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PREFACE

The Select Committee on Intelligence submits to the Senate this report on its activities from January 4, 2007 to January 2, 2009. This report will include references to activities underway at the conclusion of the 110th Congress that the Committee expects to continue into the future.

Under the provisions of Senate Resolution 400 of the 94th Congress, the Committee is charged with the responsibility of carrying out oversight of the programs and activities of the Intelligence Community of the United States. Of necessity, most of the Committee's work is conducted in secret. Nevertheless, throughout its history, the Committee has believed that its activities should be as publicly accountable as possible. It is in that spirit that we submit this report to the Senate, just as the Committee has been doing since the year after its creation in 1976.

We take this opportunity to thank all of the members of the Committee in the 110th Congress. In particular, we acknowledge the leadership of Senator John D. Rockefeller IV who served as Chairman during the 110th Congress and Vice Chairman from 2003 through 2006. Senator Rockefeller has stepped down as Chairman but will continue his service on the Committee. We take special note of those of our colleagues who have completed their service on the Committee upon their retirement from the Senate. Senator John Warner served on the Committee from 1987 through 1994, including as our Vice Chairman in 1993 and 1994, and then from 2003 through 2008. Senator Chuck Hagel served on the Committee from 2003 through 2008. Their commitment to the work of the Committee and their contribution to a strong Intelligence Community are appreciated.

We are also grateful for the work of all members of the Committee's staff during the 110th Congress. Their hard work and professionalism were indispensable to the Committee's efforts to meet its responsibilities.

DIANNE FEINSTEIN, *Chairman*
CHRISTOPHER S. BOND,
Vice Chairman

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I. INTRODUCTION

The Committee's work in the 110th Congress was shaped, in large part, by events that occurred in late 2006 and early 2007.

After CIA detainees were transferred to Guantanamo in September 2006, information about the CIA's detention program, which had previously been restricted to the Chairman and Vice Chairman, was briefed to the entire membership of the Committee. In January 2007, during the first month covered by this report, President Bush nominated J. Michael McConnell to be the second Director of National Intelligence (DNI), replacing the first DNI, John D. Negroponte, who was nominated to be the Deputy Secretary of State.

Also in January 2007, Attorney General Gonzales informed the Judiciary and Intelligence Committees that, as a result of a recent Foreign Intelligence Surveillance Court ruling, electronic surveillance that had been conducted under the President's Terrorist Surveillance Program (TSP) would now be conducted under court authorization. Then, in March 2007, Chairman Rockefeller and Vice Chairman Bond commenced efforts with the Attorney General and DNI McConnell, whom the Senate had confirmed in February, to consider amendments to the Foreign Intelligence Surveillance Act (FISA).

The Committee's expanded knowledge of the CIA's detention program, and evolving circumstances concerning foreign intelligence surveillance matters, combined with priorities of the new DNI, and ever present and challenging intelligence issues relating to Iran, North Korea, Afghanistan and Pakistan, and Iraq, all served as the basis of important undertakings of the Committee during the 110th Congress.

II. LEGISLATION

A. FISA Amendments Act of 2008

The enacting of amendments to the Foreign Intelligence Surveillance Act was a central part of the Committee's legislative activities during the 110th Congress.

1. Background to the Protect America Act of 2007 and the FISA Amendments Act of 2008

In December 2005, President Bush acknowledged the existence of a presidential electronic surveillance program that was being operated outside of the Foreign Intelligence Surveillance Act. The program, which came to be known as the President's Terrorist Surveillance Program, was described as authorizing the National Security Agency (NSA) to intercept international communications into and out of the United States of persons linked to al Qaeda or related terrorist organizations. In January 2006, the Department of Justice

(DOJ) released a paper entitled "Legal Authorities Supporting the Activities of the National Security Agency Described by the President." The paper addressed, in an unclassified form, DOJ's view of the legal basis for the activities acknowledged by the President. During 2006, dozens of lawsuits were filed challenging the legality of the President's program, including actions for damages against telecommunications companies alleged to have participated in the program. Both Houses of Congress also considered bills related to the President's program during 2006, but none of the legislation was enacted.

