

# CRS Report for Congress

## Intelligence Issues for Congress

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# Intelligence Issues for Congress

## Summary

To address the challenges facing the U.S. Intelligence Community in the 21<sup>st</sup> century, congressional and executive branch initiatives have sought to improve coordination among the different agencies and to encourage better analysis. In December 2004, the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458) was signed, providing for a Director of National Intelligence (DNI) with substantial authorities to manage the national intelligence effort. The legislation also established a separate Director of the Central Intelligence Agency.

Making cooperation effective presents substantial leadership and managerial challenges. The needs of intelligence “consumers” — ranging from the White House to cabinet agencies to military commanders — must all be met, using the same systems and personnel. Intelligence collection systems are expensive and some critics suggest there have been elements of waste and unneeded duplication of effort while some intelligence “targets” have been neglected.

The DNI has substantial statutory authorities to address these issues, but the organizational relationships will remain complex, especially for Defense Department agencies. Members of Congress will be seeking to observe the extent to which effective coordination is accomplished. FY2008 intelligence authorization legislation (H.R. 2082) addresses some of these concerns.

International terrorism, a major threat facing the United States in the 21<sup>st</sup> century, presents a difficult analytical challenge. Techniques for acquiring and analyzing information on small groups of plotters differ significantly from those used to evaluate the military capabilities of other countries. U.S. intelligence efforts are complicated by unfilled requirements for foreign language expertise. Whether all terrorist surveillance efforts have been consistent with the Foreign Intelligence Surveillance Act of 1978 (FISA) has been a matter of controversy. Changes to FISA are included in H.R. 3773 which the House and Senate have passed in different versions.

Intelligence on Iraqi weapons of mass destruction was inaccurate and Members have criticized the performance of the Intelligence Community in regard to current conditions in Iraq and other situations. Improved analysis, while difficult to mandate, remains a key goal. Better human intelligence, it is argued, is also essential.

Intelligence support to military operations continues to be a major responsibility of intelligence agencies. The use of precision guided munitions depends on accurate, real-time targeting data; integrating intelligence data into military operations will require changes in organizational relationships as well as acquiring necessary technologies.

Counterterrorism requires the close coordination of intelligence and law enforcement agencies, but there remain many institutional and procedural issues that complicate cooperation between the two sets of agencies. This report will be updated as new information becomes available.

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# Intelligence Issues for Congress

## Most Recent Developments

The Protect America Act (P.L. 110-55), enacted on August 5, 2007 made a number of significant changes to the Foreign Intelligence Surveillance Act (FISA) at the request of the Administration, but the act was set to expire on February 1, 2008. On November 15, the House passed H.R. 3773, the Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective (RESTORE) Act of 2007. This legislation would require a court order for the surveillance of a non-U.S. persons located outside the United States. unless it were known that he or she would not be communicating with U.S. persons. P.L. 110-182, signed on January 31, extended the expiration of the Protect America Act for 15 days which expired on February 16. Efforts in the House to approve another extension (H.R. 5349) failed on February 13.

On October 18, the Senate Intelligence Committee approved S. 2248, the FISA Amendments Act of 2007, which would permit the Attorney General and Director of National Intelligence jointly to authorize the targeting of persons reasonably believed to be outside the United States to acquire foreign intelligence information. The Senate bill also provides some retroactive immunity for telecommunications companies that assisted the government in counterterrorism surveillance efforts since 9/11 and have been the subject of lawsuits. The Senate approved S. 2248 on February 12 and incorporated its provisions into H.R. 3773. On March 14, the House passed an amendment to the Senate amendment of H.R. 3773; the House amendment was strongly opposed by the Bush Administration. According to media reports, negotiations between Administration and congressional leaders are underway.

On May 8, S. 2996, the Senate's version of the FY2009 Intelligence Authorization Act, was reported, but floor action has not yet occurred. The bill contains several provisions strongly opposed by the Administration, including some related to limiting interrogation of prisoners by intelligence officials to procedures included in the Army Field Manual on Human Intelligence Collection. On May 21, the House Intelligence Committee reported H.R. 5959, its version of FY2009 authorization legislation. The House version forbids the use of contractors to conduct interrogations of CIA prisoners (unless there is a written waiver from the DNI), but the Committee rejected a provision similar to that included in the Senate version regarding the Army Field Manual.

## Background and Analysis

The attacks on the World Trade Center and the Pentagon on September 11, 2001, dramatically demonstrated the intelligence threats facing the United States in the new century. In response, Congress has approved significantly larger intelligence

budgets and, in December 2004, passed the most extensive reorganization of the Intelligence Community since the National Security Act of 1947. The Intelligence Reform and Terrorism Prevention Act of 2004 (hereafter: the “Intelligence Reform Act”) (P.L. 108-458) created a Director of National Intelligence (separate from the Director of the Central Intelligence Agency) who will head the Intelligence Community, serve as the principal intelligence adviser to the President, and oversee and direct the acquisition of major collections systems. As long urged by some outside observers, one individual will now be able to concentrate on the Intelligence Community as a whole and possess statutory authorities to establish priorities for budgets, for directing collection by the whole range of technical systems and human agents, and for the preparation of community-wide analytical products.

P.L. 108-458 was designed to address the findings of the National Commission on Terrorist Attacks Upon the United States, known as the 9/11 Commission, that there has been inadequate coordination of the national intelligence effort and that the Intelligence Community, as then-organized, could not serve as an agile information gathering network in the struggle against international terrorists. The Commission released its report in late July 2004 and Congress debated its recommendations through the following months. A key issue was the extent of the authorities of the DNI, especially with regard to budgeting for technical collection systems managed by Defense Department agencies. In the end, many of the recommendations of the 9/11 Commission regarding intelligence organization were adopted after a compromise provision was included that called for implementing the act “in a manner that respects and does not abrogate” the statutory authorities of department heads.

On April 21, 2005, the Senate confirmed the nominations of John D. Negroponte, who had served as Ambassador to Iraq, as DNI and Lt. General Michael V. Hayden, then Director of the National Security Agency, as Deputy DNI. (In May 2006 Hayden became Director of the CIA.) Members of Congress will seek to ensure that the changes effected by P.L. 108-458 improve capabilities against terrorist attacks and other threats to the national security. The legislation is complex and many questions remain concerning implementation; much will depend upon relationships established between the DNI, the separate intelligence agencies, and the Secretary of Defense. On February 7, 2007, retired Navy Vice Admiral J. Michael McConnell was confirmed by the Senate as Negroponte’s successor as DNI.

**Intelligence Community.** The Intelligence Community (defined at 50 U.S.C. 401a(4)) consists of the following:

- Central Intelligence Agency (CIA)
- Bureau of Intelligence and Research, Department of State (INR)
- Defense Intelligence Agency (DIA)
- National Security Agency (NSA)
- National Reconnaissance Office (NRO)
- National Geospatial-Intelligence Agency (NGA)
- Federal Bureau of Investigation (FBI)
- Army Intelligence
- Navy Intelligence
- Air Force Intelligence
- Marine Corps Intelligence
- Department of Homeland Security (DHS)

Coast Guard (CG)  
Treasury Department  
Energy Department  
Drug Enforcement Agency (DEA)

Except for the CIA, intelligence offices or agencies are components of cabinet departments with other roles and missions. The intelligence offices/agencies, however, participate in Intelligence Community activities and serve to support the other efforts of their departments.

The CIA remains the keystone of the Intelligence Community. It has all-source analytical capabilities that cover the whole world outside U.S. borders. It produces a range of studies that cover virtually any topic of interest to national security policymakers. The CIA also collects intelligence with human sources and, on occasion, undertakes covert actions at the direction of the President. (A covert action is an activity or activities of the U.S. Government to influence political, economic, or military conditions abroad, where it is intended that the U.S. role will not be apparent or acknowledged publicly.)

