees rejected Casey's proposals. The SSCI, however, endeavored to reach a compromise, and on 17 June 1986, after months of negotiation, an agreement between Casey and the committee was formalized. The committee accepted Casey's "advisories" format and recognized the "gang of eight" option provided by existing law. At the same time, Casey would "make every reasonable effort to inform the committee of presidential findings and significant covert action activities and developments as soon as practicable." The committee would also be told of "significant transfers" of military equipment.²⁶ The deal worked out with the SSCI was not acceptable to the HPSCI. While the two sides continued to negotiate, the disclosure of the Iran-contra scandal in November 1986 effectively put an end to the negotiations with the HPSCI and cast doubt upon what had been agreed to with the SSCI.

Tightening Control over Intelligence Funding: 1986

While the HPSCI was unable to negotiate a compromise on covert action notifications, it did get changes enacted to the oversight statute in 1986 that considerably strengthened the control of the oversight committees over intelligence funding.²⁷ Although procedures had long been in place to govern the "reprogramming" of appropriated funds for different purposes, they were a matter of practice rather than law, and the HPSCI suspected the Agency was not adhering to them.

In 1986, at the initiative of HPSCI Chairman Lee Hamilton (D-IN), provisions were added to the annual authorization bill to deal with this situation. Appropriated funds could only be expended, the law would now provide, (1) if Congress had specifically authorized them; (2) if, in the case of the DCI's Contingency Reserve Fund, the DCI had given the committees prior notice of his intent to make use of such funds; or (3) if, in the case of funds being used for a purpose other than that for which they had been appropriated, the DCI (or secretary of defense) notified both committees in advance that the new purpose had been unforeseen at the time of the original appropriation and was now considered a higher priority. In addition, no funds could be spent for any intelligence activity for which Congress had denied funding, nor could funds be spent for a covert action that had not been the subject of a presidential finding.²⁸

In addition, provisions were added to the law to deal with the concerns of both committees that CIA was transferring US military equipment without advising them. From here on, the law would require such notification when

²⁶ *Ibid.*, 109.

²⁷ Smist, *Congress Oversees*, 257.

²⁸ §504, *National Security Act of 1947*, as amended.

intelligence agencies contemplated transferring defense articles or services with an aggregate value of \$1 million or more to a third party outside the US government, unless the transfer was conducted openly under the Arms Export Control Act or other applicable federal statutes.²⁹

Investigating the Iran-contra Affair: 1986–87

On 3 November 1986, a Lebanese magazine, *Al Shiraa*, reported that the United States had been supplying arms to Iran in hopes of winning release of the American hostages being held in the Middle East and that US National Security Advisor Robert McFarlane had visited Tehran earlier in the year to meet with Iranian officials in furtherance of the sales. On 12 November, the congressional leadership, including the leaders of the two intelligence committees, was briefed at the White House on the Iran initiative. On 21 November, DCI Casey and Deputy National Security Advisor John Poindexter testified before both intelligence committees, defending the arms sales as necessary to freeing the hostages and the beginning of a new relationship with Iran. Casey acknowledged that the Agency had provided support to what had been an NSC initiative but denied that the Agency had known about the nature of the shipments. He also suggested that, while the committees may not have been notified of the Agency's role "in a timely fashion," to have done so might have infringed upon the constitutional powers of the president.³⁰

Four days later, Attorney General Edwin Meese announced at a press conference that he had found evidence in the office of LTC Oliver North, who had run the Iranian initiative for the NSC, that \$12 million generated by the arms sales to Iran had been "diverted" to purchase supplies for the contras—a conglomeration of groups in Central America that were trying to overthrow the leftist Sandinista government in Nicaragua—at a time when Congress had by law expressly prohibited such assistance.

By the end of the year, no fewer than seven investigations had been launched of what had become known as the Iran-contra affair. On 26 November, Casey directed the CIA inspector general to investigate CIA's involvement. On 1 December, President Reagan established a special review board, chaired by former Senator John Tower, to investigate the NSC's involvement. Both intelligence committees announced they would conduct investigations, as did the House Appropriations and Foreign Affairs Committees. On 19

²⁹ §505, *National Security Act of 1947*, as amended.

³⁰ CIA draft study, Vol. III, 132.

December, Meese appointed an “independent counsel” to investigate the criminal aspects of what had happened.³¹

Within Congress, though, it soon became clear that Iran-contra did not fit comfortably within the existing committee structure in either house. Although CIA had had a role in it, the operation had been run out of the White House, which lay outside the jurisdictional purview of the intelligence committees. While the foreign affairs committees had jurisdiction over foreign policy, they were not equipped to deal with the intelligence aspects. Moreover, it was clear that a significant staff effort would be required, exceeding the extant capabilities of the existing committees. Thus, on 6 January 1987, the Senate created a special investigating committee; the House of Representatives followed suit a day later. Four members of the SSCI, including its chairman and vice chairman, were appointed to the Senate investigating committee; on the House side, five HPSCI members were appointed, including its chairman and ranking minority member.³² All designated senior staff from the intelligence committees were to support them. Of the congressional inquiries that had been initiated, only the SSCI, under its new chairman, David Boren (D-OK), issued a report of its investigation to that point. (See chapter 9 for a detailed description of the Agency’s role in the Iran-contra affair.)

Within several months of their creation, the Senate and House investigating committees realized that they would be seeking to review the same documents and interview the same witnesses. When it came time for hearings, each would presumably want to address the same issues. Thus, in March 1987, the two investigating committees decided to pool resources to conduct a joint investigation. While each side initially reserved the right to issue its own final report, a joint report was produced in November, signed by 18 Democratic and Republican members of the House and Senate, together with a minority report signed by eight Republican members. The investigation had gone on for almost a year and involved 300,000 documents reviewed, more than 500 witnesses interviewed, and 40 days of joint public hearings held.³³

The investigation ultimately showed that knowledge of the Iran-contra operation within the CIA had been relatively limited. While some Agency officers had known of the arms sales to Iran, no documentary evidence was found to indicate anyone at the Agency had specifically known of the “diversion” of the proceeds of these sales to the contras. By the time Iran-contra was disclosed, several Agency officers had come to suspect this had happened, but they had not been specifically told. North later testified that Casey had been

³¹ *Ibid.*, 150.

³² Smist, *Congress Oversees*, 259.

³³ *Ibid.*

aware of the diversion, but by this point Casey had died and no evidence corroborating North's testimony could be found. Notwithstanding, several Agency officers, who had been witting of North's role in organizing support for the contras from private sources, were later disciplined by DCI Webster for having deliberately withheld such information from the intelligence committees, and two senior officers were dismissed for engaging in improper activities on behalf of the contras.³⁴

For the intelligence oversight committees, however, the most unsettling revelation to emerge from the investigation came during the testimony of North when he revealed that he and Casey had planned to use the profits from the arms sales to Iran to finance a self-sustaining, "off-the-shelf" organization, run by private citizens and/or private entities, to carry out covert actions around the world without involving Congress at all.³⁵ Casey, now deceased, was unable to confirm or deny North's testimony.

