

**SUPERVISING AMERICA’S SECRET FOREIGN POLICY:
A SHOCK THEORY OF CONGRESSIONAL OVERSIGHT**

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*You see, the way a free government works,
there’s got to be a housecleaning every now and thenⁱ*

—*Harry S. Truman*

Introduction

The framers of the Constitution established a government for the United States based on the notion of sharing powers among the three branches of government: the executive, the legislative, and the judiciary. The idea was to prevent any one branch from becoming too powerful and, as a consequence, dangerous to citizens through an abuse of authority—a core principle of American government that applies to both foreign and domestic policymaking.ⁱⁱ

This principle is put to a rigorous test in times of national emergency, when there is a tendency to concentrate power in the hands of president and other officials in the executive branch. The nation’s most egregious abuses of power have occurred under such circumstances. Examples in the modern era include the confinement of Japanese-Americans to guarded camps, as a result of an executive order from President Franklin D. Roosevelt during the Second World War; Roosevelt’s sweeping use of executive agreements to move the United States towards entry into

that war; the expansive use of the war powers by President Harry S. Truman and Dwight D. Eisenhower in the early stages of the Cold War; President Lyndon B. Johnson's misleading of the American people about the poor progress of the war in Vietnam; the preparation by the Nixon Administration of a master spy plan (the "Huston Plan") against student protesters; widespread domestic espionage by the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI) against Vietnam War dissenters; and the violation of federal statutes during the Iran-*contra* scandal, driven by a secret arms deal with Iran and an overzealous response to a left-leaning government in Nicaragua (the *contra* side of the scandal).ⁱⁱⁱ

The constitutional principle of sharing power is undergoing another severe test now, as the nation focuses much of its foreign policy energies and resources on a struggle against global terrorism that took on a special sense of urgency when Al Qaeda terrorists struck the American homeland on September 11, 2001 (known as the "9/11 attacks"). Following this tragedy, Congress granted President George W. Bush wide discretionary powers to conduct war against Al Qaeda and other terrorists around the globe. Lawmakers also provided the President with a "Patriot Act" that permitted the CIA, the FBI, and military intelligence agencies wider scope to carry out investigations and interrogations against suspected terrorists. Moreover, the Congress granted the President open-ended authority to invade Iraq, out of a concern that Baghdad might have weapons of mass destruction and ties with Al Qaeda. (Both hypotheses were soon found to be incorrect, but only have war had been launched—over the objections of the United Nations.)

Added to this climate of fear about terrorism that led to the broad grants of authority to the second Bush Administration came a series of electoral results that magnified the concentration of power into the hands of the Administration, namely, a sweep of House and Senate elections that

gave Republicans control over both the executive and legislative branches, along with the additional advantage of a conservative-leaning Supreme Court and the likelihood that the President would soon be able to augment its ideological tilt with one or more appointments to the high court. All of these events summed to a situation in which the Bush Administration has enjoyed wide leeway in its conduct of foreign affairs, far beyond what the founders would have considered prudent.

In light of these circumstances of a rising executive dominance over foreign policy, this chapter examines the efforts of Congress to maintain some semblance of constitutional balance in the domain of strategic intelligence. The guiding research question is: how well have lawmakers responded to the challenge of supervising the programs and budgets of the CIA and America's fourteen other secret agencies, providing appropriate checks against their misuse?

The Sharing of Secret Power

The duty of maintaining a check on the abuse of power within the “invisible” side of America's government is especially difficult for lawmakers, since intelligence operations are highly secretive and often quite fragile; if exposed, the consequences can entail danger and even death for U.S. intelligence officers and their foreign agents in the field. Moreover, in this hidden realm, Congress has few interest groups to rely on for information about executive branch plans, policy options, and mistakes. Nor, when it come to intelligence, is the media a consistent and reliable source of information for lawmakers about questionable agency objectives and activities —unlike other more porous government entities where beat reporters routinely walk the halls and interview program managers and their aides. To an unusual degree, Congress must rely on its own devices for tracking the secret foreign policy of the United States.

On the general subject of oversight, McCubbins and Schwartz suggest a vivid police patrolling versus firefighting metaphor.^{iv} As patrollers, lawmakers *qua* overseers regularly review executive branch programs, just as a police officer might walk the streets, check the locks on doors, and shine a flashlight into dark corners—all toward maintaining a vigilance against potential criminal acts. In contrast, firefighters classically respond to alarms after a fire has broken out. In a similar fashion, lawmakers can carry out routine but careful patrols into executive branch programs; or they can wait, then rush to the scene after an alarm sounds that a program has run afoul of the law or other societal expectations.

The research on intelligence oversight on Capitol Hill indicates that the efforts of lawmakers to patrol secret agencies has been “sporadic, spotty, and essentially uncritical.”^v The chief cause of this inattentiveness derives from the nature of Congress: lawmakers seek re-election and they usually conclude that passing bills and raising campaign money is a better use of their time than the often tedious review of executive programs—especially intelligence review, which must take place for the most part in committee meetings outside of public view. Absent public awareness, credit-claiming—vital to re-election prospects—becomes difficult.^{vi}

A recent analysis of intelligence accountability suggests a pattern in recent decades: a major intelligence scandal or failure—a shock—converts perfunctory patrolling into a burst of intense firefighting, followed by a period of more dedicated patrolling that yields remedial legislation or other reforms designed to curb inappropriate intelligence activities in the future. Sometimes the high-intensity patrolling can last for months and, if the shock was particularly strong, even years. The firestorm has subsided and reforms are in place, however, lawmakers return to a state of relative inattention to intelligence issues.^{vii} Schematically, this pattern is

depicted in Figure 1. This chapter takes the analysis a step further by more closely exploring this sequence. First, though, it is important to place contemporary efforts at intelligence oversight into historical context.