Three major intelligence agencies in DOD — the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the National Geospatial-Intelligence Agency (NGA) — absorb the larger part of the national intelligence budget. NSA is responsible for signals intelligence and has collection sites throughout the world. The NRO develops and operates reconnaissance satellites. The NGA prepares the geospatial data — ranging from maps and charts to sophisticated computerized databases — necessary for targeting in an era dependent upon precision guided weapons. In addition to these three agencies, the Defense Intelligence Agency (DIA) is responsible for defense attachés and for providing DOD with a variety of intelligence products. Although the Intelligence Reform Act provides extensive budgetary and management authorities over these agencies to the DNI, it does not revoke the responsibilities of the Secretary of Defense for these agencies. There will be a need for close cooperation, but also an opportunity for disagreements that could greatly complicate the intelligence effort.

The State Department's Bureau of Intelligence and Research (INR) is one of the smaller components of the Intelligence Community but is widely recognized for the high quality of its analysis. INR is strictly an analytical agency; diplomatic reporting from embassies, though highly useful to intelligence analysts, is not considered an intelligence function (nor is it budgeted as one).

The key intelligence functions of the FBI relate to counterterrorism and counterintelligence. The former mission has grown enormously in importance since September 2001, many new analysts have been hired, and the FBI has been reorganized in an attempt to ensure that intelligence functions are not subordinated to traditional law enforcement efforts. Most importantly, law enforcement information is now expected to be forwarded to other intelligence agencies for use in all-source products.

The intelligence organizations of the four military services concentrate largely on concerns related to their specific missions. Their analytical products, along with

those of DIA, supplement the work of CIA analysts and provide greater depth on key technical issues.

The Homeland Security Act (P.L. 107-296) provided DHS responsibilities for fusing law enforcement and intelligence information relating to terrorist threats to the homeland. The Office of Intelligence and Analysis in DHS participates in the inter-agency counterterrorism efforts and, along with the FBI, has focused on ensuring that state and local law enforcement officials receive information on terrorist threats from national-level intelligence agencies.

The Coast Guard, now part of DHS, deals with information relating to maritime security and homeland defense. The Energy Department analyzes foreign nuclear weapons programs as well as nuclear nonproliferation and energy-security issues. It also has a robust counterintelligence effort. The Treasury Department collects and processes information that may affect U.S. fiscal and monetary policies. Treasury also covers the terrorist financing issue.

**The “INTs”: Intelligence Disciplines.** The Intelligence Community has been built around major agencies responsible for specific intelligence collection systems known as disciplines. Three major intelligence disciplines or “INTs” — signals intelligence (*sigint*), imagery intelligence (*imint*), and human intelligence (*humint*) — provide the most important information for analysts and absorb the bulk of the intelligence budget. *Sigint* collection is the responsibility of NSA at Fort Meade, Maryland. *Sigint* operations are classified, but there is little doubt that the need for intelligence on a growing variety of nations and groups that are increasingly using sophisticated and rapidly changing encryption systems requires a far different *sigint* effort than the one prevailing during the Cold War. Since the late 1990s a process of change in NSA’s culture and methods of operations has been initiated, a change required by the need to target terrorist groups and affected by the proliferation of communications technologies and inexpensive encryption systems. Observers credit the then-Director of NSA, Lt. Gen. Michael Hayden, who became Director of the CIA in May 2006, with launching a long-overdue reorganization of the Agency, and adapting it to changed conditions. Part of his initiative has involved early retirements for some NSA personnel and greater reliance on outsourcing many functions previously done by career personnel. Some of the initiatives relating to acquisition did not, however, meet their objectives.

A second major intelligence discipline, imagery or *imint*, is also facing profound changes. Imagery is collected in essentially three ways, satellites, manned aircraft, and unmanned aerial vehicles (UAVs). The satellite program that covered the Soviet Union and acquired highly accurate intelligence concerning submarines, missiles, bombers, and other military targets is perhaps the greatest achievement of the U.S. Intelligence Community. Subsequent experience has demonstrated that there now a greater number of collection targets than existed during the Cold War and that more satellites are required, especially those that can be maneuvered to collect information about a variety of targets. At the same time, the availability of high-quality commercial satellite imagery and its widespread use by federal agencies has raised questions about the extent to which coverage from the private sector can meet the requirements of intelligence agencies. High altitude UAVs such as the Global Hawk may also provide surveillance capabilities that overlap those of satellites.

The National Imagery and Mapping Agency (NIMA) was established in 1996 to manage imagery processing and dissemination previously undertaken by a number of separate agencies. NIMA was renamed the National Geospatial-Intelligence Agency (NGA) by the FY2004 Defense Authorization Act (P.L. 108-136). The goal of NGA is, according to the agency, to use imagery and other geospatial information “to describe, assess, and visually depict physical features and geographically referenced activities on the Earth.”

Intelligence from human contacts — *humint* — is the oldest intelligence discipline and the one that is most often written about in the media. The CIA is the primary collector of humint, but the Defense Department also has responsibilities filled by defense attachés at embassies around the world and by other agents working on behalf of theater commanders. Many observers have argued that inadequate humint has been a systemic problem and contributed to the inability to gain prior knowledge of the 9/11 plots. In part, these criticisms reflect the changing nature of the international environment. During the Cold War, targets of U.S. humint collection were government officials and military leaders. Intelligence agency officials working under cover as diplomats could approach potential contacts at receptions or in the context of routine embassy business. Today, however, the need is to seek information from clandestine terrorist groups or narcotics traffickers who do not appear at embassy social gatherings. Humint regarding such sources can be especially important as there may be little evidence of activities or intentions that can be gathered from imagery, and their communications may be carefully limited.

Contacts with individuals or groups who may have knowledge about terrorist plots present many challenges. Placing U.S. intelligence officials in foreign countries under “nonofficial cover” (NOC) in businesses or other private capacities is possible, but it presents significant challenges to U.S. agencies. Administrative mechanisms are vastly more complicated than they are for officials formally attached to an embassy; special arrangements have to be made for pay, allowances, retirement, and healthcare. The responsibilities of operatives under nonofficial cover to the parent intelligence agency have to be reconciled with those to private employers, and there is an unavoidable potential for many conflicts of interest or even corruption. Any involvement with terrorist groups or smugglers has a potential for major embarrassment to the U.S. government and, of course, physical danger to those immediately involved.

Responding to allegations in the early-1990s that CIA agents may have been involved too closely with narcotics smugglers and human rights violators in Central America, the then-Director of Central Intelligence (DCI), John Deutch, established guidelines in 1995 (which remain classified) to govern the recruitment of informants with unsavory backgrounds. Although CIA officials maintain that no proposal for contacts with persons having potentially valuable information was disapproved, there was a widespread belief that the guidelines served to encourage a “risk averse” atmosphere at a time when information on terrorist plans, from whatever source, was urgently sought. The FY2002 Intelligence Authorization Act (P.L. 107-108) directed the DCI to rescind and replace the guidelines, and July 2002 press reports indicated that they had been replaced.



A major constraint on humint collection is the availability of personnel trained in appropriate languages. Cold War efforts required a supply of linguists in a relatively finite set of foreign languages, but the Intelligence Community now needs experts in a wider range of more obscure languages and dialects. Various approaches have been considered: use of civilian contract personnel, military reservists with language qualifications, and substantial bonuses for agency personnel who maintain their proficiency. The National Security Education Program, established in 1991, provides for scholarships and career training for individuals in or planning to enter careers in agencies dealing with national security issues.<sup>1</sup>

**Other “INTs”.** A fourth INT, measurement and signatures analysis — *masint* — has received greater emphasis in recent years. A highly technical discipline, *masint* involves the application of complicated analytical refinements to information collected by *sigint* and *imint* sensors. It also includes spectral imaging by which the identities and characteristics of objects can be identified on the basis of their reflection and absorption of light. *Masint* is undertaken by DIA and other DOD agencies. A key problem has been retaining personnel with expertise in *masint* systems who are offered more remunerative positions in private industry.