Changes to Congressional Oversight Prompted by Iran-contra: 1987–91

While the Agency's involvement in and knowledge of Iran-contra had been relatively limited, the final report of the congressional investigating committees recommended a number of changes to the system of intelligence oversight that fell to the two intelligence committees to deal with. Most involved the approval and reporting of covert actions:

- Congress should be notified, without exception, no later than 48 hours after a covert action "finding" had been approved.
- All findings should be in writing and personally approved by the president.
- Retroactive findings should be prohibited.
- Findings should specify their funding source(s).
- All findings would lapse after a year unless the president renewed them.³⁶

The Iran-contra committees specifically rejected the notion that a joint committee would improve congressional oversight of intelligence but did recommend that the oversight committees bolster their capabilities by creating audit staffs to monitor the financial aspects of Agency operations. They also

³⁴ CIA draft study, Vol. III, 158.

³⁵ *Report of the Congressional Committees Investigating the Iran-Contra Affair*, 411–13; Smist, *Congress Oversees*, 264–65.

³⁶ *Report of the Congressional Committees Investigating the Iran-Contra Affair*, 423–27.

recommended that the inspector general for the CIA be made “independent” (see the discussion in the next section) and that both the IG and CIA general counsel be appointed by the president and subject to Senate confirmation.³⁷

Both committees turned first to the issue they considered paramount: notification of covert actions. In their view, the Intelligence Oversight Act of 1980 envisioned prior notice being given the committees, but where that was not possible, notice would be given “in a timely fashion.” Although the statute did not define this phrase, both committees were of the view that the failure of the Reagan administration to inform them within 10 months of the findings authorizing CIA support of the arms sales to Iran did not meet this standard.

The Justice Department, however, issued a legal opinion in late 1986 soon after Iran-contra was disclosed, saying that the “timely notice” provision had to be interpreted in light of the president’s constitutional authority as commander-in-chief and, read as such, gave the president “virtually unfettered discretion” when to provide notice of covert actions to the two committees. While there may not have been unanimity on the committees with respect to what “timely” notice meant, there was unanimity that it did not mean this.

Apart from what “timely notice” meant, however, the Reagan administration, as well as the Bush administration that followed it, objected to changing the law to require notice, without exception, within 48 hours of a finding being signed. They contended that this requirement was too inflexible and could hamstring a future president. While they were willing to compromise on the subsidiary issues (such as requiring findings to be in writing and the prohibition of retroactive findings) they would not accept a strict 48-hour time limit.

The impasse lasted for almost four years.³⁸ The intelligence committees, especially the SSCI, repeatedly offered legislation to resolve the notification issue, as well as the subsidiary issues, but for one reason or another this legislation stalled on its way through the congressional process and, on one occasion, was vetoed after making it through Congress. (See chapter 5 for a detailed discussion.)

In 1991, a compromise was reached on “timely notification,” and as a result, legislation to remedy the problems identified by the Iran-contra investigations was at long last enacted. The “timely notice” language remained in the law. But the conference report explaining this language required a president’s commitment to notify the Congress “within a few days” of signing a finding. To withhold notice for a longer period, a president would have to assert consti-

³⁷ Ibid.

³⁸ Lundberg, *Congressional Oversight and Presidential Prerogative*; Conner, “Reforming Oversight of Covert Actions After the Iran-Contra Affair.”

tutional authorities as commander-in-chief. The committees, for their part, disagreed in principle that the Constitution empowered a president to withhold notice from the Congress for longer than “a few days,” but they recognized this was an issue for the courts to settle.

The legislation went on to define “covert action” for the first time in statute and, for the first time in the Agency’s history, specifically authorized CIA to undertake such activities. Relating to some of the issues raised by Iran-contra, the new law provided that covert action findings must be in writing and personally approved by the president; that no retroactive findings would be permitted; and that findings would identify any government agency or third parties (private entities or foreign governments) being used. Finally, findings could not authorize activities that violated the Constitution or laws of the United States.³⁹

GAO Audits Resurface: 1987–88

Although the Iran-contra committees had not recommended the GAO be given authority to audit CIA activities, the issue resurfaced in Congress in the wake of the scandal. In the Senate, the chairman of the Governmental Affairs Committee (which had jurisdiction over GAO) introduced legislation that would have specifically authorized the GAO to evaluate the Agency’s programs and activities. In the House, a more limited bill was introduced authorizing the GAO to audit the Afghanistan covert action program. In both cases, the bills were referred to the intelligence committees where they languished.

The chairman of the SSCI at the time, David Boren (D-OK), was concerned, however, that some further action was needed if the committee was to stave off similar initiatives in the future. To create such a counterweight, he announced the formation of a small “audit staff” within the committee to conduct independent audits of ongoing covert action programs. Eager to ensure that congressional investigations remained in the hands of the oversight committees, the Agency welcomed Boren’s initiative.⁴⁰

The Creation of a Statutory Inspector General for the CIA: 1989

Another significant change to the oversight arrangements that grew out of the Iran-contra affair was the creation of a statutory inspector general (IG) at the CIA. The Iran-contra committee had recommended such action in 1987,

³⁹ §503 of the National Security Act of 1947, as amended.

⁴⁰ CIA draft study, Vol. III, 167.

and two years later, Congress enacted legislation creating the office. (See chapter 5 for a detailed description.)

While the Agency had had an IG since 1952, the IG established by the 1989 law would be different. Notably, it would now have a direct reporting relationship with the Congress. Heretofore, IG reports were seen as internal documents and not furnished the committees. Now they would be shared on request. Agency IGs would also be required to make semiannual reports of their activities, something that had not been done in the past. This would give the committees an awareness and an opportunity to inquire further, which they had not had before. Moreover, if the IG undertook an investigation of the DCI or other senior Agency officer, the committees would have to be notified. If the DCI were to terminate or quash one of the IG's investigations (an action the statute specifically allowed), the committees would also have to be told.⁴¹ In short, the IG statute gave the committees a window into the Agency's operations that they had not had before.

By creating an independent IG within the CIA, the statute also gave the committees a place they could go within the Agency to ask for oversight inquiries that exceeded the committees' own capabilities. While, in theory, the IG could demur to such requests and/or the DCI could block them, doing so would obviously create a political problem with the committee concerned.

Statutory Recognition of the Agency's Support of Congress: 1992

The Agency, over its entire existence, had regarded the provision of substantive intelligence support to Congress as part of its mission. (See chapter 3 for a detailed description.) But until 1992, there was nothing in the law itself that made intelligence support to the Congress part of the Agency's mission.

The Intelligence Organization Act of 1992 was not meant to effect changes to the oversight arrangements per se; indeed, those arrangements had only been modified the year before. But in setting forth the responsibilities of the DCI in law, Congress took the opportunity to spell out, for the first time, the DCI's responsibility for "providing national intelligence . . . where appropriate, to the Senate and House of Representatives and the committees thereof." The law went on to say that such intelligence should be "timely, objective, independent of political considerations, and based upon all sources available to the intelligence community."⁴²

⁴¹ §20 of the CIA Act of 1949, as amended.

⁴² §103A of the *National Security Act of 1947*, as amended.

Formalization of Notification Procedures: The Guatemala Inquiries, 1995

In 1995, the American wife of a Guatemalan guerrilla leader who had disappeared three years earlier told the two intelligence committees that the Agency had somehow been involved in his disappearance. In looking into these allegations, the SSCI discovered that a clandestine source of the Agency's within the Guatemalan military was rumored not only to have been involved in the disappearance of the guerilla leader but was also suspected of having been involved five years earlier in the death of an American citizen living in Guatemala. Both committees investigated these allegations as did the CIA inspector general and the Intelligence Oversight Board, a subcommittee of the President's Foreign Intelligence Advisory Board (see chapter 8 for more detail). The Agency's IG, in fact, undertook an even broader inquiry at the request of the intelligence committees, examining what the Agency had known about human rights abuses by any of its clandestine sources in Guatemala since 1984.

