

USAWC STRATEGY RESEARCH PROJECT

NATIONAL INTELLIGENCE REFORM

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This SRP is submitted in partial fulfillment of the requirements of the Master of Strategic Studies Degree. The U.S. Army War College is accredited by the Commission on Higher Education of the Middle States Association of Colleges and Schools, 3624 Market Street, Philadelphia, PA 19104, (215) 662-5606. The Commission on Higher Education is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation.

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U.S. Army War College
CARLISLE BARRACKS, PENNSYLVANIA 17013

Report Documentation Page

Form Approved
OMB No. 0704-0188

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

1. REPORT DATE 18 MAR 2005	2. REPORT TYPE	3. DATES COVERED -			
4. TITLE AND SUBTITLE National Intelligence Reform		5a. CONTRACT NUMBER			
		5b. GRANT NUMBER			
		5c. PROGRAM ELEMENT NUMBER			
6. AUTHOR(S) Ned Carmody		5d. PROJECT NUMBER			
		5e. TASK NUMBER			
		5f. WORK UNIT NUMBER			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Army War College, Carlisle Barracks, Carlisle, PA, 17013-5050		8. PERFORMING ORGANIZATION REPORT NUMBER			
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		10. SPONSOR/MONITOR'S ACRONYM(S)			
		11. SPONSOR/MONITOR'S REPORT NUMBER(S)			
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT See attached.					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES 33	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

ABSTRACT

AUTHOR: Mr. Ned F. Carmody

TITLE: National Intelligence Reform

FORMAT: Strategy Research Project

DATE: 18 March 2005 PAGES: 33 CLASSIFICATION: Unclassified

Is the U.S. Intelligence Community as currently constituted capable of effectively meeting today's national security intelligence needs? In the wake of the 9/11 attacks and the October 2002 assessment of Iraq's weapons of mass destruction, the answer for many in America was a resounding "No!" Without question, the debate on intelligence reform has taken on a new and profound urgency. The National Commission on Terrorist Attacks Upon the United States (better known as the 9/11 Commission) has been a catalyst for action. In its 567-page report, the 9/11 Commission identified multiple problems and suggested numerous solutions, to include: appointment of a National Intelligence Director; creation of new Community-wide, mission-oriented National Intelligence Centers; and establishment of a National Counterterrorism Center. This paper will analyze these and other reform proposals and will attempt to evaluate their potential to improve and enhance the existing U.S. intelligence system.

TABLE OF CONTENTS

ABSTRACT..... iii

NATIONAL INTELLIGENCE REFORM..... 1

NOTHING NEW UNDER THE SUN.....1

NEW DEMAND FOR CHANGE.....3

THE 9/11 COMMISSION4

THE POLITICAL RESPONSE.....5

**THE NATIONAL INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF
 2004**.....9

 THE ROLE OF THE DNI.....10

 NATIONAL INTELLIGENCE CENTERS.....11

 THE NATIONAL COUNTER TERRORISM CENTER.....11

CONCLUSIONS.....13

 DO WE HAVE THE INTELLIGENCE BILL WE NEED?.....13

RECOMMENDATIONS.....15

ENDNOTES 19

BIBLIOGRAPHY23

NATIONAL INTELLIGENCE REFORM

NOTHING NEW UNDER THE SUN

Proposals to reorganize the United States Intelligence Community (IC) started to appear almost before the ink was dry on the National Security Act of 1947, the landmark bill that established our modern national security apparatus. The 1947 act and its amendments in 1949 created a National Security Council (NSC), an Office of the Secretary of Defense (OSD) within a new Defense Department, a statutory Joint Chiefs of Staff, and a Central Intelligence Agency (CIA). In ensuing years, a near-constant stream of National Security Council Intelligence Directives, Executive Orders and recommendations from different investigative commissions, panels and committees stipulated or suggested changes in the IC's organization and methods of operation. From the outset, reformers urged the creation of a National Intelligence Director (NID) – alternatively called a Director of National Intelligence (DNI) – to provide stronger, centralized authority over the IC. As early as 1955, the Second Hoover Commission proposed that management of the CIA be turned over to an “executive officer” so that the DCI could focus attention on the greater IC. Similar recommendations to create a NID-type position or to enhance the DCI's existing authorities were made by the Schlesinger Report (1971), the Church and Pike Committees (1976), Executive Orders issued by Presidents Gerald Ford, Jimmy Carter and Ronald Reagan (1976, 1978 and 1981, respectively), the Stansfield Turner Report (1985), Boren-McCurdy Legislation (1992), the Aspin-Brown Commission (1996), and the Scowcroft Commission (2001).¹ This same call for a centralized authority overseeing the entire Intelligence Community remains at the forefront of national security discussions today.

Ironically, the framers of the 1947 National Security Act were themselves attempting to unify and centralize the nation's security system in the aftermath of Pearl Harbor and World War II. The National Security Act reflected broad consensus among policymakers on the need for change. Something had to be done to resolve the internecine squabbling between military services that had too often hampered the war effort, to reduce duplication of security programs and efforts, and to promote greater coordination between and among civilian and military agencies. Above all else, something had to be done to insure that the nation would never again experience another Pearl Harbor. The Joint Committee on the Investigation of Pearl Harbor, which released its findings in 1946, concluded that the Pearl Harbor disaster could have been averted had various commanders and agencies coordinated their actions and shared their intelligence. With these thoughts in mind, Congressional legislators crafted a National Security

Act intended to produce a unified command structure and a better, more cohesive intelligence system.²