[Insert Figure 1 Here]

The Philosophical Wellsprings of Congressional Oversight

Those who founded the government of the United States were inspired by a core value: a fear of concentrated power.^{viii} “Power, lodged as it must be in human hands, is ever liable to abuse,” warned James Madison, the Constitution’s main author. In *Federalist Paper No. 51*, he offered the celebrated counsel, “Ambition must be made to counter ambition.” The greatest gift of governance given to the new nation by the founders was the set of constitutional safeguards they established to keep power dispersed. Others at the time and down through the years have similarly extolled the virtues of a separation of powers, coupled with other “checks and balances” (perhaps the most popular phrase in school civics courses).

The focus of the nation’s founders was not on government efficiency. Had that been the case, they would have placed stronger authority in the office of the presidency; or perhaps even established a monarchy, with the remarkable George Washington the first to wear the crown. Instead, they were most concerned about the question of liberty—freedom from the kind of repression that had visited the American colonies at the hand of King George III of England: taxation without representation, forceful quartering of British troops in the homes of the colonists, the yoke of unfair laws like the Stamp Act, and the impressment of sailors on the high seas. The brilliant Supreme Court Justice Louis Brandeis restated Madison’s argument for a modern audience in 1926 (*Myers vs. U.S.*), noting that the founders had sought “not to promote efficiency

but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.”

The philosophy that the chances for liberty could be improved by guarding against the abuse of power is known today as government “accountability” or, less formally, by the awkward term “oversight”—in essence, the review of government programs and activities. Aberbach provides a useful definition of oversight as a “review of the actions of federal departments, agencies, and commissions, and of the programs and policies they administer, including review that takes place during program and policy implementation as well as afterward.”^{xix} A chairman of the House committee on intelligence, Lee H. Hamilton (D, Indiana) suggests that oversight “can help protect the country from the imperial presidency and from bureaucratic arrogance . . . [and] help keep federal bureaucracies on their toes.”^x For another experienced oversight practitioner in the Senate, Wyche Fowler (D, Georgia), the objective of accountability is, simply put, “to prevent the bureaucrats from doing something stupid.”^{xi}

Lawmakers have turned to a wide array of means to monitor events in the executive branch, in an effort to ensure that the laws of the nation are honored by bureaucrats and their bosses, that the will of Congress—a 535-person surrogate for the American people—is respected, that scandals and mistakes are avoided, taxpayer monies properly expended, efficiencies encouraged, and, above all, civil liberties protected. Chief among the means of legislative review, according to a substantial body of research, are communications between the aides of lawmakers and program managers in the bureaucracy, as well as congressional hearings (open and executive session) designed to probe into government programs.^{xii} Hearings provide the an important opportunity for

lawmakers themselves to practice accountability. In hearings they are able to pose questions that solicit information regarding the faithfulness of bureaucrats to the norms of lawful behavior, efficiency, attentiveness to congressional prerogatives, and congruence with the traditions and expectations of legislative review.

Of significance in the conduct of legislative review is the attitude of the committee chair. Like other members but with more authority to set the tone and direction for a committee, the chair can play the role of critic or advocate, or a combination of both. In Hamilton's view, properly conducted accountability relies on lawmakers behaving as both "partners and critics."^{xiii} Criticism is warranted because bureaucrats are human and, therefore, fallible; so is advocacy because bureaucrats, like everyone else, need encouragement and praise. Advocacy occurs, too, because lawmakers often believe in the value of the programs they supervise and, thus, empathize with those in the executive branch who must carry out the policies established by Congress—sometimes in trying circumstances, such as gathering intelligence in hostile areas of the world.

At the heart of any discussion of accountability lies the question of how well it is performed. At one extreme, one can imagine (though, based on the research literature, it is difficult) a stalwart lawmaker fully devoted to a close inspection of executive branch programs that fall within the bailiwick of his or her oversight committee. This overseer would direct a well-qualified staff in day-to-day monitoring activities; would rarely miss an oversight hearing; would ask probing ("hardball") questions, while at the same time offering praise when warranted; would introduce thoughtful legislation to correct and improve policy deficiencies; would require strict adherence to reporting requirements established to keep Congress informed; would tirelessly

and skeptically investigate charges—even rumors—of power abuse; and would report regularly to home constituents and the broader public about the state of accountability within the specific policy domain, offering in public a critical eye or a pat on the back as the agency merited.

At the opposite extreme (more easily imagined) a slack overseer would view accountability as chiefly an annoying drain on a lawmaker’s time and energy more profitably spent on less obscure activities that might aid re-election prospects, such as authoring legislation, championing interest group objectives, and raising campaign funds; would fill staff slots guided more by considerations of patronage than expertise; would seldom attend oversight hearings and, if in attendance, would float “softball” questions destined for the center field fence; would simply advocate an agency’s point of view and lavishly fund its programs without serious evaluation; would turn the other way when bureaucrats ignored reporting deadlines; would rely on an agency’s inspector general and managers to curb, or at least respond to, scandals and policy failures; and would see no need to keep the public informed about matters of accountability.

Research across the policy board, and certainly within the domain of intelligence, indicates that the slacker’s approach has predominated. Bibby referred to oversight as Congress’s “neglected function.”^{xiv} Ogul found oversight more intermittent than comprehensive and systematic.^{xv} And an intelligence scholar concluded recently that oversight was “an aptly chosen figure of speech.”^{xvi}

From Overlook to Oversight

The subject of intelligence provides an opportunity to explore in detail the dynamics of congressional oversight within an important policy domain. In this analysis, the term intelligence

refers to America's fifteen major secret agencies and the myriad activities they carry out.^{xvii} These activities are traditionally clustered into three prominent missions: collection-and-analysis, counterintelligence, and covert action.^{xviii}

Collection-and-analysis is a phrase meant to capture, first, the modus operandi or “tradecraft” employed by intelligence officers and their agents (“assets”), as well as the use of machines (satellites, piloted and drone reconnaissance aircraft, listening and sensing devices) to gather information from around the world for the purpose of illuminating decision options available to policymakers; and, second, the insight brought to this “raw” information by trained experts or “analysts.” Counterintelligence refers to the methods used by intelligence agencies to protect their information and operations against hostile states and organizations. Examples of counterintelligence methods include the polygraphing (“fluttering”) of CIA recruits to test their allegiance to the United States; or the penetration of a foreign intelligence service with a “mole” to determine from the inside the extent of the other nation’s spying against the United States. Covert action includes secret operations—propaganda, along with political, economic, and paramilitary activities—tailored to disrupt adversaries and, to the extent possible, shape history in America’s favor, say, by assassinating a foreign leader perceived as dangerous to the global interests and security of the United States or overthrowing the government of a hostile foreign regime.

