

**Testimony of Mandy Smithberger, Director of the Center for Defense Information
Project On Government Oversight
before the House Appropriations Committee's Legislative Branch Subcommittee**

April 2, 2019

Thank you to Chairman Ryan and Ranking Member Beutler for allowing me to testify today on behalf of the Project On Government Oversight and Demand Progress on strengthening Congress's capacity to conduct oversight on matters of national security. We respectfully urge your Committee to provide adequate resources so that personal office staff of members on key committees can receive the clearances necessary to properly oversee intelligence and other national security agencies. In addition, we urge the Committee to require a public-facing report detailing the cost of providing a Top Secret/Sensitive Compartmented Information (TS/SCI) clearance to one staff member for every member of the House.

Congress plays an essential role in overseeing the executive branch, but its resources are inadequate compared to its responsibilities, especially in the House. This problem is particularly acute when it comes to Congressional oversight of the intelligence community. Members of Congress who serve on key committees that oversee national security matters lack the staff support necessary to meet their responsibilities. This problem manifests particularly around the question of security clearances for key staff, since personal office staff can only hold a Top Secret (TS) clearance.

Congress must be able to perform adequate oversight of intelligence community operations, while still protecting our most sensitive national security information. The House Permanent Select Committee on Intelligence, the House Appropriations Defense Subcommittee, and the House Armed Services Committee all play pivotal roles in overseeing our national security. But the lack of personal congressional staff with TS/SCI security clearances for members who serve on those committees means many of the members are overseeing the executive branch blindfolded.

Both Intelligence Committee Chairman Adam Schiff (D-CA) and Ranking Member Devin Nunes (R-CA) have pointed out that their resources are woefully inadequate to properly oversee the increasingly complex intelligence community.¹ The legislative branch receives approximately 0.4 percent of the discretionary federal budget—approximately \$4.7 billion—to

¹ Adam Schiff, "Statement of Ranking Member Adam B. Schiff, Permanent Select Committee on Intelligence, before the Committee on House Administration on Committee Budget Requests for the 115th Congress," February 15, 2017. <https://docs.house.gov/meetings/HA/HA00/20170215/105558/HHRG-115-HA00-Wstate-SchiffA-20170215.pdf> (Hereinafter Schiff Statement); Devin Nunes, "Statement of Chairman Devin Nunes, Permanent Select Committee on Intelligence, before the Committee on House Administration on Committee Budget Requests for the 115th Congress," February 15, 2017. <https://docs.house.gov/meetings/HA/HA00/20170215/105558/HHRG-115-HA00-Wstate-NunesD-20170215.pdf>

oversee the entire federal government.² By contrast, this year the intelligence community alone requested \$85.75 billion, or 18 times all the money spent on the legislative branch.³

While we believe every committee is under-resourced—appropriations for House committees is down by \$110 million, or 34 percent, in inflation-adjusted dollars as compared to 2009⁴—the problem is particularly acute for the House Intelligence Committee, which cannot count on the press, civil society, or other stakeholders to fill in the gaps to help Congress uncover waste, fraud, abuse, and mismanagement. “[W]e cannot rely on outside interest groups to raise issues to our attention as other Committees can,” Chairman Schiff told the House Administration committee. “We have to find them ourselves—often from agencies very good at keeping secrets.”⁵ The problem here is not just the allotment for the House Permanent Select Committee on Intelligence, which has recently been increased, but in the resources invested in the staff that support each member of the committee.

History has shown that while Congress has curtailed its own access to national security information the number of executive branch employees and contractors accessing this information has exploded.⁶ As of October 2017, which is the most recent data publicly available, 1,194,962 people had access to top secret information, and historically approximately half of those individuals have been contractors.⁷ While we do not know how many legislative staff have clearances—and we urge Congress to track and disclose summary statistics concerning how many staff have clearances and how long it takes to obtain them—even if our proposed reform were adopted that number of cleared staff is unlikely to increase significantly or amount to even a tiny percentage of the total number of federal employees and contractors with clearance.

The costs to the legislative branch will be minimal. The three committees we identified have fewer than 100 members.⁸ It is our understanding that the cost for providing staff a TS/SCI clearance is largely borne by the CIA, and the cost of investigating and adjudicating TS/SCI

² Ida A. Brudnick and Sarah J. Eckman, *Legislative Branch: FY2019 Appropriations*, Congressional Research Service, November 13, 2018, Summary. <https://fas.org/sgp/crs/misc/R45214.pdf>

³ The National Intelligence Program budget request was \$62.8 billion, the military intelligence budget request was \$22.95 billion. Office of the Director of National Intelligence, “U.S. Intelligence Community Budget.” <https://www.dni.gov/index.php/what-we-do/ic-budget>; Tony Bertuca, “Pentagon seeks \$22.95 billion for military intelligence budget,” *Inside Defense*, March 18, 2019. <https://insidedefense.com/insider/pentagon-seeks-2295b-military-intelligence-budget>

⁴ Daniel Schuman, “How House Committees Get Their Money,” First Branch Forecast, January 25, 2019. <https://firstbranchforecast.com/2019/01/25/how-house-committees-get-their-money/>

⁵ Schiff Statement, p. 1.