Despite this intention, however, legislators simultaneously made critical concessions to traditional American distrust of a large military and of centralized power. The end result was an uneasy balance between the need for central direction and the desire to preserve autonomy for component IC agencies. Fears of reproducing a German Gestapo in the U.S. led to assurances the CIA would have no subpoena powers, law enforcement authorities or domestic intelligence mandate. The Agency would conduct both collection and analysis but would have no policymaking role. In the end, Congress adopted a series of built-in contradictions and left it up to the Executive Branch to work out the administrative details, thus opening the way for discrepancies between the act's statutory language and the reality of how the law was carried out.³ As a prime example, Congress created a Director of Central Intelligence (DCI) without the authorities needed to carry out his responsibilities as leader of the entire IC. On paper, the National Security Act authorized the DCI to facilitate an annual intelligence budget and further stipulated that the DCI prepare and approve all budgets for each of the 15 IC agencies comprising the National Foreign Intelligence Program. Yet the vast majority of the IC's total budget was appropriated directly to agencies other than the CIA. Most of this amount, an estimated 80 percent, currently is appropriated directly to the Secretary of Defense, who then determines how the IC's three largest agencies – the National Security Agency (NSA), the National Reconnaissance Organization (NRO) and the National Geospatial-Intelligence Agency (NGA) – will be funded.⁴ In sum, the DCI was left with direct authority over only the CIA; most of the IC agencies remained beyond his direct control, both financially and administratively.

Not surprisingly, subsequent efforts to reform the IC repeatedly focused on this issue of managerial control. To some, the problem lay in the multiple nature of the DCI's responsibilities. The DCI is expected to serve: (1) as the president's primary advisor on intelligence matters; (2) as the titular head of the entire IC; and (3) as the CIA's senior manager. Critics assert the DCI is pulled in too many directions; he cannot possibly lead both the IC and the CIA and do both jobs well. Others believe the IC lacks coherence and focus precisely because the DCI has such limited authority over such things as hiring, firing and budgets.⁵ The solution to which reformers kept returning was a more powerful, truly national intelligence director with the mandate and authority to manage the entire IC, not just the CIA.

NEW DEMAND FOR CHANGE

In the wake of the 9/11 disaster, efforts to examine the capability and effectiveness of the U.S. intelligence system took on a new and profound urgency. Regardless of official explanations or apologies, the painful fact remained: the US government had failed in its fundamental duty to protect its own citizens. Shocked by the unprecedented, nearly unimaginable acts of 9/11, the public wanted to know why American intelligence had failed to uncover the terrorists and prevent the attacks. Amid cries of an “intelligence failure” of catastrophic proportions, the American people demanded action. Many fervently felt that heads must roll, that someone must be found responsible and held accountable. This began what some have called the “counterterrorist spiral,” the compulsion of elected officials to appear to be taking drastic action in response to public fear and uncertainty.⁶ In response to this call for action, Congress and the President created the National Commission on Terrorist Attacks Upon the United States (better known as the 9/11 Commission) in November 2002. Its mandate was to investigate the “facts and circumstances” of the 9/11 tragedy and to answer the questions everyone was asking: “How did this happen? How can we prevent it from happening again?” In completing its report, the Commission reviewed more than 2.5 million pages of documents and interviewed more than 1,200 individuals in ten countries. Beginning in March 2003 and continuing through mid-June 2004, the Commission held a series of 12 public hearings over the course of 19 days, receiving testimony from 160 witnesses.⁷

By summer of 2004, driven by charges and revelations from the 9/11 Commission and Congress, and fueled by the press amid the growing intensity of the presidential and congressional election campaigns, public confidence in the CIA and the nation’s intelligence capabilities had sunk to new depths. The 9/11 Commission’s conclusions appeared to confirm rumors of disconnections within the IC, of different segments of the intelligence world having different but incomplete views of the terrorist threat, and of an unwillingness or inability to share information across organizational boundaries. As stated in the preamble to the 9/11 Commission Report, “We learned of fault lines within our government—between foreign and domestic intelligence, and between and within agencies. We learned of pervasive problems of managing and sharing information across a large and unwieldy government that had been built in a different era to confront different dangers.”⁸

Fast on the heels of the near universal condemnation of 9/11 as an intelligence failure came new attacks on the nation’s spy network. On 7 July 2004, the Senate Select Committee on Intelligence (SSCI) released its “Report on the U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq.” The SSCI report was a scathing attack on one of the IC’s

premier publications, the National Intelligence Estimate (NIE); in this case the October 2002 NIE on "Iraq's Continuing Programs for Weapons of Mass Destruction." Backed by the NIE, the Bush Administration had cited concern about Iraq's WMD programs as a leading justification for the war against Iraq. Yet, U.S. inspectors were unable to find any weapons stockpiles or evidence that Iraq was reconstituting its WMD programs. Could the CIA and the rest of the IC have been so wrong a second time? The SSCI report left no doubt. To devastating effect, Conclusion 1 stated: "Most of the major key judgments in the Intelligence Community's October 2002 National Intelligence Estimate . . . either overstated, or were not supported by, the underlying intelligence reporting. A series of failures, particularly in analytic trade craft, led to the mischaracterization of the intelligence."⁹ Seemingly, the IC was incapable of providing the kind of basic information required to make reasoned judgments about issues of national defense. Senator Bob Graham (D-Florida) was among the many linking the failure to prevent the 9/11 attacks and the WMD assessment. In an open letter to the SSCI Chairman, Graham thundered, "If 9-11 was a wake-up call alerting us to the problems in our Intelligence Community, the misinformation on Iraq's WMD programs gives us our first report card. The grade we have received is an F. This makes it imperative that the Congress begin the process of reforming our Intelligence Community immediately."¹⁰