Another category of information, open source information — *osint* (newspapers, periodicals, pamphlets, books, radio, television, and Internet websites) — is increasingly important given requirements for information about many regions and topics (instead of the former concentration on political and military issues affecting a few countries). At the same time, requirements for translation, dissemination, and systematic analysis have increased, given the multitude of different areas and the volume of materials. Many observers believe that intelligence agencies should be more aggressive in using *osint*; some believe that the availability of *osint* may even reduce the need for certain collection efforts. The availability of *osint* also raises questions regarding the need for intelligence agencies to undertake collection, analysis, and dissemination of information that could be directly obtained by user agencies. Section 1052 of the Intelligence Reform Act expressed the sense of Congress that there should be an open source intelligence center to coordinate the collection, analysis, production, and dissemination of open source intelligence to other intelligence agencies. The DNI is to submit a report on the advisability of such a center.

**Integrating the “INTs”.** The “INTs” have been the pillars of the Intelligence Community’s organizational structure, but analysis of threats requires that data from all the INTs be brought together and that analysts have ready access on a timely basis. This has proved in the past to be a substantial challenge because of technical problems associated with transmitting data and the need to maintain the security of information acquired from highly sensitive sources. Some argue that intelligence officials have tended to err on the side of maintaining the security of information even at the cost of not sharing essential data with those having a need to know. Section 1015 of the Intelligence Reform Act mandated the establishment of an Intelligence Sharing Environment (ISE) to facilitate terrorism-related information.

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<sup>1</sup> See CRS Report RL32557, *Requirements for Linguists in Government Agencies*, by Jeffrey J. Kuenzi.

A related problem has been barriers between foreign intelligence and law enforcement information. These barriers derived from the different uses of information collected by the two sets of agencies — foreign intelligence used for policymaking and military operations and law enforcement information to be used in judicial proceedings in the United States. A large part of the statutory basis for the “wall” between law enforcement and intelligence information was removed with passage of the USA PATRIOT Act of 2001 (P.L. 107-56), which made it possible to share law enforcement information with analysts in intelligence agencies, but long-established practices have not been completely overcome. The Homeland Security Act (P.L. 107-296) and the subsequent creation of the Terrorist Threat Integration Center (TTIC) established offices charged with combining information from both types of sources. Section 1021 of the Intelligence Reform Act made the new National Counterterrorism Center (NCTC) operating under the DNI specifically responsible for “analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism [except purely domestic terrorism]....”

**Intelligence Budget Process.** For budgetary purposes, intelligence spending is divided between the National Intelligence Program (NIP; formerly the National Foreign Intelligence Program or NFIP) and the Military Intelligence Program (MIP). The MIP was established in September 2005 and includes all programs from the former Joint Military Intelligence Program, which encompassed DOD-wide intelligence programs and most programs from the former Tactical Intelligence and Related Activities (TIARA) category, which encompassed intelligence programs supporting the operating units of the armed services. The Program Executive for the MIP is the Under Secretary of Defense for Intelligence. Only a small part of the intelligence budget is made public; the bulk of the \$40 billion that media reporting associates with overall intelligence spending is “hidden” within the DOD budget. Spending for most intelligence programs is described in classified annexes to intelligence and national defense authorization and appropriations legislation. (Members of Congress have access to these annexes, but must make special arrangements to read them.)

For a number of years some Members have sought to make public total amounts of intelligence and intelligence-related spending; floor amendments for that purpose were defeated in both chambers during the 105<sup>th</sup> Congress. In response, however, to a lawsuit filed under the Freedom of Information Act, DCI George Tenet stated on October 15, 1997 that the aggregate amount appropriated for intelligence and intelligence-related activities for FY1997 was \$26.6 billion. He added that the Administration would continue “to protect from disclosure any and all subsidiary information concerning the intelligence budget.” In March 1998, DCI Tenet announced that the FY1998 figure was \$26.7 billion. Figures for FY1999 and subsequent years have not been released and the executive branch has thus far prevailed against legal efforts to force release of intelligence spending figures. On May 23, 2000, the House voted 175-225 to defeat an amendment calling for annual release of an unclassified statement on aggregate intelligence spending. During consideration of intelligence reform legislation in 2004, the Senate at one point approved a version of a bill which would require publication of the amount of the NIP; the House version did not include a similar provision and, with the Senate deferring to the House, the Intelligence Reform Act does not require making

intelligence spending amounts public. Provisions requiring public disclosure of the aggregate amount of funds for the NIP are included in the Senate's version of the FY2008 authorization bill (S. 1538). Section 601 of P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007, requires that the DNI publicly disclose the aggregate amount of funds appropriated for the NIP although after FY2008 the President could waive or postpone the disclosure upon sending a explanation to congressional oversight committees. However, during floor consideration of the H.R. 3222, the FY2008 defense appropriations act, an amendment was adopted that would preclude funds appropriated in the act from being used to make public disclosure of NIP spending levels.

Jurisdiction over intelligence programs is somewhat different in the House and the Senate. The Senate Intelligence Committee has jurisdiction only over the NIP but not the MIP, whereas the House Intelligence Committee has jurisdiction over both sets of programs. The preponderance of intelligence spending is accomplished by intelligence agencies within DOD and thus in both chambers the armed services committees are involved in the oversight process. Other oversight committees are responsible for intelligence agencies that are part of departments other than DOD.

Most appropriations for intelligence activities are included in national defense appropriations acts, including funds for the CIA, DIA, NSA, the NRO, and NGA. Other appropriations measures include funds for the intelligence offices of the State Department, the FBI, and DHS. In the past, defense appropriations subcommittees have funded the intelligence activities of CIA and the DOD agencies (although funds for CIA have been included in defense appropriations acts, these monies are transferred directly). The Senate voted in October 2004 to establish an Appropriations Subcommittee on Intelligence, but this has not occurred and the House has not taken similar action. On January 9, 2007, the House approved H.Res. 35 which establishes a select panel within the appropriations committee that includes three members of the intelligence committee to review intelligence activities to support the work of the appropriations committee.

Intelligence budgeting issues were at the center of the debate on intelligence reform legislation in 2004. On one hand, there was determination to make the new DNI responsible for developing and determining the annual National Intelligence Program budget (which is separate from the MIP budgets that are prepared by the Office of the Secretary of Defense). The goal was to ensure a unity of effort that arguably has not previously existed and that may have complicated efforts to monitor terrorist activities. On the other hand, the intelligence efforts within the National Intelligence Program include those of major components of the Defense Department, including NSA, the NRO, and NGA, that are closely related to other military activities. Some Members thus argued that even the National Intelligence Program should not be considered apart from the Defense budget. After considerable debate, the final version of P.L. 108-458 provides broad budgetary authorities to the DNI, but in Section 1018 requires the President to issue guidelines to ensure that the DNI exercises the authorities provided by the statute "in a manner that respects and does not abrogate the statutory responsibilities of the heads of" of the Office of Management and Budget and Cabinet departments. Even when guidelines are drafted, observers expect that implementing the complex and seemingly overlapping

budgetary provisions of the Intelligence Reform Act will depend on effective working relationships between the Office of the DNI, DOD, and the President.

**The 9/11 Investigations and the Congressional Response.** In the aftermath of September 11, 2001, there was extensive public discussion of whether the attacks on the Pentagon and World Trade Center represented an “intelligence failure.” In response, the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence undertook a joint investigation of the September 11 attacks. (Earlier in July 17, 2002, the House Intelligence Committee Subcommittee on Terrorism and Homeland Security had undertaken an investigation of ways to improve counterterrorism capabilities in the light of the September 2001 attacks.) Public hearings by the resulting “Joint Inquiry” began on September 18, 2002, beginning with testimony from representatives of families of those who died in the attacks. Former policymakers and senior CIA and FBI officials also testified. Eleanor Hill, the Inquiry Staff Director summarized the Inquiry’s findings: “... the Intelligence Community did have general indications of a possible terrorist attack against the United States or U.S. interests overseas in the spring and summer of 2001 and promulgated strategic warnings. However, it does not appear that the Intelligence Community had information prior to September 11 that identified precisely where, when and how the attacks were to be carried out.”