In January 2007, soon after the 110th Congress convened, Attorney General Gonzales wrote to the Senate and House Judiciary and Intelligence Committees that a judge of the Foreign Intelligence Surveillance Court (FISC) had issued orders authorizing the Government to target for collection international communications into or out of the United States where there is probable cause to believe that one of the parties to the communication is a member of al Qaeda or a related terrorist organization. The letter advised the committees that as a result of the FISC order the electronic surveillance that had been occurring as part of the TSP would now be conducted with FISC approval. It further advised them that the President had determined not to reauthorize the TSP when then-current authorizations expired.

The decision to transfer collection from presidential to FISC authority did not resolve, however, whether legislation was needed both to modernize FISA and to address the many lawsuits brought against private carriers for alleged participation in the President's program. In light of that, in March 2007, Chairman Rockefeller and Vice Chairman Bond notified Attorney General Gonzales of their intention to address those questions. To that end, they requested that the Administration submit a formal proposal for legislation. The Director of National Intelligence submitted a proposal in April 2007 to amend the collection authorities of FISA and also to provide immunity from lawsuits arising out of the TSP.

On May 1, 2007, the Committee held a public hearing to enable the Administration to explain as openly as possible why the legislation it was proposing should be enacted. The full record of that hearing, which the Committee entitled "Modernization of the Foreign Intelligence Surveillance Act," is printed in S. Hrg. 110–399. DNI McConnell and Kenneth Wainstein, Assistant Attorney General for National Security, testified. Statements for the record were also received, posted on the Committee's website, and printed in the published hearing record from the following: Kevin Bankston, Electronic Frontier Foundation; James Dempsey, Center for Democracy and Technology; Bruce Fein, former Department of Justice official; Caroline Frederickson, American Civil Liberties Union; David Kris, former Department of Justice official; Kate Martin and Lisa Graves, Center for National Security Studies; Suzanne Spaulding, former Central Intelligence Agency and House and Senate Intelligence Committee counsel; and K.A. Taipale, Center for Advanced Studies in Science and Technology Policy. The Committee also held classified hearings and received classified information through briefings, interviews, written questions, and the examination of documents. See S. Rep. No. 110–209, at 2 (2007).

2. The Protect America Act of 2007

The timetable for considering FISA legislation was affected by two circumstances in the late spring and early summer of 2007.

First, at the end of May 2007, the Intelligence Community (IC) brought to the Committee's attention a ruling by the FISC that had an effect on the collection of foreign intelligence. In the regular 90–day cycle of reauthorizations by the FISC of electronic surveillance orders, a judge of that court, on considering in April 2007 an application to renew the orders issued in January 2007, issued a ruling that the DNI later described as significantly diverting NSA analysts from their counterterrorism mission to provide information to the Court. In late July 2007, the DNI informed Congress that the decision of the second FISA judge had led to degraded capabilities in the face of a heightened terrorist threat environment. Second, the Committee had not yet succeeded in obtaining access to documentation—namely, the presidential authorizations for the program and the legal opinions of the Department of Justice which supported those authorizations—the Committee had repeatedly requested for its consideration of legislation on immunity for telecommunication companies.

These circumstances led to a decision to separate the question of an immediate, short term measure on intelligence collection from that of a longer term measure on both FISA modernization and immunity for telecommunication companies that had participated in the program. On July 27, 2008, the Director of National Intelligence sent an interim legislative proposal to Majority Leader Harry Reid, Minority Leader Mitch McConnell, Speaker Nancy Pelosi, and Minority Leader John Boehner. The DNI stated that the interim proposal significantly narrowed his earlier legislative request and that it did not include liability protection for those who were alleged to have assisted the Government following September 11, 2001. On August 3, 2007, the Senate adopted S. 1927, the Protect America Act of 2007 (PAA), sponsored by Minority Leader Mitch McConnell and Vice Chairman Christopher S. Bond, which the House passed the following day and the President signed into law as Pub. L. 110–55. The PAA authorized the DNI and the Attorney General to acquire foreign intelligence concerning persons outside the United States if the acquisition involved the assistance of a communications provider and a significant purpose of the collection was the acquisition of foreign intelligence. The PAA was to sunset after 180 days, which the Congress subsequently extended for 15 days until February 16, 2008 (Pub. L. 110–182); notwithstanding the sunset, pursuant to the PAA, authorizations under it remained in effect for a year from their issuance. The PAA did not address the question of immunity for participation in the TSP.