THE 9/11 COMMISSION

In its 567-page report, the 9/11 Commission described a largely dysfunctional intelligence system hampered by a fragmented management structure. The Commission questioned whether the IC was organized effectively to counter terrorism and to address the other national security challenges of the future. The Commission's 41-plus recommendations touched on a variety of concerns well beyond intelligence, which ranged from border protection to airline security to immigration procedures. In the report's concluding chapter, entitled "How to Do It? A Different Way of Organizing the Government," the Commission focused on 13 recommendations specifically addressing intelligence matters. Commission Chairman Thomas Kean and Vice Chairman Lee Hamilton, in their testimony before the House Armed Service Committee on 10 August 2004, further narrowed the Commission's proposals down to "six major problems confronting the Intelligence Community," as follows:

- Structural barriers to the performance of joint intelligence work (national intelligence organized around the collection priorities of the home agencies, not the joint mission.)
- A lack of common standards and practices.

- Divided management of national intelligence capabilities between the DCI and the Defense Department.
- The DCI's "weak capacity" to set priorities and move funds and other resources.
- The competing demands of the DCI's three responsibilities.
- The IC's excess complexity and secrecy which shields its funding and work from public scrutiny. .¹¹

In an effort to bring greater cohesion to the Intelligence Community, the Commission proposed several key initiatives, to include:

- **Appointment of a Director of National Intelligence** to oversee a "complete transformation of the way the Intelligence Community does business." This new DNI would be imbued with strong budget, resource and personnel.
- **Establishment of a National Counterterrorism Center (NCTC)**. Using the 1986 Goldwater-Nichols Pentagon Reform Act as a model, the Commission saw the NCTC as the civilian equivalent of a unified joint command for counterterrorism. In its examination of IC operations prior to 9/11, the Commission saw no one acting as the "quarterback," no one capable of drawing relevant information from across the government, and no one assigning responsibilities across the various agencies. The Commission felt a NCTC, with combined intelligence and operational planning responsibilities would fill this need. Finally, the NCTC would coordinate operations, but individual agencies would execute specific operations "within their competencies."
- **Creation of National Intelligence Centers (NICs)** to focus on the key intelligence issues identified by the DNI. The Commission argued that, just as in the military, intelligence professionals should be assigned to unified joint commands (i.e., NICs) which would bring together imagery, signals and human intelligence experts, both collectors and analysts, to work together on that joint mission. The NCTC is itself a NIC; the Commission also suggested forming a NIC on WMD proliferation, with others to follow as needed.¹²

THE POLITICAL RESPONSE

Senate: At the outset of the debate over national intelligence reform, the House and Senate adopted nearly opposite positions. Responding more rapidly and more favorably to the marker thrown down by the 9/11 Commission, Senate leaders voiced approval of the Commission's recommendations. As expressed by Senator Joseph Lieberman (D-Connecticut),

“ . . . the Commission’s recommendations should be our starting point, and I believe in many cases – perhaps most – they should be our ending point.”¹³ Deliberations in the Senate ultimately produced a bill, the “National Intelligence Reform Act of 2004” (S.2845), that closely mirrored the 9/11 Commission’s conclusions and included a call for a national intelligence director with virtually complete hiring, firing and budgetary authority over the IC’s 15 agencies. The measure passed the Senate by a resounding 96-to-2 margin.¹⁴

House of Representatives: The House moved more slowly in endorsing the 9/11 Commission’s recommendations. Early on, Speaker Dennis Hastert (R-Illinois) announced that any House action on a reform bill would not begin until the following year. House leaders also signaled they would use the Commission’s findings as a guide, but they did not feel bound by the panel’s precise proposals. GOP leaders ridiculed Democrats who suggested the Commission’s 41 recommendations should be enacted with little questioning. Majority Whip Roy Blunt (R-Missouri) voiced a typical response when telling reporters “in embracing the spirit of the 9/11 Commission’s report, we don’t necessarily need to embrace the specifics of every recommendation. I heard 10 hours is the time spent by the commission in actually coming up with these recommendations.”¹⁵

Pressure from Commission members, the 9/11 families, and the press soon forced a shift in House attitudes. Legislative action was not postponed, and Speaker Hastert subsequently brought forth a bill (H.R. 10) that was a conglomeration of over 100 different proposals generated by a multitude of House committees. Perhaps as a result, H.R. 10 incorporated a wide range of issues – deportation of immigrants, beefing up on border controls and enhancing various law enforcement powers – that were not addressed in the Senate bill. Critics immediately complained these matters were extraneous to the issue of intelligence reform; some claimed these measures were deliberately introduced merely as red herrings to delay passage of legislation. Yet H.R. 10 also showed that House members had moved considerably closer to the Senate’s endorsement of the 9/11 Commission report. As Representative Chris Cox (R-California) remarked on 27 September, “It [H.R. 10] is a much more comprehensive enacting of the 9/11 Commission recommendations than anyone would have thought possible a few weeks ago.”¹⁶

Like its Senate counterpart, the House bill endorsed most of the key 9/11 Commission proposals, including a national intelligence director and NCTC. The House version, however, gave the DNI far less authority over budget and personnel than either the Senate or the 9/11 Commission. The differences reflected fundamentally opposing views on who should exercise managerial control over the Defense Department’s intelligence collection agencies, the new

intelligence director or the Pentagon. As discussed below, additional information on how intelligence spending is structured is required in order to understand the nature of this critical disagreement.