The two intelligence committees published the findings and conclusions of the Joint Inquiry on December 11, 2002.<sup>2</sup> The committees found that the Intelligence Community had received, beginning in 1998 and continuing into the summer of 2001, “a modest, but relatively steady, stream of intelligence reporting that indicated the possibility of terrorist attacks within the United States.” Further findings dealt with specific terrorists about whom some information had come to the attention of U.S. officials prior to September 11 and with reports about possible employment of civilian airliners to crash into major buildings. The Inquiry also made systemic findings highlighting the Intelligence Community’s lack of preparedness to deal with the challenges of global terrorism, inefficiencies in budgetary planning, the lack of adequate numbers of linguists, a lack of human sources, and an unwillingness to share information among agencies.

Separately, the two intelligence committees submitted recommendations for strengthening intelligence capabilities. They urged the creation of a Cabinet-level position of Director of National Intelligence (DNI) separate from the position of director of the CIA. The DNI would have greater budgetary and managerial authority over intelligence agencies in the Defense Department than possessed by the DCI. The committees also expressed great concern with the reorientation of the FBI to counterterrorism and suggested consideration of the creation of a new domestic surveillance agency similar to Britain’s MI5.

The Joint Inquiry was focused directly on the performance of intelligence agencies, but there was widespread support among Members for a more extensive review of the roles of other agencies. Provisions for establishing an independent commission on the 2001 terrorist attacks were included in the FY2003 Intelligence

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<sup>2</sup> The full report was released some months later as H.Rept. 107-792/S.Rept. 107-351.

Authorization Act (P.L. 107-306). Former New Jersey Governor Thomas H. Kean was named to serve as chairman, with former Representative Lee H. Hamilton serving as vice chairman. Widely publicized hearings were held in spring 2004 with Administration and outside witnesses providing different perspectives on the role of intelligence agencies prior to the September 11, 2001, attacks. The Commission's Report was published in July 2004.

Although the 9/11 Commission surveyed the roles of a number of Federal and local agencies, many of its principal recommendations concerned the perceived lack of authorities of the DCI. The Commission recommended establishing a National Intelligence Director (NID) to manage the National Intelligence Program and oversee the agencies that contribute to it. The NID would annually submit a national intelligence program budget and, when necessary, forward the names of nominees to be heads of major intelligence agencies to the President. Lead responsibility for conducting and executing paramilitary operations would be assigned to DOD and not CIA. The Commission also recommended that Congress pass a separate annual appropriations act for intelligence that would be made public. The NID would execute the expenditure of appropriated funds and make transfers of funds or personnel as appropriate. Proposing a significant change in congressional practice, the Commission recommended a single intelligence committee in each house of Congress, combining authorizing and appropriating authorities.

On August 27, 2004, President Bush addressed key recommendations of the 9/11 Commission in signing several executive orders to reform intelligence. In addition to establishing a National Counterterrorism Center, the orders provided new authorities for the DCI until legislation was enacted to create a National Intelligence Director. In addition, several legislative proposals were introduced to establish a National Intelligence Director, separate from a CIA Director.<sup>3</sup> The Senate passed S. 2845 on October 16, 2004; the House had passed H.R. 10 on October 8, 2004. Efforts by the resulting conference committee to reach agreed-upon text focused on the issue of the authorities of the proposed Director of National Intelligence in regard to the budgets and operations of the major intelligence agencies in DOD, especially NSA, NRO, and NGA.<sup>4</sup> Conferees finally reached agreement in early December, and the conference report on S. 2845 (H.Rept. 108-796) was approved by the House on December 7 and by the Senate on December 8. The President signed the legislation on December 17, 2004, and it became P.L. 108-458.

The Intelligence Reform Act is wide-ranging (as noted below) and its implementation will undoubtedly receive close oversight during the 110<sup>th</sup> Congress.

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<sup>3</sup> See CRS Report RL32600, *Comparison of 9/11 Commission Recommended Intelligence Reforms, Roberts Draft Bill, H.R. 4104, S. 190, S. 1520, S. 6, H.R. 4584, Current Law*, and CRS Report RL32601, *Comparison of 9/11 Commission Recommended Intelligence Reforms, S. 2845, S. 2774, H.R. 5024, Administration Proposal, H.R. 10, Current Law*, both by Alfred Cumming.

<sup>4</sup> See CRS Report RL32506, *The Proposed Authorities of a National Intelligence Director: Issues for Congress and Side-by-Side Comparison of S. 2845, H.R. 10, and Current Law*, by Alfred Cumming, and CRS Report RL32515, *Intelligence Community Reorganization: Potential Effects on DOD Intelligence Agencies*, by Richard A. Best, Jr.

Some observers have suggested that modifications to the legislation may be needed; others recommend that any difficulties be addressed by executive orders or memoranda of understandings (MOUs).

**Oversight Issues.** The 9/11 Commission concluded that congressional oversight of intelligence activities was “dysfunctional.” A number of measures were undertaken to address issues raised by the Commission, including the establishment of oversight subcommittees on both committees.<sup>5</sup> Proposals to establish one committee with both appropriations and authorization responsibilities proved unacceptable, but H.Res. 35, passed on January 9, 2007, established a panel within the appropriations committee with additional staff to review intelligence activities. Senate rules require that the Intelligence Committee include Members also serving on the Appropriations Committee thus providing for a measure of coordination; although S.Res. 445 in the 109<sup>th</sup> Congress envisioned an appropriations subcommittee on intelligence, no such entity has been established.

The involvement of the Intelligence Community in homeland security efforts that involve domestic law enforcement agencies has affected congressional oversight. In the past the two intelligence committees and the appropriations committees were almost the only points of contact between intelligence agencies and the Congress. In the 109<sup>th</sup> Congress the Homeland Security Committees also undertook oversight of some aspects of intelligence activities. Disagreements have arisen over the extent to which the Government Accountability Office (GAO) has oversight over intelligence aspects of government-wide information sharing efforts<sup>6</sup>.

## Ongoing Congressional Concerns

**Collection Capabilities.** Intelligence agencies collect vast quantities of information on a daily, even an hourly basis. The ability to locate fixed installations and moving targets has become an integral component of U.S. military capabilities. On almost any subject, the Intelligence Community can provide a wealth of knowledge within short time frames. Inevitably, there are “mysteries” that remain unknowable — the effects of unforeseeable developments and the intentions of foreign leaders. The emergence of the international terrorist threat has posed major challenges to intelligence agencies largely designed to gather information about nation states and their armed forces. Sophisticated terrorist groups in some cases relay information only via agents in order to avoid having their communications intercepted. Human collection has been widely perceived as inadequate, especially in regard to terrorism; the Intelligence Reform Act stated the Sense of Congress that, while humint officers have performed admirably and honorably, there must be an increased emphasis on and greater resources applied to enhancing the depth and breadth of human intelligence capabilities. In October 2005 the National Clandestine Service was established at CIA to undertake humint operations by CIA and coordinate humint efforts by other intelligence agencies.

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<sup>5</sup> See CRS Report RL33742, *9/11 Commission Recommendations*, by Richard F. Grimmett.

<sup>6</sup> See Government Accountability Office, *Information Sharing: the Federal Government Needs to Establish Policies and Processes for Sharing Terrorism-Related and Sensitive but Unclassified Information*, GAO-06-385, March 2006, p. 30.

