

Testimony of Mandy Smithberger, Director of the Center for Defense Information
Project On Government Oversight (POGO)
before the House Appropriations Committee
Legislative Branch Subcommittee
April 17, 2018

Thank you to Chairman Yoder and Ranking Member Ryan for allowing me to testify today on behalf of Demand Progress and the Project On Government Oversight on restoring Congress's capacity to conduct oversight on matters of national security. I also want to thank the Committee for steps it has already taken to strengthen oversight in general by mandating public access to Congressional Research Service reports. Your work on this issue will enhance public access to non-partisan, expert analysis and allow everyone to have the same information during critical policy debates.

Congress plays an essential role in conducting oversight of the executive branch, but its resources are inadequate compared to its responsibilities, particularly in the House. We urge the Committee to fully fund independent and oversight research institutions available to support Members and their staff. Funding the Government Accountability Office, Congressional Research Service, Congressional Budget Office, and legislative branch inspectors general is critical. The legislative branch receives less than one-tenth of one percent of the federal budget—approximately \$4.7 billion—to oversee the entire federal government, with a significant proportion of those resources being directed toward facilities maintenance and security. By comparison, this year the Intelligence Community asked Congress for \$80 billion, or 17 times all the money spent on the legislative branch.¹

Given the necessary secrecy around the intelligence agencies' operations, it can be difficult for the American public to determine whether that money is properly spent. We must rely on Congress to identify and address any deficiencies. Accordingly, we expect there to be sufficiently numerous staff to oversee the agencies, and that they possess a high-enough level clearance to get to the bottom of important policy questions. This unfortunately is not the reality, and the House is less capable now than at times in the past.

In the 1970s, the Church and Pike Committees famously identified abuses by the Intelligence Community, such as interference in domestic politics, illegal wiretapping, and the assassination of foreign leaders. In the wake of those investigations, Congress enhanced its own capacity for oversight by creating the select intelligence committees and expanding congressional access to classified information. By 1978 the Under Secretary of Defense's office estimated 431 staffers, including the Government Accountability Office, held compartmented security clearances.

Concerned about controlling that information, intelligence agencies appealed to Congress to reduce that access while privately admitting that the executive branch needed to also reduce the

¹ Office of the Director of National Intelligence, "U.S. Intelligence Community Budget." <https://www.dni.gov/index.php/what-we-do/ic-budget> (Downloaded March 29, 2018)

number of clearances held by its employees.² **History has shown that while Congress curtailed its own access to national security information the number of executive branch and its contractors accessing this information has exploded.** The most recent publicly available information shows nearly 4 million people hold clearances of any level, with top secret clearances held by **622,549** federal employees and **438,069** federal contractors.³ While there is no publicly available information about clearances held by the legislative branch, there are fewer than 20,000 legislative branch staffers in total and only a relative handful hold top secret clearances.⁴

In many policy areas, the press, civil society, and other stakeholders can help fill in the gaps to help Congress to uncover waste, fraud, abuse, and mismanagement. Unfortunately this is not so when it comes to information the executive branch has deemed classified, which makes it even more difficult for congressional staff to oversee national security spending and activities.

The House Permanent Select Committee on Intelligence, the House Appropriations Defense Subcommittee, and the House Armed Services Committee play pivotal roles in overseeing our national security. But the lack of personal congressional staff with top secret compartmented security clearances means the members of those committees are overseeing the executive branch blindfolded.

We recommend that one personal office staff member for each member on these committees of jurisdiction be eligible to receive the necessary security clearances to support their bosses in overseeing these operations. While every Member of Congress has constitutional duties to oversee our national security, these committees feel the pinch most acutely as they are the most dependent upon classified information. The House currently allows each Member of Congress to designate two personal office staff to receive a top secret clearance; we recommend that one of those staffers for members on these key committees be eligible to receive clearance at the top secret/sensitive compartmented information level. This would significantly strengthen those members' ability to conduct oversight, as it allows staff to press the intelligence agencies to answer the hard questions.⁵ This recommendation has widespread, bipartisan support from civil society.

The Senate has recognized the need for this enhanced support. It has provided staff 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. Under the status quo in the House, the scope and depth of oversight largely narrows to the exclusive interests and priorities of the

² Central Intelligence Agency, "Sensitive Compartmented Information Accesses," CIA-RDP81-00142R000600070016-5, Approved for Release May 1, 2001. <https://www.cia.gov/library/readingroom/docs/CIA-RDP81-00142R000600070016-5.pdf> (Downloaded March 29, 2018)

³ Office of the Director of National Intelligence, *2015 Annual Report on Security Clearance Determinations*, p. 5. https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/2015-Annual_Report_on_Security_Clearance_Determinations.pdf (Downloaded March 29, 2018)

⁴ The Brookings Institution, *Vital Statistics on Congress*, "Table 5-1," September 7, 2017, p. 2.

⁵ 33 organizations sent a letter to Speaker Paul Ryan and Democratic Leader Nancy Pelosi urging the House to

strengthen its oversight of the intelligence community. https://s3.amazonaws.com/demandprogress/letters/Strengthening_Congressional_Oversight_of_the_IC_Letter_Sept_2016.pdf (Downloaded March 29, 2018)

committee chair and ranking member, who hire and fire all committee staff. The committees, and HPSCI specifically, are designed to incorporate members from different backgrounds and viewpoints, but what use is having the members on the committee if they are not sufficiently staffed? Only a robust diversity of views and expertise of members across Congress enhance this body's ability to ensure legislation and policy serves the interests and priorities of the American people.