Since 1995 the U.S. intelligence budget has been divided into three components:

- **The National Intelligence Program (NIP)**, which encompasses all intelligence programs, projects and activities undertaken in support of decision-making at the national level. (Note: Prior to passage of the 2004 Intelligence Reform Act, this component of the intelligence budget was designated the National Foreign Intelligence Program (NFIP). Legislators purposely removed the word "foreign" to heighten the importance of both domestic and international terrorism information and to reduce, at least semantically, the previous separation between overseas and domestic counterterrorism efforts.)
- **The Joint Military Intelligence Program (JMIP)**, which is overseen by the Office of the Secretary of Defense and includes those programs that respond to defense-wide intelligence requirements as opposed to the needs of any one military service.
- **The Tactical Intelligence and Related Activities (TIARA) Program** is an aggregation of funding for tactical military intelligence programs managed by the individual services (Army, Air Force, Navy and Marines).

Four DOD agencies -- NSA, NRO, NGA and DIA -- are considered national level intelligence agencies, and as such, receive funding from the NIP budget. Yet, each also provides tactical support to battlefield commanders on the ground, and such programs of interest to military consumers may be funded through JMIP.

While the Senate bill sought a centralized DNI with increased authorities, it did not suggest interfering with DOD's authority to manage the JMIP or TIARA. On the other hand, both the 9/11 Commission and the Senate proposed giving the new intelligence director enhanced budgetary powers that would have the effect of moving NSA, NRO and NGA out of the Pentagon's control. In the Commission's view, the DNI could not be considered a true centralizing figure if the SecDef controlled the vast majority of the intelligence dollars.

Understandably, the military establishment has insisted on the need to manage the Intelligence, Surveillance and Reconnaissance (ISR) systems that directly support military forces. DOD spokesmen point out that the line between tactical and national cannot and should not be sharply drawn, that considerable benefits are gained by permitting overlapping use of national and tactical platforms. Intelligence of vital interest to a combatant commander can have national implications and vice versa. In the words of one defense expert, "the distinction

between strategic and tactical ISR systems gradually has melted away as military requirements shifted from the nuclear and conventional threat posed by the Russians to more diverse dangers arising from rogue states and terrorists.¹⁷ Moreover, intelligence from national sources has become vitally important to all manner of military operations. As one example, national platforms frequently provide the precise, real-time data needed to target today's precision-guided munitions (PGMs). Similarly, today's network-centric battlefield is heavily dependent upon the ability of national systems to feed electronic data to units on the ground. Understandably, DOD officials and members of Congress expressed concern that the DNI concept could jeopardize the increasingly close relationship between the Pentagon's combat support agencies and operational military forces¹⁸.

Alternatively, proponents of a strong DNI contend that giving the national director greater responsibility over the entire NIP would improve the management of all ISR programs, to include those now run by the NSA, NRO and NGA. ISR spending has grown dramatically in recent years, but the current system does not easily permit cost comparisons or trade-offs in the acquisition process because expenditures are looked at in piecemeal fashion, not as a comprehensive whole. Experts have pointed out that satellites and the latest generation Unmanned Aerial Vehicles (UAV) undertake the same or similar missions. Of equal concern is the belief that the focus on support to military operations by national agencies has led to reduced responsiveness to national-level policymakers at the NSC and elsewhere. It has been argued, for example, that the failure to provide advance notice of India's May 1998 nuclear test may have been partially due to use of satellites to assist U.S. military forces operating in the Persian Gulf. Similarly, in 1995 the focus of imagery analysts on Serb air defenses may have delayed finding mass grave sites, a matter of intense interest to the State Department.¹⁹

In the end, the Senate was forced to capitulate. An eleventh-hour revolt by House Armed Services Committee Chairman Duncan Hunter (R-California) convinced Speaker Haslet to pull his bill off the floor and suddenly placed passage of any reform measure by the 108th Congress in jeopardy. After President Bush personally intervened to save the bill, Hunter dropped his opposition but insisted upon the insertion of rather ambiguous wording stating that the intelligence director must operate under guidelines that "do not abrogate the statutory responsibilities" of the SecDef and other agency heads. The final bill also stipulated the Secretary of Defense will develop the annual JMIP and TIARA budgets with the "participation" of the DNI.²⁰ Exactly how this participation process will work was not clearly delineated.

In the legislative give-and-take, the Senate made substantial compromises greatly limiting the ability of the DNI to shift funds and personnel from one program or agency to another. In

the final bill, transfer of funds within the NIP must be approved by the Office of Management and Budget (OMB); must be to a “higher priority” activity; cannot be more than \$150 million and must be “less than 5 percent of amounts available” to the affected agency.²¹ (If the head of the affected agency has no objection to the proposed changes, however, these limitations do not apply.) In its recommendations, the 9/11 Commission had proposed that the DNI have virtually complete authority over intelligence personnel and funding, even over the objections of the affected agency. With some minor qualifications, the Senate bill echoed this call for full authority over budgets and personnel. The depth of the Senate’s compromise is revealed in the difference between virtual 100 percent budget control and the \$150 million/5 percent limits of the final bill.

THE NATIONAL INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

As is customary in our system of government, the final bill that President Bush signed into law on 17 December 2004 represented a compromise solution, with concessions made on both sides. As discussed below, the “National Intelligence Reform and Terrorism Prevention Act of 2004” (official title) provided some – but nowhere near all -- of the ingredients that the 9/11 Commission argued were mandatory to bring cohesion to a reorganized national security system. As a result, debate still rages as to whether this measure is the bill America needs. The essential question remains: Can the new measure produce a more effective, better coordinated intelligence system?