While neither investigation found evidence that the Agency's source had been involved in the death of the American in 1990 or in the disappearance of the guerrilla leader, they did find that CIA had learned of the first allegation in 1991 and, despite having several opportunities between 1991 and 1995, had failed to notify either of the intelligence committees of the potential problem. Both committees regarded this as a failure of the statutory requirement to keep them "fully and currently informed." The Intelligence Oversight Board at the White House later agreed, albeit finding the failure inadvertent rather than intentional.⁴³ Nonetheless, 12 Agency employees were disciplined for this failure, two of them forced to retire.

Most significant for the long term, however, were the systemic changes the Agency adopted as a result of the Guatemalan episode. In February 1996, Deutch issued new guidance for dealing with allegations of human rights abuse, or crimes of violence, by assets or foreign liaison services. In general, the guidelines provided that where such allegations could be proved or largely substantiated, further relationships would be barred unless senior CIA officials approved them as necessary to the national interest.

The Agency also established, on its own initiative, a systematic notification process to protect against another failure to notify Congress of significant information concerning its operations. Heretofore the determination of whether to notify the oversight committees of operational activities that were seen as unusual or problematic had been informal and ad hoc. Either Agency leaders themselves would see the need to advise them, or components would

⁴³ Intelligence Oversight Board, *Report on the Guatemalan Review*.

perceive a need and raise it through channels. Under the new system, instituted by DCI directive in 1996 and incorporated into Agency training programs, this process became regularized and formalized. Components would be required to systematically review operational activities on an ongoing basis for issues or problems that should be briefed to the oversight committees and provide the DCI written memoranda on the results. The DCI ultimately would decide which notifications to provide the committees as well as the content of such notifications. While the Agency continued to protect operational details to the extent possible, far more notifications began being sent to the two oversight committees than ever before.

While the practice would sometimes result in follow-up requests for briefings, or even lead one of the committees to open an investigation, the new notification system considerably reduced the chances that issues might “fall through the cracks” and lead to recrimination. Indeed, the Agency had a written record of precisely what the committees had been told. Former OCA Director John Moseman put it this way:

They couldn't come back to us any more when something went wrong and claim they'd never been told about it. If they had a problem with something, then it was up to them to let us know about it. If they didn't . . . well . . . it makes it hard for them to criticize us for failing to do something about it.⁴⁴

Procedures for “Whistleblowers” Who Wished to Contact Congress: 1998

Agency employees who wished to report perceived wrongdoing, or perceived unfairness in terms of their treatment at the hands of the Agency, had always had, in theory at least, the option of complaining to one or both of the oversight committees in Congress. But unless a complaining employee worked through Agency management to contact the congressional committees, he or she could be seen as violating the Agency's regulations governing contacts with Congress, procedures instituted not only to allow Agency management to know what was being said to Congress but also to ensure that any classified information being passed to Congress was transmitted in a secure manner. Requiring Agency employees to work through their management to contact Congress, however, naturally raised the possibility that some type of retaliatory action might be taken against the employee.

⁴⁴ Moseman interview, 28 December 2006.

Prior to the creation of the select committees in the mid-1970s, such complaints were rare. But from 1980 on, they became more frequent. Dealing with the conundrum presented by this practice came down to a case-by-case determination. If an employee came to one of the oversight committees directly and did not want his or her supervisors to know about it, the committees would usually respect that confidence. However, if the complaint led to the committee launching an inquiry or investigation, it might become necessary to reveal the employee's identity. The employee was typically consulted at this point before any such inquiry or investigation went forward. Moreover, once the complaining employee had been identified to the Agency, there was a tacit but firm understanding on both sides that any retaliatory action taken by the Agency against the employee (to include punishment for violating its procedures for contacting Congress) would bring the wrath of the committee upon the Agency. Indeed, at times, the committees made this clear in no uncertain terms. Agency managers, in such cases, typically complied with the committees' wishes.

In 1998, however, the intelligence committees, believing Agency regulations could be discouraging employees from coming to them, created a complex new procedure by statute that would provide Agency employees who wanted to contact them the option of first going to the Agency's IG with their complaint; the IG would have 14 days to determine whether the complaint was "credible" and, if so, forward it to the committees through the DCI. If the IG failed to forward the complaint, the employee could then contact the committees directly, provided that he or she advised Agency management of the intent to do so and was advised how to contact the committees to protect any classified information that might be part of the complaint. If the employee later perceived he or she had been the subject of retaliation for the complaint, that would become the basis for a second complaint to be processed through the same system.⁴⁵

The law, notably, did not make this complex procedure mandatory. Rather, it left in place the option that had existed previously: contacting the committees directly but risk being charged with violating Agency regulations governing such contacts.

⁴⁵ *The Whistleblower Protection Act of 1998, Title VII of the Intelligence Authorization Act for Fiscal Year 1999.*

The Joint Inquiry into the 9/11 Attacks: 2001–2003

The 9/11 terrorist attacks led many in Congress (and across the country) to conclude there had been an intelligence failure of serious proportions. Neither intelligence committee saw fit in the painful aftermath of the attacks, however, to immediately examine what the Intelligence Community had done, or failed to do, prior to the attacks. The Speaker of the House asked HPSCI Chairman Porter Goss (R-FL) to undertake a quiet probe of these issues, but for the most part, both committees focused on what could or should be done to prevent more attacks in the future.

In the fall of 2001, the HPSCI held a series of open hearings on the US posture in terms of responding to the terrorist threat. It examined the role of the NSC in domestic counterterrorism policy, the federal components of homeland security, and the interaction of the Intelligence Community with state and local authorities. The SSCI, for its part, held several hearings on organizational reform of the Intelligence Community in light of the attacks. Both committees also participated in the larger efforts of their parent bodies to identify legislative changes—the Patriot Act of 2001 and the creation of the Department of Homeland Security, among others—that would improve the ability of the United States to predict and thwart terrorist acts.

At the beginning of 2002, however, the leadership of both committees decided it was time for them to formally assess what had happened within the Intelligence Community. To accomplish this, the committees, for the first time in their history, agreed to conduct a joint inquiry, using a separate staff of 25 professionals hired to do the investigation. While the staff of the joint inquiry would receive guidance from and support the needs of the majority and minority on both oversight committees, its work would be separate from the other work of the oversight committees. The investigation would encompass all of the agencies within the Intelligence Community and would attempt to identify what they had known about the 9/11 attacks, including the perpetrators, and what they had done with such information.

Over the course of the inquiry, the committees held nine joint hearings in open session and 13 in closed session. Its staff reviewed more than 500,000 pages of documents and interviewed more than 300 witnesses. The 422-page report of its investigation was published in December 2002.⁴⁶ While disagreement was evident in certain of the nine additional views filed to the report, no member of either committee formally voted against it. (A discussion of the

⁴⁶ Senate Select Committee on Intelligence and House Permanent Select Committee on Intelligence, *Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001*.

findings of the joint inquiry with respect to the Agency's performance is found in chapters 7–9.)