For most of the nation’s history, America’s intelligence operations enjoyed an exceptional detachment from the normal strictures of legislative accountability.^{xix} In the prevailing view, intelligence activities demanded such tight secrecy that it was better to leave the hidden side of government to the supervision of the president and his national security team. Congress initiated a modicum of accountability in 1947 when lawmakers created the CIA and small congressional

subcommittees to review intelligence budgets and programs; but these subcommittees met infrequently and were inclined to support whatever programs the Director of Central Intelligence (DCI) recommended. An occasional intelligence flap, like the Bay of Pigs fiasco (1961) or dubious CIA ties to American student groups (1966), would stir calls in Congress for less desultory approaches to accountability; yet, proposals for the establishment of full-blown oversight committees for intelligence continued to languish, unable to attract a majority vote in either chamber—until the mid-1970s.

In the final months of 1974, the *New York Times* published a series of reports on alleged intelligence misconduct, most notably spying on American citizens (Vietnam war dissenters) and questionable covert action against the democratically elected regime of Salvador Allende in Chile (suspected of Marxist inclinations and worrisome ties to Moscow). It was one thing to have the Bag of Pigs operation blow up in Cuba and quite another to be caught spying at home, raising the fear of a Gestapo within the United States. Had the *Times* only revealed the covert action in Chile, the CIA might have slipped by again with only a few complaints from selected lawmakers, and perhaps the reintroduction by Senator Mike Mansfield (D, Montana, who had risen to the position of majority leader) of his oft-proposed bill to create a standing committee on intelligence in the Senate. For most lawmakers, domestic espionage—spying on voters—was, however, a much more deeply troubling allegation, one that could not be easily dismissed. Here was a five-alarm fire and, in January of 1975, the engines revved up on Capitol Hill, with most lawmakers clamoring aboard and hanging on as Congress sped off to put out the flames.

Shock as a Stimulus for Intelligence Oversight, 1975-2004

Thirty years have passed since Congress began to take intelligence accountability more

seriously in 1975. Since then lawmakers have devoted about six years of time to intensive, retrospective (“firefighting”) investigations into intelligence controversies, as outlined below. The remaining twenty-four years (80 percent of the total) consisted of periods of patrolling, characterized by varying degrees of intensity among overseers—some of the patrolling of a high-intensive character in the immediate aftermath of “fires,” but mostly low-intensity. During this era, the domestic spy scandal revealed in late 1974 was the first intelligence alarm of sufficient shrillness to bring about a major congressional response. Several more alarms would follow in the coming decades, as outlined below.

Alarm No. 1, 1974: Domestic Spy Scandal. Congress established House and Senate investigative committees (the Pike and Church panels) that discovered extensive spying at home by the CIA, the FBI, the National Security Agency (NSA), and the Defense Intelligence Agency (DIA). The Church Committee issued massive reports critical of assassination plots and domestic intelligence operations, plus recommended the creation of permanent oversight committee in the Senate; and the Pike Committee blasted the poor quality of intelligence analysis over the years.^{xx}

Alarm No. 2, 1987: Iran-Contra Scandal. Congress established a joint investigating panel (the Inouye-Hamilton Committee) that exposed unlawful intelligence activities by the staff of the National Security Council (NSC) and the CIA, and issued a detailed report on executive branch intelligence violations of the law.^{xxi}

Alarm No. 3, 1994: Ames Counterintelligence Failure. Congress insisted on a joint executive-legislative probe (the Aspin-Brown Commission) into the Aldrich H. Ames spy case, whereby the Soviet Union had proved able to recruit an American agent high within the CIA.^{xxii}

Alarm No. 4, 2001: 9/11 Attacks. The failure of the intelligence agencies to warn the

nation about the most catastrophic foreign attack ever against the American homeland led Congress to form a Joint Committee of inquiry (the Graham-Porter Committee) and, subsequently, to urge the creation of a presidential investigative panel (the Kean Commission, in part comprised of former legislative intelligence overseers) to further examine the issue. The House intelligence oversight committee also established a special inquiry into the inadequacies of CIA human intelligence (“humint”), especially in the Middle East and Southwest Asia.

Alarm No. 5, 2003: Weapons of Mass Destruction in Iraq. In light of an erroneous intelligence prediction about the likely presence of weapons of mass destruction (WMDs) in Iraq—a National Intelligence Estimate published in October 2002—Congress supported the creation of another presidential commission (the Silberman-Robb panel) to investigate the analytic failure. Moreover, the Senate intelligence oversight committee undertook a special inquiry of its own into the faulty WMD estimate.

As indicated by the findings in Figure 2, Congress produced several key legislative proposals related to intelligence during this time span. Of the ten major initiatives shown in the figure, only one occurred outside the context of a major fire alarm response. That single exception, the Intelligence Identities Act of 1983, was the result of a conclusion reached by lawmakers (at the CIA’s urging) that a law was necessary to provide stiff penalties against anyone who revealed without proper authorization the name of a U.S. intelligence officer or asset. The rest of the oversight initiatives were the result of inquiries and the stage of intense patrolling that followed fire alarms.

[Insert Figure 2 Here]

Some of the initiatives, such as the Intelligence Accountability Act of 1980, took a

considerable amount of time for the Congress to craft—four years in this case. In this example, some lawmakers originally hoped to pass an “Intelligence Charter”—over 270 pages long—designed to provide a broad legal framework for the secret agencies. Their intention was to construct an omnibus accountability law to replace the out-of-date language of the 1947 National Security Act. This sweeping measure attracted many dissenters, however, and the bold charter proposal ultimately gave way—under the weight of effective CIA lobbying—to a three-page bill. The much shorter law still had teeth, though, and required (among other provisions) the DCI to report to the Congress *in advance* on *all* important intelligence activities.^{xxiii} The president could delay reporting in “extraordinary circumstances,” but only for a maximum of two days.