Lamentably, examining the wording of the new bill is not always helpful. As an intelligence expert at the Center for Strategic and International Studies pointed out, “the measure has a lot of fuzzy language” open to varying interpretations.²² Similarly, Jeffrey H. Smith, a former CIA General Counsel, found “considerable confusion and contradiction” in the new bill. In Smith’s view, “lawyers across the country will be arguing about what these provisions mean for many months to come.”²³ It must be remembered, moreover, that the 1947 National Security Act authorized the DCI to serve as the head of the entire IC and to “facilitate the development” of an annual intelligence budget. Yet the DCI’s powers, as exercised, were less than they appeared on paper. The intelligence system that resulted differed markedly from the one its legislators envisioned. The same will undoubtedly prove true for the 2004 law. How the 2004 act is interpreted and implemented is of far greater significance than the law’s current language. With this caveat in mind, we will attempt to evaluate the three key elements of the Intelligence Reform Act – the role of the DNI, the NIC concept, and the creation of a counterterrorism-specific NIC, the NCTC.

THE ROLE OF THE DNI

As stipulated by the new bill, the DNI shall:

- “Serve as head of the intelligence community.”
- “Oversee and direct the implementation” of the nation’s intelligence program.
- “Develop and determine” an annual intelligence budget based on budget proposals provided by the individual intelligence agency heads.
- “Ensure the effective execution” of the intelligence budget. The Director of the Office of Management and Budget (OMB) must apportion national intelligence funds at the “exclusive direction” of the DNI for allocation to the various elements of the IC.
- “Monitor the implementation and execution” of the national intelligence program.²⁴

In short, the act seemingly gives the DNI greater power than exercised by the DCI to determine how money is distributed within the IC and to set priorities for what type of intelligence is to be collected, both potentially significant developments. Yet, as we have already seen, legislators placed definite limits on the DNI’s authority to reprogram or transfer funds. James Simon, the former Assistant DCI for Administration under George Tenet, has characterized the DNI’s new budgetary powers as “pretty thin gruel.” “Raising the reprogramming threshold is nice . . . but truly a small sum (\$150 million) for a big program.”²⁵ Another critic dismissed the \$150 million dollar limit, when compared to multi-billion dollar intelligence budgets, as mere “decimal dust.”²⁶

Former DCI Robert Gates has argued the power to move money and people within the NIP is essential for either a DCI or a DNI to respond to changing situations and priorities. In Gates’ opinion, the current legislation does not go far enough and does not provide the DNI with the full budget authority needed. Moreover, Gates cautioned against separating the DNI from the working-level analysts and officers at CIA. “The NID position, without direct control of a single line agency or organization, will eventually have its authorities eroded, eventually becoming not an intelligence czar, but eunuch.”²⁷

Others question the whole concept of DNI as unnecessary and believe it will only add an extra layer of bureaucracy. In testimony before the Senate Armed Services Committee in July 2004, John McLaughlin, then the Acting DCI, stressed that many of the reforms suggested by the 9/11 Commission had already taken place. McLaughlin pointed out example after example of changes and improvements made in the ensuing three years. He strongly asserted that the “caricature” of an IC that does not share information or work together does “a great disservice” to the men and women of the intelligence world. McLaughlin concluded his remarks by advising the Senate committee that the keys to the war on terrorism are speed, agility and flexibility. He

questioned whether “complicated wiring diagrams” or more levels of bureaucracy could produce these needed elements.²⁸

NATIONAL INTELLIGENCE CENTERS

The second major innovation of the Intelligence Reform Act was the creation of Community-wide analytic and collection centers (NICs) focused on specific national security threats/missions. In a 2003 article entitled “The Need to Reorganize the Intelligence Community,” Larry C. Kindsvater, then Executive Director for Intelligence Community Affairs, set forth all the key elements of the NIC concept. His ideas later appeared almost verbatim in the 9/11 Commission’s recommendations. Kindsvater argued the IC must: (1) refocus its structure around substantive security missions rather than collection; (2) create new mission-oriented centers with participation from across the IC; and (3) have a leader who is truly in charge (although he proposed strengthening the powers of the current DCI, not establishing a new DNI position). Kindsvater asserted that the IC is currently organized by collection “stovepipes.” As a result, the IC’s emphasis is determined by the type of collection (e.g., HUMINT, SIGINT) first and substantive issues (e.g., terrorism, proliferation) second. Moreover, no organization or person within the IC was ultimately responsible for the success or failure of our primary security missions (e.g., countering terrorism) because no one entity had responsibility for the whole program.²⁹

THE NATIONAL COUNTER TERRORISM CENTER

In accordance with Kindsvater’s proposals, the Intelligence Reform Act established two national centers – the NCTC and the National Counter Proliferation Center – and authorized the DNI to create additional NICs as deemed necessary. As stated in the act, the NCTC is to serve as the central repository for all terrorist-related intelligence. The Reform Act further stipulates that the NCTC Director shall:

- Serve as the DNI’s principal adviser on counterterrorism and shall assist the DNI in identifying, coordinating and prioritizing counterterrorism requirements;
- Establish a Directorate of Intelligence within NCTC which will have “primary responsibility” within the U.S. government for analysis of terrorism and terrorist organizations;
- Establish a Directorate of Strategic Operational Planning within NCTC which will provide “strategic operational plans” for civilian and military counterterrorism efforts and for the “effective integration” of counterterrorism operations across agency boundaries, both inside and outside the U.S. Planning shall include the mission,

objectives to be achieved, tasks to be performed, and the assignment of roles and responsibilities.³⁰

The new role of the NCTC constitutes an enormous step beyond that of the Terrorist Threat and Integration Center (TTIC), the organization it was designed to replace. TTIC was conceived as a strictly analytic component; it had no operational mandate or responsibilities. As outlined in President Bush's State of the Union Address, TTIC was to serve as an informational knowledge bank and clearinghouse, a fusion center intended to prevent information from falling between the cracks between agencies. Through TTIC, information would be shared appropriately; whatever was known to one organization would be known to all others in the IC. No longer would the FBI be kept in the dark by the CIA; conversely, no longer would law enforcement information of intelligence value be unavailable to CIA analysts.³¹

The new act specifically states that NCTC "may not direct the execution" of counterterrorism operations or engage in collection activities. Operational execution will be left up to the individual intelligence agencies, principally CIA and DOD overseas and the FBI domestically. Yet, in giving NCTC authority to establish define missions, determine tasks, and assign objectives, roles and missions, Congress has blurred the distinctions between planning and conducting operations. It will not be easy to decide where one ends and the other begins. As noted previously, the wording of the legislation will ultimately be less important than how the law will be interpreted and implemented.