Criticism from the 9/11 Commission and an End to Term Limits: 2004

In its final report, issued in July 2004, the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) issued a scathing indictment of the existing oversight arrangements. Finding that congressional oversight of intelligence had become “dysfunctional,” the commission said that unless changes were made, “the American people will not get the security they want and need.”⁴⁷ The commission went on to recommend either a joint committee on intelligence modeled on the Joint Atomic Energy Committee be created or a single committee in each house that had the power both to authorize and appropriate. It also recommended that whatever arrangements may be adopted, the oversight committees should be smaller and that term limits for their members be eliminated.⁴⁸

In the wake of such criticism, the leaders of both Houses called for internal reviews of their respective committee structures. In the end, however, there was no sentiment in either house for the commission's principal recommendations: a joint committee on intelligence or a committee with the combined power to authorize and appropriate. Both bodies did, however, ultimately drop the term limits for members who served on the Intelligence Committees.⁴⁹ From here on, service on the two committees would be indefinite, subject to the same vagaries as service on other congressional committees.

In addition, the Senate resolution provided that at the start of each Congress the Senate majority and minority leaders, not the respective party caucuses, would choose the chairman and vice chairman of the SSCI. While this change had not been part of the 9/11 Commission's recommendations, it was explained in terms of reducing the partisanship associated with these appointments. The Senate also reduced the number of members on the SSCI to 15 (its original number) and established within the SSCI a subcommittee on oversight.

⁴⁷ *9/11 Commission Report*, Authorized Edition, Norton paperback, 419–20. Although the commission did not fully explain why it had found that congressional oversight of intelligence had become “dysfunctional,” it is likely that members found that intense partisan divisiveness had come to infect the work of both committees. See “Author's Commentary” at the end of this chapter.

⁴⁸ *Ibid.*, 420–21.

⁴⁹ S. Res. 445, 108th Cong., 2nd Sess., 2004; H. Res. (get cite)

AUTHOR'S COMMENTARY

What Changed When the Select Committees Were Created

As the text of this chapter indicates—and the point is reinforced repeatedly in the balance of this study—virtually everything changed once the select committees were created, from legislative initiatives affecting the Agency, to program and budget reviews, to oversight of its activities. But the fundamental thing that changed was the nature of the relationship between the Agency and the Congress.

Instead of having overseers—both members and staff—who generally saw their responsibility for the Agency as an additional duty, the Agency now had congressional overseers for whom responsibility for the Agency (and the Intelligence Community) was their exclusive focus. Not surprisingly, far more time and energy were devoted to assessing the Agency's needs and evaluating its activities, and there were more of them (both members and staff) to do it. A capability was put in place that had not existed before, and this enabled the committees to undertake many things—legislation, budget reviews, oversight inquiries—that heretofore had exceeded their ability to accomplish. This, in turn, forced the Agency itself to devote far more time and energy to managing its side of the relationship.

While the chairmen and ranking minority members (on the SSCI, its vice chairman) of the select committees continued to be the focal points for DCIs to work with, their obligations (keeping the committees “fully and currently informed,” for example) now applied to the committees as a whole. Moreover, the committees insisted on access to Agency records and personnel to carry out their responsibilities as well as to document Agency activities. The era of cozy tête-à-têtes with the chairmen of their subcommittees was gone forever.

This situation had both advantages and disadvantages for the Agency. On the positive side, assuming it could prove itself, it would have stronger, more credible advocates in Congress than it had had under the old system. Assuming the committees took their responsibilities seriously and worked constructively with the Agency to solve its problems (both with legislative authority and with funding), the Agency might be able to accomplish things it could not have accomplished before. On the negative side, it was clearly going to have to expose more of its information to a larger audience on the Hill. This would not only increase the risk of its disclosure but also provide far more opportunities for Congress to second-guess what the Agency was doing. For years, other departments and agencies had complained of congressional “micromanagement,” but it was a problem that, until now, CIA had managed to avoid.

But now, as the oversight process grew more intrusive and complex over the last quarter of the 20th century, CIA went from an agency with cursory oversight by the Congress to perhaps the most scrutinized agency in the executive branch. Whether this increased attention on balance contributed to or detracted from the Agency's ability to perform its mission is for others to analyze.

The Joint Committee Solution

Even after each house established the select committees on intelligence in the mid-1970s, the joint committee idea never completely went away but rather found different advocates. Now those who espoused the idea were members who favored less oversight rather than more. But those who held such views never commanded enough support in either house to constitute a significant challenge to the select committee arrangement, and the Agency itself never pushed for such change.

Why this proved to be the case may need explaining. While separate oversight committees in the House and Senate, both with relatively large staffs, pose certain practical problems for the Agency—problems that having to deal with one committee rather than two would seemingly ameliorate—the joint committee arrangement would have different, perhaps more serious problems.

On the plus side (from the Agency's standpoint), fewer people would presumably have access to its information, reducing the potential for leaks. There would also, presumably, be fewer demands made upon the Agency and fewer egos (at both the member and staff level) for the Agency to satisfy.

But having only one committee to deal with would necessarily mean putting the Agency's eggs in one basket. So long as the joint committee were supportive—both in terms of its operational activities and its resource needs—the relationship would work to the Agency's advantage. But, inevitably, if things stayed this way for long, calls would again be heard for oversight reform. The committee had been co-opted, many would say. On the other hand, if the relationship should sour, there would be nowhere for the Agency to turn. What the joint committee said and did would be the final word.

Having two committees involved in the Agency's affairs not only brings a natural check and balance to the day-to-day work of each committee—neither wants the other to see it as uninformed or arbitrary—it also provides an avenue of appeal for the Agency when it believes its interests are being slighted by one of the two committees. Assuming it can make its case to the “friendlier” committee, chances are that it can reach some kind of an accommodation that protects the Agency's equities in the issue at hand.

Having committees in both houses also gives members of both bodies who are not on the oversight committees assurances that the two committees have sorted issues out before matters come to floor, including funding for the Agency. Legislative proposals from a joint committee do not provide that level of confidence. Members do not know the extent to which their side has played in the legislation or even if it reflects the views of their members. That is why most joint committees are not given legislative authority but are set up to “study” an area of mutual concern. If they wish to propose legislation, they have to work through the standing committees of jurisdiction. If a joint committee on intelligence were to be created, it would necessarily need legislative authority, but its bills would not carry the same weight with the rank and file of Congress as those produced in the “normal” system.

Finally, by virtue of the Senate’s constitutional responsibilities, there are some functions that the SSCI has that could not migrate to a joint committee. For example, only Senate committees can “advise and consent” on presidential nominations. A joint committee could not hold confirmation hearings for the DNI or other officials within the Intelligence Community. Similarly, only the Senate can ratify treaties. The longstanding role of the SSCI in providing advice to the rest of the Senate on the ability of the Intelligence Community to verify international treaties could not migrate very well to a joint committee.

Thus, from the creation of the select committees until 2004, the idea of creating a joint committee to replace the two select committees never gained much traction in either house of Congress or at the Agency itself. Ironically, when the 9/11 Commission offered the idea again in 2004, it did so as a means of strengthening the oversight being provided by the select committees, oversight that it now found had become “dysfunctional,” that is, partisan and ineffectual. (See chapters 7 and 8.) Despite the commission’s unusually harsh criticism, however, neither House showed interest in its recommendation. It was still not apparent to either body that a joint committee offered a better solution.