The Frequency of Intense Intelligence Accountability

The most important intelligence “wake-up call” for lawmakers in the period before the formal creation of the CIA and America’s modern intelligence community in 1947 was the Japanese attack against Pearl Harbor on December 7, 1941. The intelligence portions of the National Security Act of 1947 were a delayed response to that intelligence failure, coupled with a growing concern about a new threat to the United States: the rise of the Soviet Union as a global rival, steered by a Marxist philosophy anathema to America’s espousal of market-based democracies.^{xxiv}

Following the establishment of the intelligence community, several low-threshold fire alarms sounded during the early years of the Cold War. Among the most notable were the failure to predict the outbreak of war on the Korean peninsula (1950), the Bay of Pigs disaster (1961), the controversy over CIA ties to the National Student Association and other domestic groups (1966), and an alleged CIA connection to the Watergate burglars (1973). None of these alarms was as

shattering as the subsequent high-threshold shocks delivered by the domestic spy scandal, *Iran-contra*, the Ames case, the 9/11 attacks, or the mistaken WMD report that helped fuel an American war in Iraq in 2003. With the possible exception of the Ames case, these fire alarms caught the attention of Americans across the nation, which in turn caused lawmakers to focus on the events; and the Ames case certainly sounded an alarm among national security officials inside the D.C. Beltway.

Members of Congress may well have reacted sharply to the *Iran-contra* scandal even if the public had not taken an interest, since it amounted to an insulting disregard for the congressional appropriations process. Prior to the scandal, a Democratic-led Congress rebuffed the efforts of the Reagan Administration to fund covert action in Nicaragua; as a result, the NSC staff resorted to the raising of private funds as a means for carrying out covert action in Nicaragua, despite laws (the Boland Amendments^{xxv}) that strictly prohibited such operations against the ruling Sandinista regime. Lawmakers reacted strongly as well to the Ames counterintelligence (CI) case, since a Soviet penetration at the highest levels of the CIA—the worst CI failure in American history—was difficult to disregard, striking as it did at the heart of the Agency’s mandate in the 1947 National Security Act to protect “sources and methods.”

In contrast to these high-threshold alarms, Korea in 1950 and the Bay of Pigs in 1961—while obviously disconcerting—dealt with matters outside the United States. The CIA-student and the CIA-Watergate flaps occurred at home, but the former came across as a fairly narrow issue (involving Agency support for U.S. students attending international conferences) and the latter proved to have little substance. One of the men implicated in the Watergate burglary was a former CIA officer (E. Howard Hunt) who had requested a wig and other disguise paraphernalia from the

Agency's Directorate of Science and Technology for the infamous break-in; but investigations showed that the CIA had not realized the purpose of Hunt's request and had no prior knowledge of the plot.

An examination of the frequency of alarms, both low- and high-threshold (see Figure 3), discloses the periodicity of intelligence scandals in the modern era.^{xxvi} Eliminating the CIA-Watergate "scandal," since it was in reality an insignificant matter, an intelligence alarm sounded roughly every seven-and-a-half years, on average. The longest gap—twice the average—occurred between the domestic spying scandal exposed in 1974 and the Iran-*contra* affair exposed in 1987, a total of thirteen years. The domestic spying scandal and the ensuing investigations were especially traumatic to the intelligence agencies; intelligence officers still remember 1975 as the "Year of the Intelligence Wars"—*annus horribilis*. The investigations established a new standard of ethics for the intelligence agencies that may have reduced the incidence of improper behavior by intelligence officers over the next decade. This good record came to an end as the Reagan Administration's obsession with Nicaragua led the NSC staff to misuse the government's secret agencies, and even develop their own new secret agency ("The Enterprise"), in an attempt to destroy the Sandinista regime.

[Insert Figure 3 Here]

The briefest interlude between alarms occurred from 2001 to 2003, with the Iraqi WMD error coming quickly on the heels of the 9/11 failure—a double blow to the reputation of the CIA and the reason for its dramatic decline in 2004-05 as America's premier intelligence agency. Now the CIA is just one of the fifteen agencies in the intelligence community and no longer as "central"—a job given by the Intelligence Reform Act of 2004 to the new Director of National

Intelligence or DNI. In June 2005, the White House informed the Director of the CIA that no longer would he be a regular attendee at NSC meetings.^{xxvii}

The conclusions presented here about the periodic the inattentiveness of lawmakers as patrollers should not overshadow the fact that intelligence oversight since 1975 has been vastly more robust than “in the good old days,” as some mossback intelligence professionals recall the years from 1947-1974 when Congress left the secret agencies largely to their own devices. Intelligence overseers since 1975 have benefitted greatly from two standing intelligence oversight committees, the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI), along with budget and subpoena powers. The authority of these two panels goes far beyond the powers enjoyed by any other legislative chamber in the world, today or in the past. Moreover, while lawmakers have been less than fully engaged in patrolling, they have been dedicated—even aggressive—firefighters.

Even during the more quotidian periods since 1975, the staffs of the intelligence committees—some 50-70 individuals, often well educated and experienced—have regularly queried intelligence professionals about their activities, pored over annual budget requests line-by-line, visited intelligence installations at home and abroad, and prepared detailed briefing books for the use of committee members during hearings. Very little of this kind of persistent staff work was carried out before 1975, underscoring the profound effect of the domestic spying scandal of 1974 and the sixteen-month-long Church and Pike Committee investigations—the most extensive probes into the operations of the intelligence agencies, even more comprehensive than the Aspin-Brown or Kean inquiries in 1995 and 2004.

Intelligence Failures and Scandals

A noteworthy aspect of the findings presented here is the contrast between intelligence failures and scandals. Intelligence failures are frequently inadvertent, resulting from the lack of a well-placed agent, a surveillance satellite in the wrong orbit, an intercepted telephone conversation never translated quickly enough into English, an analyst who makes an honest and well-intended but faulty judgment (perhaps because of inexperience). Of course, a CIA officer might also be lazy, an agent might be doubled, or an analyst might be poorly trained. Often as not, though, failures happen as a result of human fallibility. Mistakes in the prediction of world events are, in a word, inevitable.^{xxviii} This condition can be mitigated to some degree by improving a nation's capacity to gather reliable information from around the globe, say, by building more sophisticated spy satellites or reconnaissance airplanes; but, the chances of failure can never be eliminated. The future is an unknown place, shrouded in fog.