Reaction to the NCTC within the IC has been decidedly mixed, and if anything, the NCTC concept is more controversial than the idea of a DNI. As always, the devil is in the details. Intelligence Community members want to know if the NCTC will serve as the "orchestrator" or "originator" of counterterrorism analysis and reporting. Will it "drive and direct" the process or serve only to "consult and coordinate?" DOD representatives have pointed out that the term "strategic operational planning" creates a conflict of interest for the Pentagon. The military has its own statutory, Title 10 responsibilities for planning, and U.S. forces operate under a chain of command that is inconsistent with control by an intelligence entity. Force protection, as one example, is an inherent command responsibility that cannot be delegated. Similarly, FBI officials worry about intelligence officials crossing over into law enforcement matters. Even with passage of the USA PATRIOT Act, clear-cut differences exist between the legal authorities granted to law enforcement officers and intelligence personnel.³²

Complicating theoretical problems with NCTC's role is a real world concern: NCTC does not currently have personnel with the necessary training or experience in operations (operations were previously outside TTIC's scope). Seemingly, the only way for NCTC to acquire

intelligence officers with operational experience would be to strip them out of CIA. As CIA management has argued, tearing down the Agency's Counterterrorism Center (CTC) in order to build up the NCTC makes little sense. Rank-and-file CTC officers already view TTIC critically. TTIC was seen as redundant, as doing work that CTC was already capable of handling, and without bringing any special value-added to the process. To date, the DCI has resisted requests to move CTC's special Al Qa'ida unit to the new, multi-million-dollar NCTC facility in Northern Virginia. At least for now, the work of this unit has been considered too vital to risk disrupting its cohesion and focus by moving it to the NCTC building.

CONCLUSIONS

DO WE HAVE THE INTELLIGENCE BILL WE NEED?

After months of debate, the Intelligence Reform Act created a DNI who enjoys only marginally greater power over the Intelligence Community than previously held by the DCI (although, admittedly, DCI's traditionally chose not to exercise the full powers available to them under the 1947 National Security Act.) The DCI always had the authority to approve IC budgets. Under the new measure, the DNI gained an increased ability to move people and funds within and between programs, but as we have seen, the final bill did not grant the DNI the full reprogramming and transferring authorities recommended by the 9/11 Commission, and critics have dismissed the dollar amounts now transferable as insignificant.

Counter-balancing the DNI's reprogramming power is a significant loss in authority resulting from his separation from any existing organization. Unlike the DCI, the DNI has no troops of his own, and no agency under his direct control. Everything the DNI accomplishes will have to be done by working through others. Although the new position of DNI may provide a more elevated pulpit from which to speak, the DNI will still have to rely on his ability to cajole and convince the various agency heads to get anything done. As Winston P. Wiley, a former senior CIA official has pointed out, "It's not that budgets and personnel are not important, but what's really important is directing, controlling and having access to the people who do the work. They created a person who doesn't have that."³³

As John McLaughlin argued, the IC had already adopted many of the 9/11 Commission's recommendations before passage of the new legislation. Moreover, in creating the new DNI position, Congress seems to have added an unnecessary level of bureaucracy. The new law permits the DNI to have a support staff of up to 500. That number is greater than entire Divisions within the CIA. If the DNI fills all the slots he is authorized, what will all these people do?

The DNI has been designated as the president's primary intelligence briefer, but the intelligence the DNI presents will not come from his support staff but from analysts at CIA. Presumably, those analysts will be required to brief CIA management, who will, in turn, brief the DNI or his staff. Such redundancy runs counter to the need for speed and flexibility in conducting the war on terrorism. The alternative would be to move the current intelligence analysis capability from the CIA to the DNI's Office. This, however, would result in massive changes and disruptions to the analytical activities and capabilities of CIA. It is hard to see how this will improve America's war on terrorism.

Another ramification of this bill relates to the language inserted by Congressman Duncan Hunter as part of the compromise when the bill was in Conference, which requires that the DNI operate in a manner ". . . that respects and does not abrogate the statutory responsibilities of the heads of the departments of the United States Government concerning such departments. . . ." ³⁴ By itself, this language opens the door to enormous differences over the actual execution of the DNI's authorities over the DOD portions of the NIP. When coupled with the creation of a Four-Star Intelligence Command within DOD that will have command and control over the DIA, NSA, NGA, NRO and Service intelligence agencies, the language above virtually guarantees the DNI will have little more authority over personnel and finances in the DOD portion of the NIP than DCI's have exercised since 1947. ³⁵ Among the first practical results of the combination of the Hunter compromise language and the expected passage of the Chambliss bill would be the complete subordination of NSA and NGA in their entirety to an operational military command. Since both agencies include national as well as JMIP and TIARA assets, those national assets will become part of that operational military command. It is hard to see how this will strengthen the DNI's ability to manage the National Intelligence Program.