There are also congressional concerns regarding major technical systems — especially reconnaissance satellites. These programs have substantial budgetary implications. Whereas the Intelligence Community was a major technological innovator during the Cold War, today both intelligence agencies and their potential targets make extensive use of commercial technologies, including sophisticated encryption systems. Filtering out “chaff” from the ocean of data that can be collected remains, however, a major challenge.

**Analytical Quality.** The ultimate goal of intelligence is accurate analysis. Analysis is not, however, an exact science and there have been, and undoubtedly will continue to be, failures by analysts to prepare accurate and timely assessments and estimates. The performance of the Intelligence Community’s analytical offices during the past decade is a matter of debate; some argue that overall the quality of analysis has been high while others point to the failure to provide advance warning of the 9/11 attacks and a flawed estimate of Iraqi weapons of mass destruction as reflecting systemic problems. Congressional intelligence committees have for some time noted weaknesses in analysis and lack of language skills, and a predominant focus on current intelligence at the expense of strategic analysis.

Analytical shortcomings are not readily addressed by legislation, but Congress has increased funding for analytical offices since 9/11 and the Intelligence Reform Act of 2004 contains a number of provisions designed to improve analysis — an institutionalized mechanism for alternate or “red team” analyses to be undertaken (section 1017), the designation of an individual or entity to ensure that intelligence products are timely, objective, and independent of political considerations (section 1019), and the designation of an official in the office of the DNI to whom analysts can turn for counsel, arbitration on “real or perceived problems of analytical tradecraft or politicization, biased reporting, or lack of objectivity” (section 1020).

These efforts will, however, be affected by the long lead-times needed to prepare and train analysts, especially in such fields as counterterrorism and counterproliferation. Improving analysis depends, among other things, upon the talents of analysts brought into government service, encouraging their contributions and calculated risk-takings, and a willingness to tolerate the tentative nature of analytical judgments. These factors are sometimes difficult to achieve in government organizations. Another significant impediment to comprehensive analysis has been a shortage of trained linguists especially in languages of current interest. As noted above, the National Security Education Program and related efforts are designed to meet this need, but most observers believe the need for linguists will remain a pressing concern for some years.

An enduring concern is the existence of “stovepipes.” Agencies that obtain highly sensitive information are reluctant to share it throughout the Intelligence Community out of a determination to protect their sources. In addition, information not available to analysts with relevant responsibilities is many times wasted. In recent years there have been calls for greater sharing in order to improve the quality of analysis, but it is expected that dealing with this complex dilemma will require continuing attention by intelligence managers.

**The Intelligence Community and Iraq.** The Intelligence Community has been widely criticized for its performance in regard to Iraq. The Baath regime in Baghdad undeniably presented major challenges; it was almost impossible to penetrate the inner reaches of Saddam Hussein's government. U.S. intelligence agencies supported the efforts of U.N. inspectors charged with determining Iraqi compliance with U.N. resolutions requiring Iraq to end any programs for the acquisition or deployment of weapons of mass destruction, but such efforts were frustrated by the Iraqi government.

At Congress's request, a National Intelligence Estimate (NIE) dealing with Iraqi weapons of mass destruction (WMD) was prepared in September 2002, shortly before crucial votes on the Iraqi situation. The NIE has been widely criticized for inaccurately claiming the existence of actual WMDs and exaggerating the extent of Iraqi WMD programs. The Senate Intelligence Committee concluded that the NIE's major key judgments "either overstated, or were not supported by, the underlying intelligence reporting." The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction severely criticized analysts who misinterpreted the limited intelligence about Iraqi WMDs that was available and failed to alert policymakers to the uncertainties in both evidence and analysis.

Other observers note, however, that the Intelligence Community based its conclusions in significant part on Iraq's previous use of WMD, its ongoing WMD research programs, and its unwillingness to document the destruction of WMD stocks in accordance with U.N. resolutions. These factors, which have never been disputed, served as background to Administration decisions. Some observers argue, however, that Administration officials misused intelligence in an effort to build support for a military option.<sup>7</sup>

On February 11, 2004, President Bush by Executive Order 13328 created a Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction. The Commission, co-chaired by former Senator Charles S. Robb and retired Federal Judge Laurence H. Silverman, was asked to assess the capabilities of the Intelligence Community to collect, analyze, and disseminate intelligence regarding WMD and related 21<sup>st</sup> Century threats. In addition, the Commission was asked to look specifically at intelligence regarding Iraqi WMD prior to Operation Iraqi Freedom and to compare prewar assessments with the findings of the Iraq Survey Group. The Commission issued its report on March 31, 2005.<sup>8</sup> The report described in detail a number of analytical errors that resulted in faulty pre-war judgments on Iraq's weapons of mass destruction. The Commission recommended that the DNI take steps to forge an integrated Intelligence Community, that intelligence functions within the FBI be combined into a single National Security Service, and urged that the DNI not focus on the preparation of the President's Daily Brief at the expense of the long-term needs of the Intelligence Community.

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<sup>7</sup> For additional background, see CRS Report RS21696, *U.S. Intelligence and Policymaking: The Iraq Experience*, by Richard A. Best Jr.

<sup>8</sup> The report may be found at [<http://www.wmd.gov/report/index.html>].



Despite the inadequate intelligence on Iraqi WMD programs, the success of the military attack on the Iraqi regime launched in March 2003 by the United States, the UK, and other countries was greatly assisted by intelligence. The extensive use of precision-guided munitions that targeted key Iraqi military and command facilities and limited civilian casualties was made possible by the real-time availability of precise locating data. Observers have noted that operational shortcomings in transmitting intelligence data that were frequent during the 1991 Persian Gulf War were not observed in the Iraq campaign of 2003.

As the security situation in Iraq continues to be a matter of grave concern, intelligence collection and analytical capabilities have been severely criticized. In December 2006 the Iraq Study Group concluded that the “Defense Department and the intelligence community have not invested sufficient people and resources to understand the political and military threat to American men and women in the armed forces.” The Group further maintained that intelligence agencies “are not doing enough to map the insurgency, dissect it, and understand it on a national and provincial level. The analytic community’s knowledge of the organization, leadership, financing, and operations of militias, as well as their relationship to government security forces, also falls far short of what policy makers need to know.”<sup>9</sup>

**International Terrorism.** Although intelligence agencies were focused on international terrorism from at least the mid-1980s, the events of September 11, 2001 made counterterrorism a primary mission of the Intelligence Community. In response to a widespread perception that barriers that restricted the flow of information between the CIA and the FBI, Congress passed the USA PATRIOT Act (P.L. 107-56) which removed barriers on sharing foreign intelligence and law enforcement information (including grand jury information). The PATRIOT Act was designed to facilitate an all-source intelligence effort against terrorist groups that work both inside and outside U.S. borders. Nevertheless, problems of coordination and institutional rivalries persist. Moreover, some provisions in the USA PATRIOT Act relating to the sharing of law enforcement and foreign intelligence information were to have expired in early 2006, but new legislation (P.L. 109-177 and P.L. 109-178) was enacted on March 9, 2006, that extended expiring provisions with modifications.<sup>10</sup>

Legislation was also enacted to create a Department of Homeland Security that would contain an analytical office responsible for integrating information from foreign intelligence and law enforcement sources. In addition, the Administration announced the establishment of the Terrorist Threat Integration Center (TTIC) in January 2003 under the DCI. In accordance with EO13354 of August 27, 2004 and the Intelligence Reform Act, TTIC has been transferred to the National Counterterrorism Center (NCTC).

As an intelligence mission, counterterrorism has several unique characteristics. Although it usually requires input from all the various intelligence disciplines, most

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<sup>9</sup> U.S., Iraq Study Group, Report (Washington: Vintage Books, 2006), p. 94.