Through the expenditure of over \$40 billion a year on intelligence, the United States attempts to pierce as much of the fog as possible; nevertheless, the world will never be fully transparent. The planet is too large and adversaries are too cunning at hiding their activities, whether planning attacks against the United States from remote caves in Afghanistan or constructing atomic bombs in deep underground caverns in North Korea. Further, some things are simply unknowable in advance—"mysteries," as opposed to "secrets" that might be stolen from a safe. An example of a mystery is the question of who will follow Valdimir Putin as the next Russian president. When failures to find out secrets occur, as with the war in Korea in 1950 and WMDs in Iraq in 2003, the United States inevitably takes measures to improve its collection and analysis; still, new and unexpected threats are bound to rise somewhere in the world.

Scandals and improprieties, in contrast to failures, are usually intentional. Someone breaks

a law, a regulation, or a standard operating procedure in order to achieve a goal. The violator hopes not to be discovered, and may be convinced anyway that the importance of the goal trumps all other considerations. When called upon to explain why they had broken the law during the *Iran-contra* affair, NSC staffers from the Reagan Administration said they were responding to a “higher law” that required them to fight communism in Central America, even if Congress had foolishly passed the Boland Amendments.^{xxix}

In theory at least, intelligence scandals could be eliminated by recruiting only virtuous people for high office: men and women who would never succumb to illegal spying on U.S. citizens, flaunting laws like the Boland Amendments, infiltrating and subsidizing student groups and other organizations in American society, providing disguises to former intelligence officers without checking on the purpose, or lying to congressional overseers (as happened during the *Iran-contra* affair^{xxx}). Yet, scandals are as much an existential inevitability as collection and analytic failures. Indeed, the entire rationale for accountability presented by Madison in Federalist Paper 51 rests on the supposition—confirmed every day—that humans are not angels. They will make mistakes and they will sin. So with respect to failures and scandals within the intelligence (or any other government) domain, one can anticipate more of both.

At the same time, though, a nation can take steps to decrease the odds of mistakes and wrongdoing by improving its intelligence collection-and-analysis capabilities, carefully recruiting men and women of high integrity, and steadfastly patrolling the secret agencies in search of incipient gaps in performance and signs of flaws in the human character (such as Ames’s abuse of alcohol and luxury spending beyond a CIA officer’s government salary). That is why oversight patrolling is so important: ideally, one would like to nip trouble in the bud, whether failure or

scandal. Implicit in the notion of accountability is the hope that a few more (elected) eyes available to examine policy initiatives from the vantage point of Capitol Hill (not just the White House) will help discover perhaps—there is no guarantee—problems before they lead to catastrophes.

After the 9/11 terrorist attacks, lawmakers lamented their inattention to intelligence oversight duties. “We didn’t understand . . . the need for human intelligence,” conceded SSCI overseer Mike DeWine (R, Ohio), “we simply did not provide the resources.”^{xxxix} Bob Graham (D, Florida), the SSCI chairman who co-chaired the Joint Committee investigation into the 9/11 intelligence failure, has said, “We probably didn’t shake the [intelligence] agencies hard enough after the end of the Berlin Wall to say: ‘Hey, look, the world is changing and you need to change the way in which you operate . . . new strategies, new personnel, new culture.’ We should have been more demanding of these intelligence agencies.”^{xxxix} The HPSCI chair at the time, Porter Goss (R, Florida), who served as the other co-chair of the Joint Committee inquiry, issued a separate report issued by the House Committee in 2004 that was scathing in its criticism of CIA human intelligence.

What if these lawmakers and their colleagues had been sufficiently exercised about such intelligence deficiencies in the years preceding September 11, 2001? The attacks might have been discovered in advance with better humint, faster translation of communications intercepts from Al Qaeda plotters, and sharper analysis.

In 1995, a top secret memo (now partially declassified) came from the CIA’s Counter-terrorism Center (CTC) to the Aspin-Brown Commission. It warned that “aerial terrorism seems likely at some point—filling an airplane with explosives and dive-bombing a

target.”^{xxxiii} This warning appeared in the *President’s Daily Brief*, delivered by the CIA to President Bill Clinton and his top national security advisers; and the Agency briefed members of SSCI and HPSCI about this hair-raising possibility as well.^{xxxiv} Yet, six years before the prediction became a reality, none of these policymakers took any significant steps to alert U.S. commercial pilots to the danger, urge the FBI to watch flight training schools, or tighten airport security.^{xxxv}

When George W. Bush replaced Clinton as president, the White House counterterrorism expert Richard A. Clarke, as well as the CTC, provided fresh warnings to the new national security adviser, Condoleezza Rice (as well as, again, members of SSCI and HPSCI), that Al Qaeda might resort to aerial terrorism and other methods of attacking the United States. The Bush Administration temporized from January to September of 2001; and the congressional oversight committees also did little to improve America’s defenses against an aerial attack by terrorists.^{xxxvi} The 9/11 tragedy was an intelligence failure to be sure; but it was a policy failure as well, in the White House during both Democratic and Republican administrations, and it was a failure of accountability on Capitol Hill.

A Congressional Oversight Agenda for Intelligence

To lessen the chance of failure and scandal (however impossible the ideal of completely eliminating both), contemporary congressional overseers and their aides on SSCI and HPSCI face a demanding agenda. Of foremost importance is greater devotion to police-patrolling instead of waiting for fire alarms to sound, which in the closed world of intelligence are unlikely to erupt until a major scandal or disaster strikes. Lawmakers need to pay closer attention to an administration’s threat assessments (as the mistakes related to the Iraq “threat” in 2003 attest); its

balance between human and technical collection; its data-mining capabilities; the perspicacity of its analytic reports; charges of politicization; and efforts to achieve institutional and computer integration to enhance the sharing of intelligence from all sources at the federal level of government (horizontal), as well as down to the state and local levels (vertical).