⁶ Daniel Schuman, “Schiff’s First Order of Business for the House Intelligence Committee,” *Just Security*, January 29, 2019. <https://www.justsecurity.org/62409/schiffs-order-business-house-intelligence-committee/>

⁷ Office of the Director of National Intelligence, *Fiscal Year 2017 Annual Report on Security Clearance Determinations*, August 27, 2018, p. 4. <https://www.dni.gov/files/NCSC/documents/features/20180827-security-clearance-determinations.pdf>; Office of the Director of National Intelligence, *2015 Annual Report on Security Clearance Determinations*, September 26, 2014, p. 5. <https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/2015-Annual-Report-on-Security-Clearance-Determinations.pdf>

⁸ The House Permanent Select Committee on Intelligence has 22 members, the House Appropriations Defense Subcommittee has 18 members, and the House Armed Services Committee has 57 members.

clearances is around \$5,000 for someone who has never had a clearance.⁹ We do anticipate there would be some funding needed for the legislative branch to maintain records of nondisclosure agreements, store classified documents, and track individuals granted clearance, and we urge the Committee to increase funds for the Sergeant at Arms accordingly. As most of the personal office staff of the relevant committees likely already have TS clearances, providing additional access should not be burdensome.

To ensure national security information is properly protected, we urge the Committee to increase counterintelligence training for all Congressional staff who receive security clearances. This training should be akin to that provided by intelligence agencies to their own personnel. This should also help prevent improper leaks. Congressional staff are held to the same standards as the executive branch, including criminal prosecution for mishandling information. The recent prosecution of James Wolfe, who worked for the Senate Intelligence Committee, demonstrates that there will be swift accountability if staff do not properly protect this information. And as former CIA Director George Tenet pointed out, 95 percent of leaks come from the executive branch.¹⁰

The Intelligence Committee includes members from the Foreign Affairs, Judiciary, Armed Services, and Appropriations committees.¹¹ The purpose is to ensure that those committees' interests are respected while guarding sensitive information before the Intelligence Committee.¹² And yet, **as currently structured, House Intelligence Committee staff cannot pursue or prioritize the oversight interests of each member.** The nature of how staff are chosen means they largely reflect the interests of the Chair or Ranking Member, respectively. What use is there in having members with wide-ranging backgrounds on the committee if they are not sufficiently staffed? Only a robust diversity of views and expertise of members across Congress enhances this body's ability to ensure legislation and policy serves the interests and priorities of the American people.

Adequate knowledge and context is essential to responsible oversight. A recent panel of former members of the House and Senate Select Committees on Intelligence underscored how difficult it can be to properly target questions to responsibly uncover the information necessary for performing their constitutional duties. "You have to play 20 questions," former House Intelligence Committee Ranking Member Jane Harman (D-CA) said. "You have to ask precisely the right question of the intelligence briefer to get an answer that's useful."¹³ In many ways Congress's job has only become harder as the intelligence community has become even more

⁹ Lindy Kyzer, "Contractors Paying for Clearance Costs Considered in New Study," *ClearanceJobs*, July 16, 2017. <https://news.clearancejobs.com/2017/07/16/contractors-paying-clearance-costs-new-study/>

¹⁰ Brad Wright, "Most leaks come from executive branch, CIA director says," *CNN*, July 22, 1999. <https://web.archive.org/web/20150311084631/http://www.cnn.com/ALLPOLITICS/stories/1999/07/22/leaks/>

¹¹ Daniel Schuman, "Is the House Intelligence Committee Out of Balance," Demand Progress, July 7, 2016. <https://medium.com/demand-progress/is-the-house-intelligence-committee-out-of-balance-5ea5ce3ff05e>

¹² David Boren and William S. Cohen, "Keep Two Intelligence Committees," *The New York Times*, August 17, 1987. <https://www.nytimes.com/1987/08/17/opinion/keep-two-intelligence-committees.html>; The National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, July 22, 2014, p. 421. <http://govinfo.library.unt.edu/911/report/911Report.pdf>

¹³ George Mason University, "Intelligence Community Oversight," C-SPAN, March 11, 2019, 24:00. <https://www.c-span.org/video/?458690-1/intelligence-community-oversight&start=1251> (Hereinafter "Intelligence Community Oversight")

reluctant to brief Congress. “It won’t be 20 questions, it will be 100 questions,” former House Intelligence Committee Chair Mike Rogers (R-MI) added.¹⁴

The answer to this problem is to ensure that each member of the Committee has someone who will primarily reflect their interests and their perspectives and act as a confidential sounding board. Empowering personal office staff, who will function as designees or shared staff, is the obvious and economic solution for Congress to robustly oversee the intelligence community.