<sup>10</sup> For further information, see CRS Report RS22412, *USA PATRIOT Improvement and Authorization Act of 2005: A Sketch*, by Brian T. Yeh and Charles Doyle.

observers believe that it is especially dependent upon humint. Technical systems are good at providing information about numbers of airplanes, ships, and tanks but the most important information on small groups of terrorist plotters often is provided by humint sources. Furthermore, the type of humint required for counterterrorism depends on contacts with sources far removed from embassy gatherings and requires expertise in languages that are possessed by few in this country. This is a distinct difference from humint collection during the Cold War when Soviet diplomats and military officers were often the principal targets.<sup>11</sup>

**Intelligence Support to Military Forces.** In 1997, the House intelligence committee noted that “intelligence is now incorporated into the very fiber of tactical military operational activities, whether forces are being utilized to conduct humanitarian missions or are engaged in full-scale combat.” The Persian Gulf War demonstrated the importance of intelligence from both tactical and national systems, including satellites that had been previously directed almost entirely at Soviet facilities. There were, nonetheless, numerous technical difficulties, especially in transmitting data in usable formats and in a timely manner. Many of these issues have since been addressed with congressional support and in Operation Iraqi Freedom intelligence was an integral part of the operational campaign.

## Issues in the 110<sup>th</sup> Congress

Observers expect that oversight of the implementation of the Intelligence Reform Act will extend into the 110<sup>th</sup> Congress. Both chambers will address authorization and appropriations legislation in accordance with procedures established in the Intelligence Reform Act, undoubtedly taking into consideration the diverse interpretations of different Members regarding the provisions. Congress is also likely to monitor the evolving relationship between the DNI and the CIA Director especially in regard to humint collection and covert operations as well to CIA’s analytical efforts. The role of the Defense Department and the Under Secretary of Defense for Intelligence are also likely to be a congressional concern.

**Quality of Analysis.** Evaluations of the Intelligence Community’s performance in regard to Iraqi WMD undertaken by congressional committees and by the Robb/Silverman Commission are likely to affect the influence of ongoing assessments of Iranian and North Korean and potentially other nuclear programs. Intelligence on WMD requires the collecting of data with highly sophisticated technical systems and by human agents in areas where U.S. access is limited and continuing analysis of complex and subtle indicators. As WMD proliferation will remain a major policy concern, the quality of supporting intelligence is likely to be a focal point of congressional interest in the Intelligence Community.

**Implementation of the Intelligence Reform Act (P.L. 108-458).** The legislation is expected to continue to have a major influence on the Intelligence Community. The DNI will have authority to task intelligence collection and analysis

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<sup>11</sup> See CRS Report RL31292, *Intelligence to Counter Terrorism: Issues for Congress*, by Richard A. Best, Jr. Foreign language issues are covered in CRS Report RL32557, *Requirement for Linguists in Government Agencies*, by Jeffrey J. Kuenzi.

and manage national intelligence centers including the National Counterterrorism Center, which encompasses TTIC, and the National Counter Proliferation Center (and potentially additional centers). The DNI will have enhanced budgetary and acquisition authorities over the entire national intelligence effort, although the exact contours of the relationship with other government organizations, especially the Defense Department, will be addressed in accordance with presidential guidelines. The act has a number of provisions designed to ensure that intelligence analysis is not politicized or biased and to protect civil liberties at a time when additional counterterrorism measures are being undertaken. Intelligence agencies in the DOD will remain in their existing chain of command and continue to be responsible for providing support to combat commands.

The expansion of intelligence efforts, especially concentrated in counterterrorism, has resulted in a severe shortage of trained analysts, especially those with excellent foreign language talents. The problem is already acute in some agencies and the likelihood of significant retirements in coming years will complicate efforts to improve intelligence capabilities.

**ISR Programs.** Although major intelligence, surveillance, and reconnaissance programs are classified and discussed in the classified annexes of intelligence authorization and defense appropriations acts, they include a substantial portion of the overall intelligence budget. Satellites and NSA's sigint efforts are likely to continue to receive close scrutiny from Congress throughout the 110<sup>th</sup> Congress given their technological complexity and high costs.<sup>12</sup>

**Terrorist Surveillance Program/NSA Electronic Surveillance/FISA.** In December 2005 media accounts of electronic surveillance by NSA authorized outside the parameters of the Foreign Intelligence Surveillance Act (FISA) led to extensive criticism of the Administration. Although the technical details of the effort remain classified, the Administration maintains that communications, which involve a party reasonably considered to be a member of Al Qaeda, or affiliated with Al Qaeda, and one party in the U.S., may be monitored on the basis of the President's constitutional authorities and the provisions of the Joint Resolution providing for Authority for the Use of Force (P.L. 107-40) of September 18, 2001. The need for speed and agility requires, the Administration further argues, an approach not envisioned by the drafters of FISA. Others counter that FISA should have governed such electronic surveillance. In early March 2006 agreement was reached with the leadership of the two intelligence committees to establish procedures for enhanced legislative oversight of the NSA effort, and legislative initiatives are under consideration that would either modify FISA or establish new statutory authorities for electronic surveillance.

Differing views of Members on the NSA effort were reflected in the House Intelligence Committee's 2006 report on FY2007 intelligence authorization

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<sup>12</sup> For further information, see CRS Report RL32508, *Intelligence, Surveillance, and Reconnaissance (ISR) Programs: Issues for Congress*, by Richard A. Best Jr.

legislation (H.Rept. 109-411).<sup>13</sup> In light of decisions issued by the Foreign Intelligence Surveillance Court (FISC) on January 10, 2007, the Administration advised the Chairman and Ranking Member of the Senate Judiciary Committee that any electronic surveillance that had previously occurred as part of the Terrorist Surveillance Program (TSP) would thereafter be conducted subject to the approval of the FISC. Further, the Administration indicated that it would not re-authorize the TSP after the expiration of the then-current authorization. On May 1, 2007, the Senate Intelligence Committee held an open hearing on the Administration's proposal to revise FISA to take account of changes in communications technologies since the 1970s, with Members expressing differing views on the desirability of the legislation.<sup>14</sup>

According to media reports, a judge on the FISC at some point in 2007 ruled that a FISC order was required for surveillance of communications between foreign persons abroad if the communications passed through the United States. On August 2, 2007, the DNI issued a statement on FISA modernization in which he contended that the Intelligence Community "should not be required to obtain court orders to effectively collect foreign intelligence from foreign targets located overseas." Although details of the effort remain classified, there appears to have been wide agreement among Members that FISA needed to be amended to permit surveillance without a court order of such foreign to foreign communications regardless of whether they were routed through the United States.

The Protect America Act (P.L. 110-55), signed on August 5, 2007, after extensive congressional debate excluded from the definition of "electronic surveillance" under FISA, surveillance directed at a person reasonably believed to be located outside the United States. In addition, under certain circumstances, FISA, as amended by this legislation, permitted the DNI and the Attorney General, for periods up to one year, to authorize acquisition of foreign intelligence information "concerning persons reasonably believed to be located outside of the United States," apparently including U.S. persons, and to direct a communications provider, custodian, or other person with access to the communication immediately to provide information, facilities, and assistance to accomplish the acquisition. Those receiving such directives had the right to contest them in court. The DNI and the Attorney General were required to certify, in part, that this acquisition did not constitute electronic surveillance; and the Attorney General was required to submit the procedures by which this determination is made to the FISC for review as to whether the Government determination was clearly erroneous. On a semiannual basis, the Attorney General must report to congressional oversight committees on instances of noncompliance with directives and numbers of certifications and directives issued during the reporting period. P.L. 110-55 expired on February 1, 2008 and efforts to

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<sup>13</sup> See also CRS Report RL33637, *Electronic Surveillance Modernization Act, as passed by the House of Representatives*, and CRS Report RL33669, *Terrorist Surveillance Act of 2006: S. 3931 and Title II of S. 3929, the Terrorist Tracking, Identification, and Prosecution Act of 2006*, both by Elizabeth B. Bazan.