Truly meaningful oversight would also give closer scrutiny to covert action (especially with respect to the beguiling assassination option) and questionable efforts by the Department of Defense to develop its own capabilities in this area. One would expect to see, too, a renewed focus on counterintelligence: appraising the merits of an MI5-like unit in the United States, reviewing the effectiveness of barriers against another Ames, and building protections against hostile electronic penetrations of new interagency computer-integration systems.

Among other issues overseers need to examine more closely are the merits of providing the DNI with greater authority in order to overcome the powerful centrifugal forces that exist in the U.S. intelligence community. On the civil liberties side, lawmakers must also revisit the flawed Patriot Act, the procedures of the Foreign Intelligence Surveillance Court (which failed in the months preceding the 9/11 attacks), and the rights of law-abiding Muslim Americans. The latter face the danger of being lumped together, by virtue of religion and skin color, with suspected Al Qaeda operatives.

Continuing Barriers to Effective Intelligence Oversight

Success in addressing the intelligence oversight agenda in Congress will depend above all on the motivation of SSCI and HPSCI members. Since the creation of these committees in 1976 and 1977, respectively, their members have already outperformed their marginally engaged

predecessors from 1947-1974. And their staffs are larger by a factor of thirty or so. Even so, the efforts of the two panels fall short of full engagement at the member level, and even the best of staffs cannot compensate for lawmakers who treat their oversight responsibilities as a secondary concern (although a few lawmakers over the years have been deeply committed to effective oversight^{xxxvii}). Neither SSCI nor HPSCI managed to sniff out the Iran-*contra* operation, the weakened counterintelligence posture that allowed the acts of treason by Ames and others^{xxxviii}, the poor humint prior to the 9/11 attacks, or the misleading WMD analysis that provided a rationale for the war against Iraq in 2003. “Eternal vigilance is the price of liberty” was Thomas Jefferson’s enduring counsel. Similarly, eternal vigilance by SSCI and HPSCI members is the price of successful intelligence accountability.

Lawmakers must really want to be effective overseers, or else the safeguards extolled by the founders are doomed to failure. This will require building into the congressional culture better incentives to encourage attention to the duties of intelligence accountability. Incentives could include prestigious awards presented by the congressional leadership and civic groups to leading overseers, Capitol Hill perks dispensed by the leadership based on the devotion of lawmakers to oversight duties, and publicity in national and hometown newspapers underscoring admirable oversight accomplishments by individual members.

Membership motivation is, however, only half of the equation for success. The other half is executive branch cooperation in the quest for improved intelligence accountability. A common term of derision among intelligence professionals and White House officials toward SSCI and HPSCI members is “micro-managers”—the accusation that lawmakers and their staffs are meddlers likely to harm sensitive intelligence operations. Former President George H.W. Bush

recently referred in the *Los Angeles Times* to the members and staff of the Church and Pike Committees of 1975 as “untutored little jerks.”^{xxxix} A series of *Wall Street Journal* op-ed pieces in 2003 placed the blame for the 9/11 and WMD intelligence failures on legislative overseers and the damage they have caused by their probes into the operations of the intelligence agencies. These critics evidently wish to turn the clock back to the pre-1975 era, when oversight was weak and the intelligence agencies slipped into domestic spying and other questionable (often illegal) activities.

If the executive branch insists on viewing lawmakers as “an outside interference” (as the nation’s national security adviser, Vice Admiral John M. Poindexter referred to Congress during the planning of the Iran-*contra* operations^{xl}), then overseers will be cut off from the information they need to properly evaluate intelligence programs. The end result will be an intelligence community more and more isolated from any semblance of checks-and-balances and increasingly likely to present the nation with its next major intelligence scandal or failure. When Congress attempted to investigate the 9/11 failure, the White House, the DCI, and various intelligence officers attempted to delay and obstruct the work of the Joint Committee.^{xli} Stonewalling and slow-rolling are prime enemies of accountability and the form of government envisioned by James Madison and the other founders. The essence of genuine oversight is an attitude of comity between the branches, as executive officials and lawmakers join together to weed out inept and improper government activities.

Over and above strengthening its intelligence oversight agenda and developing an interbranch consensus about the value of cooperative accountability, the Congress must also put its own house in order with respect to a sensible division of labor for intelligence oversight.

Presently, the tangled jurisdictional lines for accountability over the secret agencies make the Gordian knot look like a simple bowline. In addition to SSCI and HPSCI, the Committees on Armed Services, Judiciary, and Appropriations all have a claim on intelligence review. This list needs to be reduced to SSCI, HPSCI, and the Appropriations Committees, with the latter closely adhering to the budget ceilings and priorities of the authorizing committees (rather than ignoring the work of the two intelligence committees, as is frequently the case today^{xliii}). Along with the creation of attractive oversight incentives for lawmakers, nothing is more vital for improved intelligence accountability on Capital Hill than the correction of this current jurisdictional chaos.

Conclusion

Intelligence accountability since 1975 has been infinitely more serious than before that watershed year; still, it is nowhere near as effective as it can and should be, if the United States hopes to reduce the odds of another major intelligence scandal or failure in the future. In place of the sporadic patrolling and ad hoc responses to fire alarms, lawmakers and their staffs will need to redouble their commitment to a continuous, week-in-week-out scrutiny of intelligence activities, praising meritorious operations, suggesting ways to improve new or faltering programs, and rooting out improper initiatives and miscreant officials before they lead to full-blown disasters that harm the nation's security and good reputation. For this to work, the public will need to acquire a better understanding and appreciation of accountability. Scholars, journalists, and public officials must engage in more effective "public diplomacy" to educate Americans about the value of oversight carried out by members of Congress.

None of this will be easy. Yet, as America's founders understood, the virtue of democracy lies not in its ease, but in its promise to protect the people against the abuse of power —perhaps

most especially secret power.