Term Limits for Members of the Select Committees

Until 2004, members of the select committees served fixed terms. Initially, the principal rationale for this policy was to prevent members of the oversight committees from being “co-opted” by the agencies they were supposed to oversee. A secondary purpose was to expose more members of Congress to the work of intelligence and dispel the notion that oversight would continue to be limited to a select few.

Over time, however, it became increasingly apparent that term limits were having a deleterious effect on the expertise of the committees and their respec-

tive staffs. Members who were able to achieve a working mastery of the subject were forced to leave the committees just when they had begun to be effective. Others, recognizing that their time on the committee was limited and that they were not destined to play a leadership role during this period, never tried to master the subject. Moreover, the turnover of members meant a turnover of staff, especially when committee leaders, who had done most of the hiring, left their positions. While both committees over their history made an effort to retain valued staff, even when their political mentors left, it was often difficult to effect such a transition.

While removing term limits had been a frequent topic of discussion on both committees, it was not until 2004, when the 9/11 Commission recommended they be abolished, that their parent bodies took such action. Removal of term limits will not, in and of itself, make members instant experts on intelligence, but it should over time make them more knowledgeable of the Agency's activities and more appreciative of its needs. It should also lead to greater continuity on their professional staffs.

At the same time, with fewer members serving on the two committees, there will be reduced awareness within their parent bodies of how the committees are conducting themselves. Over time, this could lead again to mistrust and resentment, especially if the rest of Congress should find itself shut out of the Agency's work altogether. While oversight of the Agency's operations necessarily should rest principally with the select committees, the Agency should continue to meet the legitimate needs of other committees for intelligence analysis. Otherwise, there will be problems.

The Impact of Personalities, Attitudes, and Circumstances

As this chapter indicates, the period from the creation of the select committees until 2004 was a period that saw the proliferation of laws and regulations governing the oversight relationship. Nevertheless, personalities, attitudes and circumstances often continued to determine how the relationship played out in practice.

The creation of the select committees in the mid-1970s, for example, took very different routes in the Senate and House, largely because of the experience each body had had with its respective investigating committee. The resolution creating the SSCI was brought to the floor soon after the Church Committee had issued its final report and passed by a substantial, bipartisan vote. A core group of both members and staff moved from the Church Committee to the SSCI, giving it immediate expertise and continuity in dealing with the issues the committee had identified. The House, on the other hand,

did not consider the resolution creating the HPSCI until July 1977, a year and a half after the Pike Committee had disbanded, and did so only then because House Speaker O’Neill decided that a House counterpart to the SSCI was needed. House leaders wanted to stay as far away from the Pike Committee model as possible, and no members or staff from the Pike Committee moved to the new committee. But this meant the new committee had to build itself from scratch.

Both the Senate and the House leadership, in fact, were concerned that the acrimony and partisanship that had characterized the work of the investigating committees not be carried over to their new oversight committees. They also recognized that oversight of the Intelligence Community was never going to work if the committees did not protect the information that was shared with them. It was especially important that the new committees get off to the right start, with leaders who would set an appropriate, bipartisan tone. Accordingly, the first chairmen appointed to each committee were seasoned members with reputations for bipartisanship and prudence: Inouye at the SSCI and Boland at the HPSCI. Both indicated early on their intent to carry out their work in a businesslike fashion, avoid partisanship and sensationalism, and protect the secrets that were entrusted to them.

The change in administration that occurred at roughly the same time helped get things off on the right foot. Senior members of the Carter administration, notably Vice President Walter Mondale, had been instrumental in the creation of the SSCI and were proponents of greater congressional oversight. Furthermore, neither the new president nor his choice as DCI, Stansfield Turner, had experienced first hand the acrimony and frustrations of the Church and Pike investigations. Thus they were able to come to their positions (committing to the new oversight arrangements in Congress) unburdened personally by the experience of the recent past.

The SSCI, for the reasons noted above, was quicker off the mark. It had a substantial agenda left over from the Church Committee inquiry and also had responsibilities as a Senate committee—particularly advising the Senate on the ability of the Intelligence Community to verify arms control treaties—that at times necessitated a degree of involvement its House counterpart did not have. But both committees in their early years managed to carry out their responsibilities in workmanlike fashion, putting through an intelligence authorization bill each year as well as other legislation (for example, the Foreign Intelligence Surveillance Act of 1978) pertaining to their area of jurisdiction. Oversight inquiries took place behind closed doors, with few if any leaks of classified information. DCI Turner took seriously his obligation to consult and cooperate with them.

The HPSCI particularly benefited from the continuity in its leadership. Boland served as its chairman for eight years, his entire tenure on the committee. Most of the staff that he assembled at the beginning stayed with him, allowing the committee to overcome its initial deficit in staff expertise. There was also a high degree of staff continuity on the SSCI, although the leadership of the committee changed hands several times during Boland's tenure on the HPSCI. Senator Inouye left after two years, succeeded by Birch Bayh (D-IN), and when the Senate changed hands in 1980, Senator Goldwater took charge for the next four years. Perhaps at no time during the history of the oversight committees did personality and circumstance make such a difference.



Senator Barry Goldwater. Although he opposed the establishment of the Senate Select Committee on Intelligence, he served as the committee's chairman between 1980 and 1984.

(US Senate Historical Collection)

Goldwater, by this point, was 71 years old, a cantankerous veteran of 24 years in the Senate. He had run for president against Lyndon Johnson in 1964 and had been soundly defeated. He had also served on the Church Committee, where he had been an outspoken defender of the Intelligence Community, often taking issue with the committee's chairman. He had actually opposed the creation of the SSCI during the Senate's floor debate but accepted appointment to it once it was established. Even after he became chairman, however, he would offer the view (much to his staff's chagrin) that the committee was not needed.

With his appointment as SSCI chairman assured by the 1980 election, Goldwater urged President-elect Reagan to appoint Goldwater's own candidate, ADM Bobby Ray Inman, to the DCI's position. But Reagan had promised that to his campaign manager, New York lawyer and former Securities and Exchange Commission chairman, William O. Casey. Goldwater did not like it, but he accepted it. Inman was named Casey's deputy.

Casey had been in the OSS during World War II but had had limited exposure to intelligence activity since then. During the tumultuous decade of

the 1970s, he had been practicing law. He and Goldwater were both hard-line anticommunists intent on rebuilding the military and intelligence communities, which they believed had suffered during the Carter years. But from the start, relations between them were strained. A few months after the Senate confirmed Casey, information came to light that he had withheld relevant information during the confirmation process. Goldwater investigated. Then came the appointment of Casey's crony, Max Hugel, as the DDO. Goldwater was outraged, and Hugel was later forced to resign.

Casey knew he was obliged to deal with the oversight committees, not only because the law required it, but because there were things he wanted from the Congress, such as funding and legislation. But he never liked this part of his duties, seeing the committees as obstacles to the president's ability to carry out his responsibilities as commander-in-chief and principal arbiter of US foreign policy. While he paid lip service to the oversight process, he came across as less than candid in his dealings with the committees. As one member later put it, "Casey treated us like mushrooms. He kept us in the dark and fed us manure."⁵⁰ Others complained they had to pull information from Casey. "He wouldn't tell you if your coat was on fire," one later commented, "if you didn't ask him."⁵¹ Even when Casey did respond to members' questions, his answer often came in the form of an infuriating mumble, deepening their impression that he was trying to keep them in the dark. Below the surface, many perceived contempt, both for themselves and their respective institutions.