<sup>14</sup> See CRS Report RL34279, *The Foreign Intelligence Surveillance Act: A Brief Overview of Selected Issues* by Elizabeth B. Bazan.

extend it further failed in the House when H.R. 5349 was rejected on February 13.<sup>15</sup> Acquisitions authorized while the PAA was in force may continue until the expiration of the period for which they were authorized.

The Protect America Act was strongly criticized by some Members; on November 15, 2007, H.R. 3773, the RESTORE Act (the Responsible Electronic Surveillance that is Overseen, Reviewed, and Effective Act of 2007) was passed by the House to clarify that a court order is not required for the acquisition of the contents of communications between two persons neither of whom is known to be a U.S. person, and both of whom are reasonably believed to be located outside the United States, regardless of whether the communications passed through the United States or if the surveillance device was in the United States. If, in the course of such an acquisition, the communications of a U.S. person are incidentally intercepted, stringent minimization procedures would apply. Court orders would, however, be required if the communications of a non-U.S. person reasonably believed to be located outside the United States were targeted where the other parties to the target's communications are unknown and thus might include U.S. persons or persons located physically in the U.S. Some Members argue that this provision would unnecessarily tie the hands of intelligence agencies and jeopardize the counterterrorism effort. The RESTORE Act would also provide for increased judicial oversight and would require quarterly implementation and compliance audits by the Inspector General of the Justice Department, and add related congressional reporting requirements.

The Senate Intelligence Committee reported its own version of a FISA amendment on October 26. The Senate bill (S. 2248), as amended, contains provisions authorizing the Attorney General and the DNI jointly to authorize targeting of persons, other than U.S. persons, reasonably believed to be outside the U.S. to acquire foreign intelligence information for periods up to one year. Under the Senate bill, FISC approval would be required for targeting a U.S. person reasonably believed to be located outside the U.S. to acquire foreign intelligence information, if the acquisition constitutes electronic surveillance under FISA, or the acquisition of stored electronic communications or stored electronic data that requires an order under FISA, and the acquisition is conducted in the U.S. The Senate bill also would provide some retroactive immunity to telecommunications companies from civil suits in federal and states courts related to assistance that they have provided to the government in connection with intelligence activities between September 11, 2001 and January 17, 2007.

A central issue has been the role of the Judicial Branch, and the FISC in particular, in approving and/or overseeing surveillance that does not target but may involve individuals who are U.S. persons. Some argue that only the independent judiciary can ensure that intelligence efforts do not become improperly or illegally directed towards Americans. FISA currently permits electronic surveillance to gather foreign intelligence information pursuant to a FISC order of U.S. persons where there is probable cause to believe they are foreign powers or agents of foreign powers if

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<sup>15</sup> For further background see CRS Report RL34143, *P.L. 110-55, the Protect America Act of 2007: Modifications of the Foreign Intelligence Surveillance Act* by Elizabeth B. Bazan.

other statutory criteria are met. Some argue, however, that changes in technologies since FISA was enacted in 1978 have made case-by-case judicial review of each international communication link that might involve a U.S. person impractical and risky to national security. Details of this issue are complex and, in many cases, classified. The Senate approved S. 2248 on February 12 (and incorporated it into H.R. 3773).

On March 14 the House approved an amendment to the version of H.R. 3773 that had been approved by the Senate. The House amendment would require judicial review by the FISC of procedures for targeting a non-U.S. person located outside of the U.S. even if the person was not reasonably believed to be communicating with a U.S. person or a person in the U.S. The House amendment would require either a prior FISC order approving the applicable certification, targeting procedures, and minimization procedures or a determination that an emergency situation exists in which case a certification would have to be filed with the FISC within seven days. The Administration argues that this requirement adds unprecedented requirements for targeting communications of non-U.S. persons that could result in delaying collection efforts and the loss of some intelligence forever.

If the target of an acquisition were a U.S. person reasonably believed to be outside the U.S. , then, except in emergencies, the House-passed amendment would require a FISC order approving an application for an acquisition for a period up to 90 days. The acquisition could be renewed for additional 90 day periods upon submission of renewal applications. If the Attorney General authorized an emergency acquisition of such a U.S. person's communications, the Attorney General would have to submit an application for a court order within seven days of that authorization.

The House version would also not grant retroactive immunity to telecommunications companies but would allow them to present evidence in their defense to a court. In addition, the House bill would establish a commission on warrantless electronic surveillance activities conducted between September 11, 2001 and January 17, 2007.

Upon passage of its amendment to H.R. 3773, which was strongly opposed by the Administration, the House did not request the calling of a conference with the Senate but it is possible that efforts will be made to find legislative language that will be acceptable to both chambers.

**Role of the CIA.** Intelligence reform legislation enacted in 2004 may have a significant effect on the work of the CIA. The CIA Director does not have the Community-wide responsibilities that historically absorbed the attention of the DCI, nor is he responsible for daily morning briefings in the White House. In his role as National Humint Manager, the CIA Director oversees the National Clandestine Service's efforts humint collection by the CIA and coordinates humint efforts by other agencies. The CIA also retains primary responsibilities for all-source analysis on a vast array of international issues that are of concern to the U.S. Government. Some observers suggest that the CIA has lost stature as a result of the Intelligence Reform Act that placed the DNI between the head of the CIA and the President. Other observers argue, however, that without the burden of interagency coordination,

the CIA Director will be better positioned to emphasize analytical and humint activities. Congress has expressed concern about both humint and the conduct of analysis on repeated occasions and may choose to oversee the CIA Director's efforts more closely.

**Role of the FBI.** In the wake of the September 2001 attacks, the FBI was strongly criticized for failing to focus on the terrorist threat, for failing to collect and strategically analyze intelligence, and for failing to share intelligence with other intelligence agencies (as well as among various FBI components). Subsequently, FBI Director Robert S. Mueller III introduced a number of reforms to create a better and more professional intelligence effort in an agency that has always emphasized law enforcement. Congress has expressed concern about the overall effectiveness of these reforms and with the FBI's widely criticized information technology acquisition efforts.<sup>16</sup>

**The Role of the Under Secretary of Defense for Intelligence.** The position of Under Secretary of Defense for Intelligence (USD(I)) was established by the Defense Authorization Act for FY2003 (P.L. 107-314, sec. 901). The statute and DOD directives gave the incumbent signification authorities for the direction and control of intelligence agencies within DOD especially in regard to systems acquisition. There are reports that DOD special forces have also been involved in human intelligence collection efforts that are not effectively coordinated with CIA. Some media commentators have pointed to potential conflicts between the office of the USD(I) and the DNI's office, but there is little official information available publicly. The first USD(I), Stephen Cambone, resigned at the end of 2006; his successor is retired Air Force Lt. General James Clapper who previously served as director of both NGA and DIA. In May 2007 the USD(I) was also designated Director of Defense Intelligence and will also serve on the DNI's executive committee.

**Paramilitary Operations and Defense Humint.** In the Afghan campaign and in Iraq the CIA conducted paramilitary operations separate from or alongside Special Forces from the Defense Department. Some observers, and the 9/11 Commission, have recommended that DOD assume responsibility for all such efforts to avoid duplication of effort. In addition, there had been media reports that CIA and DOD efforts in Afghanistan were not well coordinated. DCI Goss testified in February 2005, however, that a joint review by CIA and DOD had reaffirmed the need for separate efforts. Observers note that CIA can hire paramilitary operators (in many instances retired military personnel) for specific missions of a limited duration; in addition, some missions may be more appropriate for nonuniformed personnel.<sup>17</sup>

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<sup>16</sup> For further information, see CRS Report RL33033, *Intelligence Reform Implementation at the Federal Bureau of Investigation: Issues and Options for Congress*, by Alfred Cumming and Todd Masse.