Figure 1. The Dominant Pattern of Intelligence Oversight by Lawmakers, 1975-2004

sporadic patrolling* > intelligence shock > intense firefighting > intense > sporadic patrolling . . .
 (scandal/failure)
 patrolling
 and
 reform

*a result of insufficient opportunities for credit-claiming and the enhancement of re-election prospects, which in turn produce an inattentiveness to oversight duties and a concomitant ripening of conditions for scandal or failure

Figure 2. Type of Stimulus and Intelligence Oversight Response by U.S. Lawmakers, 1975-2004

<i>Year</i>	<i>Stimulus</i>	<i>Oversight Response</i>	<i>Purpose of Response</i>
1974	FA (#1)	Hughes-Ryan Act	Controls on covert action

1976-77	FA (#1)	Est. oversight committees; critical reports	More robust oversight
1978	FA (#1)	FISA	Warrants for electronic surveillance
1980	FA (#1)	Intel. Oversight Act	Tighten oversight rules
1983	P	Intel. Identities Act	Protect intel. officers/agents
1989	FA (#2)	Inspector General Act	Improve internal CIA oversight
1991	FA (#2)	Intel. Oversight Act	Further tighten oversight rules
1996	FA (#3)	Est. DCI assistants; critical reports	IC management improvements
2001	FA (#4)	Patriot Act; authorization of war against Al Qaeda and Taliban regime; increases in counter- terrorism funding	Surveillance of suspected terrorists; paramilitary counterattacks against Al Qaeda and Taliban
2004	FA (#4)	Critical reports	Improve humint and analysis
2004	FA (#4 & 5)	Intel. Reform Act	Strengthening IC coordination

Abbreviations:

FA = fire alarm (#1 = domestic spying; #2 = *Iran-contra*; #3 = Ames; #4 = 9/11; #5 = WMDs in Iraq)

P = patrolling

humint = human intelligence

IC = intelligence community

FISA = Foreign Intelligence Surveillance Act [P.L. 95-511; 92 Stat. 1783 (Oct. 25, 1978)]

DCI = Director of Central Intelligence

Figure 3. The Frequency of Low- and High-Threshold Intelligence Alarms, 1941-2004
(with High-Threshold in Bold)

Year	1941	1950	1961	1966	1973	1974	1987	1994	2001	2003	
Alarm	F	F	F	S	S	S	S	F	F	F	
	^	^	^	^	^	^	^	^	^	^	
Interval/Yrs.	9	11	5	7	1	13	7	7	2		Ave.: 7.6*

The Events:

1941 - Pearl Harbor attack
1950 - Outbreak of war on Korean peninsula Low
1961 - Bay of Pigs
1966 - CIA-National Student Association scandal
1973 - CIA-Watergate "scandal"
1974 - Domestic spying scandal
1987 - Iran-*contra* scandal
1994 - Ames counterintelligence failure
2001 - 9/11 attacks
2003 - faulty WMD analysis (Iraq)

The Thresholds:

High
Low
Low
Low
Low
High
High
High
High
High

*excluding the CIA-Watergate case (see text)

Abbreviations:

F = failure of collection and/or analysis
S = scandal or impropriety
WMD = weapons of mass destruction

Notes

i. Merle Miller, *Plain Speaking: An Oral Biography of Harry S. Truman* (New York: Berkley, 973), p. 420

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- ii. See Alexander Hamilton, John Jay, and James Madison, *The Federalist* (New York: Modern Library, 1937), No. 10, pp. 53-62, and No. 51 (pp. 335-341) and Thomas Jefferson, “Draft of the Kentucky Resolutions” (October 1778), in *Jefferson* (New York: Library of America, 1984), p. 455; for classic modern statements of the framers’s views, see Justice Louis Brandeis, *Myers v. United States* [272 U.S. 52 293 (1926)], and Richard E. Neustadt, *Presidential Power* (New York: Wiley, 1960).
- iii. Edward S. Corwin, *The President: Office and Powers* (New York: New York University Press, 1957); Louis Fisher, *Constitutional Conflicts between Congress and the President* (Princeton: Princeton University Press, 1985); Michael J. Glennon, *Constitutional Democracy* (Princeton: Princeton University Press, 1990); Louis Henkin, *Foreign Affairs and the Constitution* (New York: Norton, 1972); Loch K. Johnson, *America’s Secret Power: The CIA in a Democratic Society* (New York: Oxford University Press, 1989); Harold Hongju Koh, *The National Security Constitution: Sharing Power after the Iran-Contra Affair* (New Haven: Yale University Press, 1990); Daniel S. Papp, Loch K. Johnson, John E. Endicott, *American Foreign Policy: History, Politics, and Policy* (New York: Pearson Longman, 2005).
- iv. M.D. McCubbins and T. Schwartz, “Congressional Oversight Overlooked: Police patrols and Fire Alarms,” *American Journal of Political Science* 28 (1984), pp. 165-179.
- v. Harry H. Ransom, “Secret Intelligence Agencies and Congress,” *Society* 123 (1975), pp. 33-38.
- vi. Donald Mayhew, *The Electoral Connection* (New Haven: Yale University Press, 1974).
- vii. Loch K. Johnson, “Accountability and America’s Secret Foreign Policy: Keeping a Legislative Eye on the Central Intelligence Agency,” *Foreign Policy Analysis* 1 (2005), pp. 99-

120.

viii. James Sterling Young, *The Washington Community, 1800-1828* (New York: Columbia University Press, 1966).

ix. Joel D. Aberbach, *Keeping a Watchful Eye: The Politics of Congressional Oversight* (Washington, D.C.: Brookings Institution, 1990), p. 2.

x. Lee H. Hamilton and Jordan Tama, *A Creative Tension: The Foreign Policy Roles of the President and Congress* (Washington, D.C.: Woodrow Wilson Center Press, 2002), p. 56.

xi. Author's interview with Senator Fowler, Washington, D.C., May 9, 2003.

xii. See, for example, Aberbach, *op.cit.*

xiii. Quoted by F. Davies, "GOP-Controlled Senate Expected to Give Less Scrutiny to War on Terror," *Miami Herald* (November 7, 2002), p. A1.