In sum, after all the effort expended, what we ended up with is not true reform, not a fundamental change in how things are done, but merely a restructuring of the existing apparatus. Seeking to find someone to blame and frustrated by the lack of accountability within the IC, the 9/11 Commission focused on the top of the intelligence pyramid. The Commission's recommendations and the legislation that followed designated the DNI as the one person who would be accountable to the president and the American public. In large measure, the Intelligence Reform Act ignored the working level operations officers, analysts, SIGINT technicians and FBI field agents, who do the actual work needed to penetrate terrorist organizations, identify threats and disrupt potential plots. ³⁶ Amid all the talk about a failure to "connect the dots," an equally important problem was overlooked: we simply did not have enough dots. Although the CIA warned repeatedly about a possible Al Qa'ida attack on the

U.S., it was unable to provide sufficiently detailed, actionable intelligence to prevent the catastrophe. Many recognize a critical need for more HUMINT collectors, as well as more and better ways for operating outside embassies against non-state actors such as Al Qa'ida. Yet, for the most part, the Intelligence Reform Act did not address these fundamental concerns. And the 9/11 Commission and the framers of the Intelligence Reform Act also seem to have overlooked a basic fact of human intelligence gathering: if no one in a position of access to the information desired is willing to spy for you, then no number of case officers, no amount of money and no level of eloquent persuasion can improve on the collection of human intelligence in such a case.

RECOMMENDATIONS

Needed or not, we now have a DNI; the time for counterarguments is probably past. The following suggestions, however, are intended to enhance the effectiveness of the IC and can be incorporated into any new IC architecture.

- Don't separate analysis from operations. As we have seen, the NCTC will have responsibility for strategic planning but not for the execution of counterterrorism operations. The language implies a distinct separation between the two functions. Yet, recent CIA experience has demonstrated the synergistic benefits of having HUMINT collectors and analysts work together. In CTC and the Agency's other issue-oriented centers, analysts are brought into operational planning at the outset. Working jointly, ops officers and analysts bring their different perspectives, experiences, and skills to bear on collection efforts. The result has been more successful, more productive operations. At the same time, the analysts have gained an appreciation for the challenges and constraints facing the case officer. In the process, analysts acquire a better understanding of the quality of the information obtained; where it is strong, where questionable. The result is better analysis and more accurate guidance for senior policymakers. Former DCI Robert Gates characterized bringing the analytical side of CIA closer to operations, begun with the creation of CTC in 1986, as one of the "great achievements of the last 18 years"³⁷
- Don't throw the baby out with the bathwater. One obvious effect of the new law is a severe diminution of the CIA's role. As but one example, the central repository for counterterrorism intelligence used to be the CIA's CTC; now it is the NCTC. Similarly, the Agency has an active Counterproliferation Division (CPD) whose effectiveness was demonstrated by its exposure of A. Q. Khan and his black-market

sales of nuclear technology to Libya, Iran and North Korea. Yet CPD will now apparently take a subordinate position to the new National Counter Proliferation Center. The trend is clear. New NICs, when they are formed, will also usurp existing CIA entities. CIA personnel have a depth of expertise and knowledge of clandestine and covert operations that cannot be matched anywhere else in the government. At present, however, vacuums currently exist within the IC, and DOD and the FBI are naturally moving to fill these voids. We must make certain we have the right people and organizations fulfilling the roles for which they are best suited. These should be decisions made on relative merit, not politics.

- Address Congressional oversight. Although the 9/11 Commission strongly urged reform of Congressional oversight of the IC, which is now scattered among a bewildering array of House and Senate committees, the new act does not address the issue. In the last two fiscal years, Congress appropriated funding to the IC before the authorization bills (authorizing specified activities) had made their way through the necessary legislative committees, seemingly making a mockery of the whole process. In serving multiple masters, the heads of intelligence agencies not only receive disjointed, disparate guidance, but also waste time -- their most precious resource -- in a never-ending series of briefings.³⁸
- Monitor the FBI's progress. The FBI may well be the world's best criminal investigative institution, but the 9/11 Commission harshly criticized its substandard performance in the counterterrorism arena. Since 2001, the FBI has instituted a number of new measures, to include hiring better trained analysts and enlarging its Counterterrorism Division. Additionally, the Bureau now has reports officers who oversee the dissemination of intelligence collected in the field; an activity that is, in itself, a new undertaking for the FBI. Director Robert Mueller has repeatedly stated the primary mission of the FBI is now prevention of future terrorist attacks, not after-the-fact law enforcement. Yet such a sea-change constitutes a fundamental shift in FBI tactics, procedures and culture. The Bureau has improved its intelligence capabilities, but continued progress is needed.

In signing the National Intelligence Reform Act on 17 December 2004, President Bush said, "Our vast intelligence enterprise will become more unified, coordinated and effective. It will enable us to better do our duty, which is to protect the American people."³⁹ While that is certainly the goal, much more remains to be done. Fundamental reform has only just begun, and the rebuilding process will take considerably more time and effort. We cannot mislead the

public into believing the job is over now that a bill has been passed and a new DNI nominated. If we are to make the American people safer, significant, meaningful reform of the intelligence system must continue in the months and years to come.

WORD COUNT= 6890

ENDNOTES

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³ *Ibid.*, 6,7.

⁴ Cumming, 3.

⁵ Warner, 11.

⁶ Laura K. Donohue, "Fear Itself, Counterterrorism, Individual Rights and US Foreign Relations Post 9-11," in *Terrorism and Counterterrorism: Understanding The New Security Environment*, ed. Russell D. Howard and Reid L. Sawyer (New York: McGraw-Hill, 2004), 313-338.