Some in the executive branch have argued in opposition to expanding access of congressional staff to this information, arguing that Congress invariably leaks to the press. However, no less than former CIA Director George Tenet said 95 percent of leaks come from the executive branch.⁶ More importantly, it is Congress's job to oversee these agencies, and the clearances are essential for such oversight to occur.

That said, we believe Congress must take an important step to ensure that information is properly protected. Specifically, we urge this committee to support increased counterintelligence training for congressional staff who receive security clearances, akin to that provided by intelligence agencies to their personnel.

The costs of security clearance investigations for legislative staff are not publicly available, but there is reason to believe the costs will be minimal. Currently every Member of Congress is allowed to have two staff with a Top Security clearance, and the investigation the House conducts for that clearance should cover most, if not all, of the needs for determining whether a staff member should receive a compartmented clearance. Some staff also already hold those clearances from reserve military duty or past work, limiting the costs of "turning on" that clearance for legislative work. The cost of investigating and adjudicating TS/SCI clearances in the executive branch is around \$5,000 for someone who has never had a clearance, and that clearance is good for 5 years.⁷

The three committees we identified have no more than 100 members, all told.⁸ Even if we assume that no office has any cleared personal staff and all of them would request TS/SCI clearances, the cost would be \$500,000 over 5 years, or \$100,000 annually. But of course this estimate is significantly inflated because many staff actually do already have TS clearances, and some of the members' serve on multiple committees. We do anticipate there would be some, likely minimal, costs for maintaining records of nondisclosure agreements and tracking individuals granted clearance, and urge the Committee to increase funds for the Sergeant at Arms accordingly.

In addition to requesting that each member of these three committees be able to provide one of their personal office staffers with TS/SCI clearances, we also request a public-facing report that details the cost of providing a single TS/SCI cleared staffer to every member of the House who requests one. This would clarify the marginal costs of providing Sensitive Compartmented

⁶ Brad Wright, "Most leaks come from executive branch, CIA director says," *CNN*, July 12, 1999. <http://www.cnn.com/ALLPOLITICS/stories/1999/07/22/leaks/> (Downloaded March 29, 2018)

⁷ An individual holding a top secret clearance is normally subject to a periodic investigation every five year. U.S. Department of Defense, Defense Security Service, "Periodic Reinvestigations," December 1, 2015. http://www.dss.mil/psmo-i/indus_psmo-i_updates.html (Downloaded March 29, 2018)

⁸ HPSCI has 22 members, HAC-D has 16 members, and Armed Services has 62 members.

Information access to staff who already have a Top Secret clearance and allow Congress to consider the costs and benefits of providing sufficient support to all members of the House.

Congress is the public's best check on the most secretive aspects of the national security bureaucracy. We urge you to strengthen Congress's abilities fulfill this solemn obligation.



Mandy Smithberger

Director, CDI Straus Military Reform Project

Ms. Smithberger, a former national security policy adviser to U.S. Rep. Jackie Speier (D-Calif.) worked on passing key provisions of the Military Whistleblower Protection Enhancement Act into law, which expands protections by increasing the level of Inspector General review for complaints, requiring timely action on findings of reprisal, and increasing the time whistleblowers have to report reprisals.

She also worked on an amendment to the National Defense Authorization Act (NDAA) that required closer scrutiny of the Littoral Combat Ship program's deficiencies, including limiting the Navy to purchasing only the number of mission modules required for operational testing.

Smithberger, who has a Masters in Strategic Studies and International Economics from Johns Hopkins University's School of Advanced International Studies, also served as an analyst at the Defense Intelligence Agency and U.S. Central Command.

Witness Disclosure Form

Clause 2(g) of rule XI of the Rules of the House of Representatives requires non-governmental witnesses to disclose to the Committee the following information. A non-governmental witness is any witness appearing on behalf of himself/herself or on behalf of an organization other than a federal agency, or a state, local or tribal government.

<p>Your Name, Business Address, and Telephone Number:</p> <p>Mandy Smithberger 1100 G St NW suite 500 Washington, DC 20005 202-347-1122</p>
<p>1. Are you appearing on behalf of yourself or a non-governmental organization? Please list organization(s) you are representing.</p> <p>Project on Government Oversight Demand Progress</p>
<p>2. Have you or any organization you are representing received any Federal grants or contracts (including any subgrants or subcontracts) since October 1, 2012 related to the agencies or programs funded by the Subcommittee?</p> <p>Yes <input checked="" type="radio"/> No</p>
<p>3. Have you or any organization you are representing received any contracts or payments originating with a foreign government since October 1, 2012 related to the agencies or programs funded by the Subcommittee?</p> <p>Yes <input checked="" type="radio"/> No</p>
<p>4. If your response to question #2 and/or #3 is "Yes", please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof), and/or the amount and country of origin of any payment or contract originating with a foreign government. Please also indicate whether the recipient was you or the organization(s) you are representing.</p>

Signature:

Mandy Smithberger

Date:

April 5, 2018