Goldwater, nevertheless, sought to work with Casey, in particular when it came to their shared concern that communist regimes were getting footholds in several Central American countries. When the HPSCI became disillusioned with the covert action program supporting the contras in Nicaragua during the early 1980s it had been Goldwater who took up the administration's cause and sought to moderate the cuts made to the program.

In April 1984, however, it came to light that the Agency had, as part of its covert operation in the country, mined the harbors of certain Nicaraguan ports in order to create economic problems for the Sandinista regime. Goldwater regarded this as an act of war and was outraged that Casey had not notified the committee before undertaking it. In fact, as the record showed, Casey had mentioned it in testimony before the committee but no one picked up on what he had said. In all probability, no one had understood it. In any event, as far as Goldwater was concerned, notice to the committee had been insufficient. Casey was forced to make an official apology and agreed to notify the com-

⁵⁰ CIA draft study, Vol. III, 54–55.

⁵¹ Smist, *Congress Oversees*, 214.

mittee of any significant new activity undertaken pursuant to a previously reported covert action finding.

When Goldwater left the SSCI chair in 1985, to be replaced by another Republican, David Durenberger (MN), Casey's relationship with the committee changed, but did not improve. In particular, Durenberger's penchant for talking with the press—sometimes criticizing Casey personally, sometimes dealing with highly classified topics—led to frequent clashes between the two. By this point, Casey's own reputation for obstinacy and obfuscation was firmly entrenched on the committee.

Although impossible to prove at this juncture, it seems likely that Casey's contempt for the oversight process, as well as his inability to work with the leaders of the oversight committees, were factors that led him to allow the NSC staff at the Reagan White House to undertake the sorts of activities that eventually came to be known as "Iran-contra." When the Congress, at the initiative of the oversight committees, foreclosed further assistance to the contras in 1984, Casey supported the clandestine White House effort to circumvent the restriction by raising funds from third-party donors. Similarly, the White House decision not to tell the committees of the arms sales to Iran in 1985–86 was likely made because Casey believed they would oppose the effort. Indeed, if Oliver North's 1987 testimony to the Iran-contra committees is true, Casey had known that the proceeds generated by the arms sales had been diverted to the contras. Moreover, according to North, Casey had begun looking at the arms sales as a way of funding covert action programs without going to the committees at all.

Iran-contra stands as the most serious breach of faith with the congressional oversight process that any DCI has been a party to. Ultimately, the scandal led to the far-reaching changes in the oversight system (see chapters 5 and 9). It happened principally because Casey saw the committees as impediments to the president's foreign policy objectives rather than as collaborators in that process. Regrettably, he died in February 1987 before he could fully explain his actions.

Relations between the Agency and its congressional overseers returned to an even keel in the wake of Iran-contra, largely because of the personalities and circumstances of the individuals who assumed the key roles on each side. William Webster, a former federal judge who had headed the FBI for 10 years, became DCI in May 1987. His background was in law enforcement, and he had a reputation for impeccable integrity. For most members, his pledge during his confirmation hearings to work with the oversight committees rang true. Assuming the chair of the SSCI at that juncture was David Boren (D-OK), a conservative who had previously been governor of the state. Not only did he come to the Senate with a sense of deference toward executive authority, he

prided himself on being a consensus-builder. In the tradition of the late Senator Arthur Vandenberg, Boren believed that partisanship in matters of national security should stop at the water's edge. At the HPSCI, Louis Stokes (D-OH) took the reins and, like Boren, was deferential to executive authority, having earlier served as mayor of Cleveland. Also like Boren, his leadership style was nonconfrontational.

Boren served as SSCI chairman for six years, allowing him to compile a record of legislative achievement unmatched by any of his predecessors (see chapter 5). Not only did he push through legislation remedying the shortcomings in the oversight process revealed by Iran-contra but also legislation essentially revalidating the roles and missions of US intelligence agencies in the aftermath of the Cold War. While Boren did support modest budget cuts at the end of his tenure, they were nowhere as severe as many in Congress were urging at the time. Boren's achievements owed much to his talent (and his penchant) for consensus-building and helped him hold the chair for six years.

On the HPSCI, no chairman after Boland served more than two years in the position until the tenure of Porter Goss, which began in 1997. While this meant less continuity in leadership on the House side, all of those appointed in the intervening years—Lee Hamilton (D-IN), 1985–86; Stokes, 1987–88; Anthony Beilenson (D-CA), 1989–90; Dave McCurdy (D-OK), 1991–92; Dan Glickman (D-KN), 1993–94; and Larry Combest (R-TX), 1995–96—were political moderates and less partisan than most of their House colleagues.

Also, with the exception of McCurdy, none had a confrontational style. McCurdy was seen as rising star in Democratic political circles. Bright, young, and politically ambitious, he had served on the HPSCI from 1983 to 1985 and was reappointed in 1989, serving as chair of the oversight and evaluation subcommittee. When he became chairman in January 1991, he promised to reinvigorate and intensify the committee's oversight. In fact, McCurdy followed through on his commitment, instituting a far more aggressive brand of oversight than his predecessors. He decreed that all witnesses coming before the committee would be sworn and that tardiness would not be tolerated. Above all, he expected candor. He made it clear he did not want to spend time pulling answers from witnesses or interpreting what they had said. But, to many outside observers, his apparent political ambitions tended to detract from his effectiveness.

In September 1991, McCurdy announced that he was considering a run for the presidency in 1992. A few weeks later, he injected himself into the Gates confirmation process by telling the *Washington Post* that Gates should withdraw his nomination. (SSCI Chairman Boren had already announced his sup-

port for Gates.) Then, on 18 October, McCurdy announced he would not run for president after all, committing instead to supporting the candidacy of former Arkansas governor, Bill Clinton. In fact, during his second year as HPSCI chairman, McCurdy spent a great deal of time campaigning for Clinton, apparently in hopes of winning the defense job in a new administration. But once elected, Clinton settled on McCurdy's House colleague, Les Aspin, instead. While McCurdy was rumored to be a candidate for the DCI position, he chose to publicly take himself out of the running before the job was even offered. In January 1993, Kansas congressman, Dan Glickman replaced him as HPSCI chairman, and McCurdy left the committee. Clinton announced his intent to nominate R. James Woolsey for the DCI position.

On the Senate side, Dennis DeConcini (D-AZ) replaced Boren as chairman of the SSCI. DeConcini was a lawyer by training and a former attorney general for the state of Arizona. At the time of his appointment, he had served on the committee for six years, leaving him but two years as chairman. He took the reins of the SSCI not only at the start of a new administration but also at a time when his party caucus was calling for cuts in intelligence spending in the wake of the Cold War (see chapter 6).

Woolsey, himself a lawyer in private practice with considerable experience in government, resisted such cuts, refusing to compromise what had been requested in the administration's budget. This got him off on the wrong foot with DeConcini, and their relationship continued to deteriorate for the entire two-year period that each held their respective positions, becoming public and increasingly strident in the aftermath of the Aldrich Ames espionage case (see chapter 10). Woolsey prided himself on knowing the Hill and how to work with members. He had been there before. But this sense of self-assurance came across as arrogance to many on the Hill. DeConcini found him uncompromising, stubborn and, at times, condescending. He particularly resented Woolsey taking his complaints to other senators. Woolsey, for his part, found DeConcini antagonistic and meddlesome, and too easily provoked by his (hostile) staff. While his relationship with Glickman was more cordial, Woolsey's confrontational style created obstacles for him at the HPSCI as well. In the end, he resigned after less than two years as DCI, his inability to work well with the oversight committees distinctly tarnishing his tenure.