<sup>17</sup> See CRS Report RS22017, *Special Operations Forces (SOF) and CIA Paramilitary Operations: Issues for Congress*, by Richard A. Best, Jr. and Andrew Feickert; also CRS Report RL33715, *Covert Action: Legislative Background and Possible Policy Questions*, by Alfred Cumming.

Some observers have expressed concern that expanded efforts by DOD intelligence personnel to collect humint overseas may interfere with ongoing efforts of CIA humint collectors.<sup>18</sup> Intelligence officials have maintained in congressional testimony that there is no unnecessary duplication of effort and that careful coordination is undertaken during the planning and implementing of such operations.<sup>19</sup> The determination to ensure that such coordination is effective was further reflected in the designation of the DCIA as head of the National Clandestine Service.

**Regional Concerns.** Despite the urgency of the counterterrorism mission, the Intelligence Community is responsible for supporting traditional national security concerns, including developments in China, North Korea, Iran, and South America. In February 2006 testimony before the Senate Intelligence Committee, DNI Negroponte provided a summary of the Intelligence Community's assessments of threats, challenges, and opportunities throughout the world. A similar review was provided by DNI Negroponte on January 11, 2007.

**CIA and Allegations of Prisoner Abuse.** Media accounts of abuse of prisoners in Iraq by CIA officials have led to calls for a congressional investigation. Some have also raised broader concerns about the role of intelligence agencies in holding and transporting prisoners.<sup>20</sup> The conference version of the FY2008 Intelligence Authorization bill (sec. 327) included provisions requiring all executive branch agencies, including the CIA, to use only interrogation techniques authorized by the Army Field Manual. Opposition to this provision was a primary reason cited in the President's message vetoing this legislation on March 8, 2008.

## 109<sup>th</sup> Congress Legislation

### **H.R. 2475 (Hoekstra)**

Intelligence Authorization Act for FY2006; introduced May 19, 2005; reported June 2, 2005 (H.Rept. 109-101); passed House June 21, 2005.

### **H.R. 5020 (Hoekstra)**

Intelligence Authorization Act for FY2007; introduced March 28, 2006; reported April 6, 2006 (H.Rept. 109-411); passed House April 26, 2006.

### **S. 1803 (Roberts)**

Intelligence Authorization Act for FY2006; introduced and reported by the Select Committee on Intelligence, September 29, 2005 (S.Rept. 109-142); reported by the Armed Services Committee, October 27, 2005 (S.Rept. 109-173).

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<sup>18</sup> See Barton Gellman, "Secret Unit Expands Rumsfeld's Domain," *Washington Post*, January 23, 2005, p. A1.

<sup>19</sup> See the testimony of General Bryan Brown, Commander, Special Operations Command, to the Senate Committee on Armed Services, Subcommittee on Emerging Threats and Capabilities, April 22, 2005.

<sup>20</sup> See CRS Report RL32567, *Lawfulness of Interrogation Techniques under the Geneva Convention*, and CRS Report RL33643, *Undisclosed U.S. Detention Sites Overseas: Background and Legal Issues*, both by Jennifer K. Elsea.



**S. 3237 (Roberts)**

Intelligence Authorization Act for FY2007; introduced and reported by the Select Committee on Intelligence, May 25, 2006 (S.Rept. 109-259); reported by the Armed Services Committee, June 21, 2006 (S.Rept. 109-265).

**110<sup>th</sup> Congress Legislation**

**S. 372 (Rockefeller)**

Intelligence Authorization Act for 2007. Introduced and reported by the Select Committee on Intelligence, January 24, 2007 (S.Rept. 110-2). Debated April 16-17, 2007.

**S. 1538 (Rockefeller)**

Intelligence Authorization Act for 2008. Introduced and reported by Select Committee on Intelligence, May 31, 2007 (S.Rept. 110-75). Reported by Armed Services Committee, June 26, 2007 (S.Rept. 110-92). Floor consideration, October 3, 2007; incorporated into H.R. 2082 as an amendment.

**H.R. 1196 (Reyes)**

Intelligence Authorization Act for FY2007. Introduced and referred to the Permanent Select Committee on Intelligence, February 27, 2007.

**H.R. 2082 (Reyes)**

Intelligence Authorization Act for FY2008. Introduced and referred to the Permanent Select Committee on Intelligence, May 1, 2007 (H.Rept. 110-131). Reported, May 2, 2007; debated May 10-11, 2007; approved May 11, 2007. Conference report (H.Rept. 110-478) filed December 6. House approved conference report, December 13, 2007; Senate approved conference report, February 13, 2008. Returned (vetoed) by the President, March 8, 2008.

**H.R. 5959 (Reyes)**

Intelligence Authorization Act for FY2009. Introduced and referred to Permanent Select Committee on Intelligence, May 5, 2008. Reported (amended), May 21, 2008.

**S. 2996 (Rockefeller)**

Intelligence Authorization Act for FY2009. Original measure reported, May 8, 2008.

## For Additional Reading

- U.S. Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Report to the President of the United States*, March 31, 2005.
- U.S. Congress. Committee of Conference Intelligence Authorization Act for Fiscal Year 2005: Conference Report. December 7, 2004. 108<sup>th</sup> Congress, 2<sup>nd</sup> session (H.Rept. 108-798).
- . Intelligence Reform and Terrorism Prevention Act of 2004. December 7, 2004. 108<sup>th</sup> Congress, 2<sup>nd</sup> session. (H.Rept. 108-796).
- U.S. Congress. House of Representatives. Permanent Select Committee on Intelligence. Report of the U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence, *Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001*. December 2002. 107<sup>th</sup> Congress, 2<sup>nd</sup> session (H.Rept. 107-792). [Also, S.Rept. 107-351]
- . Intelligence Authorization Act for Fiscal Year 2005. June 21, 2004. 108<sup>th</sup> Congress, 2<sup>nd</sup> session (H.Rept. 108-558).
- . Intelligence Authorization Act for Fiscal Year 2006. June 2, 2005. 109<sup>th</sup> Congress, 1<sup>st</sup> session (H.Rept. 109-101).
- . Intelligence Authorization Act for Fiscal Year 2007. April 6, 2006. 109<sup>th</sup> Congress, 2<sup>nd</sup> session (H.Rept. 109-411).
- . Intelligence Authorization Act for Fiscal Year 2008. May 7, 2007. 110<sup>th</sup> Congress, 1<sup>st</sup> session (H.Rept. 110-131).
- . Intelligence Authorization Act for Fiscal Year 2008. Conference Report. December 6, 2007, 110<sup>th</sup> Congress, 1<sup>st</sup> session (H.Rept. 110-478).
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- U.S. Congress. Senate. Select Committee on Intelligence. *Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*. July 9, 2004. 108<sup>th</sup> Congress, 2<sup>d</sup> session. (S.Rept. 108-301).
- . *Intelligence Authorization Act for Fiscal Year 2006*. September 29, 2005. 109<sup>th</sup> Congress, 1<sup>st</sup> session. (S.Rept. 109-142).
- . *To authorize Appropriations for Fiscal Year 2005 for Intelligence and Intelligence-Related Activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency*

*Retirement and Disability System*. May 5, 2004. 108<sup>th</sup> Congress, 2<sup>nd</sup> session (S.Rept. 108-258).

———. *Intelligence Authorization Act for Fiscal Year 2007*. January 24, 2007. 110<sup>th</sup> Congress, 1<sup>st</sup> session. (S.Rept. 110-2).

———. *Intelligence Authorization Act for Fiscal Year 2008*. May 31, 2007. 110<sup>th</sup> Congress, 1<sup>st</sup> session. (S.Rept. 110-75).

U.S. Department of Justice, Commission for Review of FBI Security Programs, *A Review of FBI Security Programs*, March 2002.

U.S. National Commission on Terrorist Attacks Upon the United States. *The 9/11 Commission Report*, July 2004.