xiv. John F. Bibby, "Congress' Neglected Function," in *The Republican Papers*, edited by Melvin R. Laird (New York: Anchor, 1968), pp. 477-488.

xv. Morris S. Ogul, *Congress Oversees the Bureaucracy: Studies in Legislative Supervision* (Pittsburgh: University of Pittsburgh Press, 1976).

xvi. William H. Jackson, Jr., Book Review, *Intelligence and National Security* 5 (1990), p. 254.

xvii. See Mark M. Lowenthal, *U.S. Intelligence: Evolution and Anatomy*, 2d. ed. (Westport, Connecticut: Praeger, 1992).

xviii. Loch K. Johnson, *Secret Agencies: U.S. Intelligence in a Hostile World* (New Haven: Yale University Press, 1996).

xix. Gregory F. Treverton, "Intelligence: Welcome to the American Government," in Thomas E. Mann, ed., *A Question of Balance: The President, the Congress, and Foreign Policy*

(Washington, D.C.: The Brookings Institution, 1990), pp. 70-108.

xx. For the Church Committee Report, see Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Final Report*, 94th Cong., 2d Sess., Sen. Rept. No. 94-755, 6 vols (Washington, D.C.: Government Printing Office, March 1976). The Pike Committee Report was leaked and published as “The CIA Report the President Doesn’t Want You to Read: The Pike Papers,” *Village Voice* (February 16 and 23, 1976). For an overview of these investigations, see Loch K. Johnson, *A Season of Inquiry: The Senate Intelligence Investigation* (Lexington: University Press of Kentucky, 1985); and Frank J. Smist, Jr., *Congress Oversees the United States Intelligence Community, 1947-1989* (Knoxville: University of Tennessee Press, 1991).

xxi. U.S. Congress, *Report on the Iran-Contra Affair, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House Select Committee to Investigate Covert Arms Transactions with Iran*, S. Rept. 100-216 and House Rept. 100-433 (November 1987). For an overview, see William S. Cohen and George J. Mitchell, *Men of Zeal: A Candid Inside Story of the Iran-Contra Hearings* (New York: Viking, 1988).

xxii. Loch K. Johnson, “The Aspin-Brown Intelligence Inquiry: Behind the Closed Doors of a Blue Ribbon Commission,” *Studies in Intelligence* 48 (Winter 2004), pp. 1-20. On the specifics of the Ames case, see David Wise, *Nightmover* (New York: Harper Collins, 1995).

xxiii. 94 Stat. 1981, Title IV, Sec. 501, 50 U.S.C. 413.

xxiv. Rhodri Jeffreys-Jones, “Why Was the CIA Established in 1947?” in Rhodri Jeffreys-Jones and Christopher Andrew, eds., *Eternal Vigilance? 50 Years of the CIA* (London: Cass, 1997), pp. 20-41; and Loch K. Johnson, “A Central Intelligence System: Truman’s Dream Deferred,”

American Journal of Intelligence 21 (Summer 2005), pp. 16-36.

xxv. Sections 106 and 107 of Public Law 99-569 (Intelligence Authorization Act for Fiscal year 1987); see Permanent Select Committee on Intelligence, *Compilation of Intelligence Laws and Related Laws and Executive Orders of Interest to the National Intelligence Community*, U.S. House of Representatives, 104th Cong., 1st Sess. (July 1995), pp. 739-741.

xxvi. This analysis does not attempt to include every intelligence failure; that list is much longer (see Johnson, *Secret Agencies*, *op.cit.*). But it does include the most significant. Not everyone will agree with the choices. For example, some believe that the CIA's failure to predict the fall of the U.S.S.R. represents its most significant analytic error. The author believes that this set the bar too high: no one could, or did, predict that epic event with any accuracy. The CIA's Soviet analysts (SOVA), however, did a remarkable job of tracking the decline of the Soviet economy during the 1980s and suggesting that this could lead to marked political upheaval in Russia and beyond (Johnson, *Secret Agencies*, *op.cit.*). The excellence of this tracking is why the surprise of the Soviet fall is not included here.

xxvii. Timothy J. Burger, "A New White House Memo Excludes CIA Director," *Time* (June 5, 2005), p. 21.

xxviii. See Richard K. Betts, "Analysis, War and Decision: Why Intelligence Failures Are Inevitable," *World Politics* 31 (October 1978), pp. 61-89.

xxix.

xxx. Cohen and Mitchell, *op.cit.*

xxxi. Remarks, CNN (October 14, 2002); see, also, Kevin Whitelaw and David E. Kaplan, "Don't

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- Ask, Don't Tell," 137 *U.S. News & World Report* (September 13, 2004), p. 36.
- xxxii. Remarks, "The Lehrer News Hour," PBS Television (October 17, 2002).
- xxxiii. Johnson, "The Aspin-Brown Intelligence Inquiry," *op.cit.*, p. 12.
- xxxiv. Authors interviews with officials in the Clinton Administration and members of SSCI and HPSCI, Washington, D.C. (March 1995).
- xxxv. The 9/11 Commission Report, *Final Report of the National Commission on Terrorist Attacks upon the United States* (New York: W.W. Norton, 2004).
- xxxvi. Richard A. Clark, *Against All Enemies* (New York: Free Press, 2004).
- xxxvii. Johnson, *America's Secret Power*, *op.cit.*, pp. 207-33.
- xxxviii. In addition to Wise, *Nightmover*, *op.cit.*, see John Barron, *Breaking the Ring* (Boston: Houghton Mifflin, 1987); and David Wise, *Spy: The Inside Story of How the FBI's Robert Hanssen Betrayed America* (New York: Random House, 2002).
- xxxix. Quoted in Bob Drogin, "Spy Agencies Fear Some Applicants Are Terrorists," *Los Angeles Times* (March 8, 2005), p. A1.
- xl. U.S. Congress, vol. 8, *op.cit.*, p. 159.
- xli. U.S. Congress, Joint Inquiry into the September 11 Terrorist Attacks, *Final Report* (2003).
- xlii. Whitelaw and Kaplan, *op.cit.*, p. 36.