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⁸ *Ibid.*, xvi.

⁹ Congress, Senate, Select Committee on Intelligence, *Report on the U.S. Intelligence Community's Prewar Intelligence Assessment on Iraq*, 108th Cong., 7 July 2004, 14.

¹⁰ "Senator Graham Calls for Action on Intelligence Reform," 30 January 2004; available from <<http://www.iwar.org.uk/news-archive/2004/01-30-6.htm>>; Internet; accessed 21 September 2004.

¹¹ Congress, House, Armed Services Committee, *Prepared Statement of Chairman Thomas Kean and Vice Chairman Lee Hamilton of the National Commission on Terrorist Attacks Upon the United States*, 108th Cong., 2d sess., 10 August 2004, 2.

¹² *Ibid.*, 2-4.

¹³ Joseph Lieberman, "Floor Statement of Senator Lieberman on Introduction of the 9/11 Commission Implementation Act," 7 September 2004; available from <http://govt-aff.senate.gov/_files/Jil911LegintroshortFINALI20.pdg>; Internet; accessed 4 October 2004, 1-3.

¹⁴ Mary Curtius, "Senate Passes Major Overhaul of U.S. Intelligence," *Los Angeles Times*, 7 October 2004, sec. A

¹⁵ Charles Babington, "Votes Set on 9/11 Recommendations," *Washington Post*, 16 September 2004, sec. A, p. 29.

¹⁶ Gail Russell Chaddock, "House, Senate Diverge on 9/11 Response," *Christian Science Monitor*, 27 September 2004, 3.

¹⁷ Richard A. Best, Jr., "Intelligence Community Reorganization: Potential Effects on DOD Intelligence Agencies," *Congressional Research Service Report for Congress*, Order Number RL32515 (6 August 2004) 5.

¹⁸ Duncan Hunter, "Think of the Battlefield," *Wall Street Journal*, 7 October 2004, sec. A, p.18. See also "Gen. Myers Bucks Bush Over Intelligence Chief," *Washington Times*, 23 October 2004.

¹⁹ Richard A. Best, Jr., "Intelligence Issues for Congress," *Congressional Research Service Report for Congress*, Order Code IB10012, 27 October 2004, 3,7.

²⁰ Philip Shenon, "House Approves Broad Overhaul of Intelligence," *The New York Times*, 8 December 2004, sec. A, p. 1.

²¹ Shane Harris, "Reform Bill Misses the Mark, Intelligence Veterans Say," GovExec.com, 16 December 2004.

²² Peter Baker and Walter Pincus, "Bush Signs Intelligence Reform Bill," *Washington Post*, sec. A, p. 1.

²³ Douglas Jehl, "The Spymaster Question," *The New York Times*, 8 December 2004, sec. A, p. 23.

²⁴ Congress, *National Intelligence Reform and Terrorism Prevention Act of 2004*, 108th Cong., 2d sess., sec. 1011. See also Congress, Senate Committee on Governmental Affairs, *Summary of Intelligence Reform and Terrorism Prevention Act*, 6 December 2004.

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²⁶ David E. Kaplan and Kevin Whitelaw, "Intelligence Reform—At Last," *US News & World Report*. 20 December 2004, 31-32.

²⁷ Robert M. Gates, "Racing to Ruin the C.I.A.," *New York Times*, 8 June 2004, sec. A, p. 25.

²⁸ John E. McLaughlin, "Testimony Before the Senate Armed Services Committee on 9-11 Commission Findings," 17 August 2004; available from <http://www.cia.gov/cia/public_affairs/speeches/2004/mclaughlin_testimony_08172004.html>; Internet; accessed 24 September 2004.

²⁹ Larry C. Kindsvater, "The Need to Reorganize the Intelligence Community," *Studies In Intelligence* 47, no. 1 (2003); available from <<http://www.cia.gov/csi/studies/vol47no1/article03.html>>; Internet; accessed 24 September 2004.

³⁰ Congress, *Intelligence Reform and Terrorism Prevention Act of 2004*, 108th Cong., 2d sess., sec. 1021. See also Congress, Senate Committee on Governmental Affairs, *Summary of Intelligence Reform and Terrorism Prevention Act*, 6 December 2004.

³¹“Terrorist Threat Integration Center Begins Operations,” Central Intelligence Agency Press Release, 1 May 2003; available from <http://www.cia.gov/cia/public_affairs/press_release/2003/pr05012003.html>; Internet; accessed 24 September 2004.

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³⁴ Congress, *National Intelligence Reform and Terrorism Prevention Act of 2004*, 108th Cong., 2d sess., sec. 1018.

³⁵ Saxby Chambliss, “We Have Not Correctly Framed the Debate on Intelligence Reform,” *Parameters* 35 (Spring 2005): 5-13.

³⁶ Dana Priest and Walter Pincus, “Director’s Control a Concern,” *Washington Post*, 8 December 2004, sec. A, p. 1.

³⁷ Robert M. Gates, “Former CIA Chief Says Roberts’ Proposal to Reform the CIA Would Be a Catastrophe,” interview by Bernard Gwertzman, *Council of Foreign Relations*, 24 August 2004; available from <<http://cfr.org/publication.php?id=7270>>; Internet; accessed 27 August 2004.

³⁸ The competing interests and multiple oversight authorities of various Congressional committees also serve as a means to circumvent disagreements within the Executive Branch. If, for example, the Secretary of Defense disagrees with a DCI initiative, he need not take up the matter with the President. As a practical reality, it is far simpler for the SecDef to use political allies in, say, the Senate or House Armed Services Committee to head off or tie up the proposal in the legislative deliberation process.

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