When the Republicans won both houses in the 1994 off-year elections, new chairmen took the reins at each of the intelligence committees: Arlen Specter (PA) at the SSCI and Larry Combest (TX) at the HPSCI. Specter was also a lawyer and former state attorney general, who, like DeConcini, had served for six years on the SSCI. His would necessarily be a two-year term. Combest was a low-key conservative—a farmer and businessman—who had served on the staff of Senator John Tower (R-TX) during the 1970s.

With Woolsey's resignation, President Clinton initially offered the DCI's job to John Deutch, then serving as deputy secretary of defense, but Deutch preferred to stay where he was. When Clinton's second choice, LTG Michael Carns, fell by the wayside, however (see chapter 11), Deutch agreed to accept the job, after obtaining a commitment from Clinton that he would be a member of the cabinet.

Deutch had been a chemistry professor and former provost at the Massachusetts Institute of Technology and had served on numerous governmental panels before going to the Pentagon. In his two years as deputy defense secretary, he had established himself as a tough, knowledgeable manager, and the leaders of both intelligence committees welcomed his nomination in the wake of Woolsey's turbulent tenure.

Upon taking office, Deutch was forced to deal with the issue of whether the Agency had deliberately withheld pertinent information from the committees regarding one of its assets in Guatemala (see chapter 8). The incident had occurred before Deutch became DCI, and no evidence was found indicating the withholding had been deliberate. Nevertheless, Deutch sought to placate the committees by disciplining several of the CIA employees involved and instituting new procedures to govern the recruitment of assets with records of human rights abuse.

While these actions may have helped Deutch assuage the oversight committees they were not well received by many at the Agency. Complaints from employees regarding his detached management style also began to reach the committees. When Nora Slatkin, who was Deutch's choice for the number-three position at the Agency but who had little previous intelligence experience, began to falter in carrying out the day-to-day business of the Agency, word of her difficulties also leaked to the press. Deutch's derogatory comments to a reporter about the intellectual quality of the Agency's workforce were also made public.⁵² Deutch, it appeared, did not seem happy with the Agency he had agreed to lead.

While this attitude undermined his credibility with some on the Hill, the leaders of the two oversight committees, Specter and Combest, continued to accept him at face value. In fact, Specter—a former prosecutor who relished intellectual combat in the public arena—opened a far greater percentage of the committee's deliberations to the public during his two-year tenure as chairman than any of the Agency's overseers in Congress had ever done. While most were not "headline-grabbers," Deutch was required to testify in public session more than any DCI before him. Deutch lasted only a year and a half in the job,

⁵² Tenet, *At the Center of the Storm*, 4.

worn down not so much by his relations with Congress as by the situation he found himself in at the Agency, where he faced not only the increasing discontent in the workforce but had to contend with such highly contentious but unfounded charges that the Agency had been involved in selling crack cocaine in Los Angeles (see chapter 8).

Once again, in early 1997, the departure of a DCI roughly coincided with new leaders taking the reins at the two intelligence committees: Richard Shelby (R-AL) at the SSCI and Porter Goss at the HPSCI. Shelby, a lawyer by training, had served on the committee for two years prior to being appointed chairman. Goss, a former businessman, had served as an Agency case officer during the early part of his professional career, making him the only former CIA employee ever to become one of its principal overseers.

To replace Deutch, Clinton nominated the man who had served as his national security adviser during his first term, Anthony Lake, and from the outset, Shelby signaled his intent to cause problems for the nominee. Then-DDCI Tenet recounts in his memoir a conversation he had with Shelby shortly after Lake's nomination had been announced. "George, if you have any dirt on Tony Lake," Shelby told Tenet, "I'd sure like to have it." The request, according to Tenet, left him speechless.⁵³

The confirmation hearings that followed were the most baldly political the committee had ever conducted (see chapter 11). When Lake withdrew after losing his patience, it fell to Tenet as Clinton's second nominee to cope with the change in political climate at the SSCI. While Shelby did not attempt to stall Tenet's nomination as he had Lake's, it soon became clear that he intended to position himself as the Agency's foremost critic. Many if not most of the episodes the committee looked into during Shelby's tenure (the alleged involvement in drug sales in Los Angeles, the discovery that former DCI Deutch had kept classified information on his home computer, the accidental bombing of the Chinese embassy in Belgrade) had little to do with the issues that mattered as far as the long-term future of the Agency was concerned but did give Shelby's committee opportunities for high-profile "show trials." Even issues like the failure of the Intelligence Community to predict the Indian nuclear test in 1998 (see chapter 7), which might have presented an opportunity for the committee to exercise useful, in-depth oversight, were treated as occasions for press conferences rather than prompting a serious, independent investigation by the committee. As one Agency officer close to the process later observed, "It was a game of 'pin the tail on the [Democratic] donkey' in those days."⁵⁴

⁵³ *Ibid.*, 6.

⁵⁴ Ott, "Partisanship and the Decline of Intelligence Oversight."

Partisanship of this kind was far from unknown on Capitol Hill, but it had not been commonplace on the SSCI, and in 2000, Shelby took a further step by publicly calling for Tenet to resign. The only other time this had happened in the Agency's history had been when Goldwater suggested that Casey should be replaced over the Hugel appointment (see chapter 10). (There had been other occasions when the chairman of an oversight committee had publicly criticized a DCI.)

Some attributed Shelby's animus toward Tenet in part to an incident that had occurred at the dedication ceremony on 26 April 1999, when the Headquarters compound was formally named the George Bush Center for Intelligence. Former OCA Director John Moseman recalled that about an hour before the ceremony was to begin he received a telephone call from Shelby's staff angrily demanding that Shelby be accorded a speaking role and place on the dais.

By that point it was too late to accommodate them. We already had the program set. Only President Bush, the DCI, and Congressman Portman [the original sponsor of the legislation] had seats on the stage. But yes—they were quite upset about it. Was it the reason he called for George [Tenet] to resign? No, I don't think so—but it probably contributed to it.⁵⁵

For Tenet, having his relationship with Shelby deteriorate to this point was both troubling and puzzling:

As a former Hill staffer, I understood the need to tend to Congress. It is important work. I believe in thorough and thoughtful oversight; it distinguishes this country from all other countries in the world. But I occasionally found myself wishing committees had focused more of their time on the long-term needs of U.S. intelligence rather than responding to the news of the day.⁵⁶

For whatever reason, Shelby proved unreceptive to Tenet's overtures. Moseman later recalled,

There wasn't much we could do about it. We just had to keep at it. There were things we had to deal with [Shelby] on and we continued to do it on a professional basis.⁵⁷

A year and a half after the dedication ceremony, the Republicans won back the White House in the 2000 election, and the issue of whether the incoming

⁵⁵ Moseman interview, 28 December 2006.

⁵⁶ Tenet, *At the Center of the Storm*, 35.

⁵⁷ Moseman interview, 28 December 2006.