Indeed, the Senate has recognized the need for this enhanced support, and has provided designees for members of the Senate Select Committee on Intelligence with TS/SCI clearances, and has consequently been able to engage in more robust oversight. The staff reflect the perspectives and interests of each individual member while providing additional capacity to the committee. While one might think the addition of designees would lead to increased partisanship, former Senator Saxby Chambliss (R-GA), who served on the House Intelligence Committee and was Vice Chair of the Senate Select Committee on Intelligence, said he found otherwise. According to Chambliss, as implemented in the Senate, the Chair and Vice Chair both approved all designees, which encouraged collaboration and professionalism.¹⁵ The designee system in the Senate has also allowed the Committee to take on additional policy portfolios, meaning adopting this reform for the House would benefit the entire Committee.¹⁶ Overall, providing designees or shared staff to members in the House would increase both the capacity and the credibility of the Committee.

We believe it is time for the House to adopt a similar approach for its national security committees. A personal office staffer could serve as designated or shared staff with the Committee at the discretion of each member and with the consent of the Committee. Consequently, committees can have increased capacity without worrying that they will be diminishing their authority. A system of designees has widespread, bipartisan support from civil society.¹⁷ Creating a system of designees for the Intelligence Committee is also a reform that Democratic members of the House Intelligence Committee have called for, and that committee Chair Adam Schiff (D-CA) has said is appealing.¹⁸

Critics of this proposal have argued that rather than increasing Congressional access to highly classified information, Congress should combat over-classification. This is a false choice. Over-classification is a serious problem that creates public distrust in government, and impedes sharing information within government. When this authority is abused it also undermines the

¹⁴ “Intelligence Community Oversight,” 44:55.

¹⁵ “Intelligence Community Oversight,” 46:30.

¹⁶ The Federalist Society, “The Role of Congressional Intelligence Committees,” International & National Security Law Practice Group and Article I Teleforum, April 18, 2018. <https://fedsoc.org/events/the-role-of-congressional-intelligence-committees>

¹⁷ Thirty-three organizations sent a letter to then-Speaker Paul Ryan (R-WI) and then-Minority Leader Nancy Pelosi (D-CA) urging the House to strengthen its oversight of the intelligence community. “Strengthening Congressional Oversight,” September 13, 2016. https://s3.amazonaws.com/demandprogress/letters/Strengthening_Congressional_Oversight_of_the_IC_Letter_Sept_2016.pdf

¹⁸ Gopal Ratnam, “Democrats Want More Security Clearances for House Intel Aides,” *Roll Call*, November 27, 2018. <https://www.rollcall.com/news/policy/democrats-security-clearances-house-intel-aides>

legitimacy of this designation and threatens the protection of legitimate secrets.¹⁹ While we support reforms in that area, Congress must still maintain adequate access to review controlled information so long as the executive branch asserts it has the sole authority to make classification decisions.²⁰ Moreover, supporting members in their oversight duties is something we can do now.²¹

Years of executive overreach by Democratic and Republican administrations have unconstitutionally diminished Congress's role. Congress must reassert itself as a coequal branch, and that must start with providing sufficient support to its Members to perform their constitutional oversight duties.

¹⁹ Scott Amey, "Testimony of Scott Amey about the Burdens of Overclassification and Government Secrecy before the House Committee on Oversight and Government Reform," December 7, 2016.

<https://www.pogo.org/testimony/2016/12/testimony-of-scott-amey-about-burdens-of-overclassification-and-government-secrecy/>

²⁰ Reforms to address this issue can be found at R Street, Demand Progress, FreedomWorks, and Electronic Frontier Foundation. *Strengthening Congressional Oversight of the Intelligence Community*, September 13, 2016, pp. 2-3.

[https://www.eff.org/files/2016/09/13/strengthening congressional oversight of the ic white paper sept 2016.pdf](https://www.eff.org/files/2016/09/13/strengthening%20congressional%20oversight%20of%20the%20ic%20white%20paper%20sept%202016.pdf)

; Nate Jones, "'There's classified, and then there's classified': Tangible Steps to Fix the Classification and Declassification System," Statement for the Public Interest Declassification Board, National Security Archive, December 6, 2016. https://transforming-classification.blogs.archives.gov/2016/12/06/theres-classified-and-then-theres-classified-tangible-steps-to-fix-the-classification-and-declassification-system-by-nate-jones-national-security-archive/#_ftn1

²¹ We urge Congress to challenge the executive branch's assertion that classification authority is solely up to the executive branch. Former House Government Operations Committee Chair Jack Brooks (D-TX) considered the executive branch's authority on clearances to be an improper violation of separation of powers and initiated a mirror process to approve or deny clearances for staff of his committee conducted through the then-General Accounting Office.