Bush administration should keep Tenet on came to the fore.⁵⁸ Shelby publicly urged Bush to put “his own person there” rather than hold Tenet over as DCI, but other prominent Republicans—notably, former DCI Gates and HPSCI Chairman Goss—urged Bush to keep Tenet on. Indeed, Goss had often defended Tenet in the face of Shelby’s public criticisms.⁵⁹

When Bush chose to ignore Shelby’s counsel, the senator’s calls for Tenet’s resignation abated. In May 2001, after control of the Senate shifted back to the Democrats because a Republican senator changed his party affiliation, the SSCI gained a new chairman, Bob Graham (D-FL), who was neither as partisan as Shelby nor as confrontational.

But Shelby remained as vice chairman and after the terrorist attacks of 9/11, which he described as a “massive failure of intelligence,” renewed his calls for Tenet’s resignation. Acknowledging there had also been successes on Tenet’s watch and that he liked Tenet at a personal level, he told the *New York Times* on 10 September 2002, that “you could do better . . . get somebody stronger.” Even after rotating off the SSCI in December 2002, Shelby continued to call for Tenet’s resignation. Asserting his oft-stated position that there had been more intelligence failures on Tenet’s “watch” than that of any DCI in history, he told CNN (*American Morning*, 17 July 2003) that it was time for him “to walk the plank.”

Relations with HPSCI Chairman Goss were markedly different during this period, as they were with the two appropriations committees that looked after the Agency’s resource needs. Indeed, Tenet increasingly turned to the appropriators for support, according to Moseman, in the face on the difficulty he was having with the SSCI.⁶⁰

By the time Republicans regained control of the Senate in January 2003, Shelby’s tenure on the SSCI had expired, and Pat Roberts (R-KS), who had served on the committee for four years, became its chair. By this point, it was clear that Tenet remained the Bush administration’s choice for the job, and with war in Iraq in the offing, Roberts seemed to want a new relationship with the DCI, and Tenet reciprocated.

By the fall of 2003, however, it was clear to both Roberts and Goss—after no weapons of mass destruction (WMD) had been found in Iraq—that there had been an intelligence failure of serious proportions (see chapters 7 and 8 for more detail). The intelligence assessments prepared before the war that

⁵⁸ Sciolino, “As Bush Ponders Choice of Intelligence Chief, Some Suggest That No Change Is Needed.”

⁵⁹ Risen, “CIA Chief Is Asked to Stay On and Agrees.”

⁶⁰ Moseman interview, 28 December 2006.

had provided the Bush administration's principal justification for going to war had proved wrong. The more the committees looked into it, the more vocal (and critical) their respective chairmen became.

At the same time, Roberts and Goss were confronted with an unprecedented political situation. The 2004 presidential campaign was already in full swing, and it was apparent that the administration's use of intelligence to justify the war in Iraq would be an issue, perhaps even a decisive one, in the election. Thus, for the first time in their history, the committees were seized with an issue that had the potential for determining a presidential election. This was not lost upon Democrats on either committee. On the SSCI, Democrats pressed for committee investigations of both the Intelligence Community and the administration's use of intelligence to justify the war. On the HPSCI, Democrats simply pressed for a committee investigation of the intelligence failure.

After months of partisan bickering—during which time the Senate majority leader actually forbade the SSCI from continuing with its investigation—its leaders announced in February 2004 that the committee would carry out its investigation in phases, beginning with the performance of the Intelligence Community. The performance of the administration would be deferred until the initial phase was completed.⁶¹

The HPSCI undertook no investigation at all, despite the obvious significance of the intelligence failure that had occurred and the constant prodding of its Democratic members. Indeed, in the fall of 2003, Goss's stewardship of the committee, in the eyes of most observers, suddenly became far more partisan. Since taking over in 1997, he had run the committee in a relatively bipartisan, nonconfrontational way. Most of his public statements were supportive of the Agency, and the committee's work was carried out in concert with the minority. Now he seemed to be ignoring them.

Goss had already announced by this point that he would be retiring from Congress at the end of 2004. There was also speculation after the Iraqi intelligence failure that Tenet would not remain in the DCI's position much longer. In any event, in early 2004, Goss began making uncharacteristically partisan public statements, both attacking the national security record of the putative Democratic presidential nominee and focusing blame for the mistakes on Iraq on the Intelligence Community rather than the administration. Some, including SSCI Vice Chairman Jay Rockefeller (D-WV), apparently believed Goss was angling for the DCI's job should Tenet leave. Indeed, once Tenet

⁶¹ For a detailed description of this period, see Snider, "Congressional Oversight of Intelligence After 9/11," published as chapter 14, *Transforming U.S. Intelligence*.

announced in the summer of 2004 his intent to resign, Rockefeller went so far as to warn the Bush White House not to nominate Goss as his replacement.⁶²

Realizing that the votes for Goss were there notwithstanding Rockefeller's opposition, Bush nominated him anyway. While Rockefeller and others on the committee attempted to make an issue of Goss's earlier political statements during his confirmation hearing (see chapter 11), focusing on the issue of whether as DCI he would be politically independent of the White House, the issue never found resonance within the body as a whole. The Senate confirmed Goss, 77–17.

Notwithstanding, 2004 had been a low-water mark in the history of the two committees. To a degree, politics had always affected the way Congress carried out its intelligence oversight, but for the first 50 years of the Agency's existence, the oversight was relatively bipartisan. That began to change in the SSCI in 1997 and in the HPSCI in 2003, ultimately coming to a head in 2004 and leading the 9/11 Commission to conclude that Congress's oversight of intelligence had become "dysfunctional." In hindsight, this appears to have happened for a variety of reasons. In some cases, members appointed to the oversight committees, and to their chairs, were excessively partisan in their orientation. Some seemed to regard oversight of the intelligence function as no different than any other kind of oversight Congress exercised. The leaders of the two intelligence committees also found themselves in uniquely difficult circumstances during this period, coming under pressure from the White House and their respective leaders and caucuses to protect their party's political interests.

Whatever the reasons, the oversight process suffered as a result. Neither intelligence committee was able to get as much done. Other committees stepped into the void. The Agency itself increasingly turned to the appropriators, where it found a more sympathetic ear and a more reliable partner. The purpose of oversight also became skewed. Rather than a constructive collaboration to tackle genuine, long-term problems, oversight became a means of shifting political blame, as the circumstances required, either to the incumbent administration or away from it.

When any intelligence agency perceives this is happening, communications will suffer. No longer confident how the committees will use the information they are provided, agencies become more wary of what they share with them. The committees will still get what they ask for and are entitled to, pursuant to existing law, but the enthusiasm of senior agency officials for coming to the committees with their problems will inevitably wane.

⁶² Rockefeller press release, 25 June 2004.

Fortunately for the Agency, politicization of the oversight process has not been the norm. Even when it has happened, members have usually acted quickly to “right the ship.” Most members of the House and Senate, in fact, want their intelligence committees to operate on a bipartisan basis. They do understand the problem in doing otherwise. Perhaps the best indication of this attitude was evident in the Goss confirmation process. Had Goss not chosen to abandon his previously bipartisan approach to oversight during the last year of his tenure, his nomination would have sailed through the SSCI. As it was, the Senate confirmed him by a large margin, largely cause of that earlier record of bipartisanship.

As it happened, Goss was the only congressional overseer of the Agency ever to become its director. With his assumption of the DCI’s position in September 2004, the Agency’s relationship with Congress had in a sense come full circle. As it happened, Goss would also be the last DCI. He would still head the Agency but Congress would no longer look to him as the head of US intelligence. That in itself would foreshadow a change in the Agency’s relationship with the Hill.