3. The FISA Amendments Act of 2008

On October 9, 2007, the Committee gained access to the presidential authorizations and supporting DOJ opinions for the TSP. After a Committee business meeting at which it acted on seven amendments, the Committee by a vote of 13–2 favorably reported on October 26 an original bill, S. 2248, the FISA Amendments Act of 2007, with an accompanying report, S. Rep. No. 110–209, that contained additional and minority views. Under the terms of S.

Res. 400 (1976), the Committee on the Judiciary obtained sequential referral of the bill, which it in turn reported on November 16, 2007, with a report—S. Rep. No. 110–258—that was filed on January 22, 2008.

There were three rounds of Senate floor debate on cloture, amendments, and passage: 153 Cong. Rec. (Dec. 14–17, 2007); 154 Cong. Rec. (Jan. 23–Feb.12, 2008) (including a managers' amendment in the form of a complete substitute, agreed to on January 24, 2008); and 154 Cong. Rec. (June 25 and July 8–9, 2008). On February 12, 2008, the Senate passed S. 2248 by a vote of 68–29, which it sent to the House as an amendment to H.R. 3773, the House-passed FISA bill. On March 14, 2008, the House, by a vote of 213–197, voted to return H.R. 3773 to the Senate with an amendment. On June 20, 2008, following an agreement reached without a formal conference, the House, by a vote of 293–129, passed a new bill, H.R. 6304, which contained a complete compromise of the differences between the measures that each House had passed earlier. On July 9, by a vote of 69–28, the Senate joined in passing H.R. 6304. During debate on the bill, the Chairman and Vice Chairman of this Committee each placed in the Congressional Record sectional analyses of the Act. Those statements built on the Committee's analysis of S. 2248 in its October 2007 report with changes to reflect Senate floor action on S. 2248 and the compromises embodied in H.R. 6304: 154 Cong. Rec. S6129–35 (daily ed., June 25, 2008) (Chairman Rockefeller); *id.*, S6387–94 (daily ed., July 8, 2008) (Vice Chairman Bond); *see also id.*, S6404–6405 (daily ed., July 8, 2008) (Chairman Rockefeller); *id.*, S6471 (daily ed., July 9, 2008) (colloquy between Chairman Rockefeller and Vice Chairman Bond). President Bush signed the bill into law, as Pub. L. 110–261, on July 10, 2008. 44 Weekly Comp. Pres. Doc. 975.

The FISA Amendments Act of 2008 (FAA) addresses two principal challenges. First, looking forward, it provides for the targeting of persons reasonably believed to be located outside the United States, under a system of judicial and other oversight that is intended to protect the privacy and civil liberties of U.S. citizens and permanent residents. Second, looking back, it provides protection by way of immunity to electronic communication service providers who provided assistance to the Intelligence Community between September 11, 2001, and the conclusion of the President's program in January 2007, upon receiving written assurances that the program had been authorized by the President and determined to be lawful. Additionally, the Act establishes procedures for protecting service providers who have provided in the past, or provide in the future, assistance to the Intelligence Community in accordance with orders of the FISC or written certifications of the Attorney General under specified provisions of Title 18. The Act has no effect on any litigation against government officials in relation to the President's program and provides for a thorough review of and report on the President's program by Inspectors General with relevant jurisdiction.

• Title I of the FISA Amendments Act of 2008 establishes a new Title VII of FISA on foreign intelligence collection targeted against persons reasonably believe to be located outside of the United States.

• Section 702 replaces the temporary authority of the Protect America Act by authorizing collection of foreign intelligence in the United States with the assistance of electronic communication service providers that is targeted against non-U.S. persons reasonably believed to be outside the United States. The PAA had authorized collection "concerning" persons reasonably believed to be located outside the U.S. Section 702 eliminates the vagueness associated with the word "concerning" and instead authorizes the "targeting" of persons. The PAA had not provided for judicial review of minimization procedures; section 702 provides for that review. It also establishes a series of limitations on collection to ensure that surveillance under section 702 is not directed at persons within the United States or at U.S. persons inside or outside of the United States. The judicial review of targeting and minimization procedures is to occur prior to the commencement of collection under a DNI and Attorney General authorization unless they determine that exigent circumstances exist. The ground for exigent circumstances is whether, without immediate implementation, intelligence important to national security may be lost or not timely acquired. Section 702 modifies the procedures for judicial review, both in the form of enforcement petitions against non-complying carriers and their petitions for judicial review, of directives issued to carriers by the DNI and the Attorney General. It also enhances oversight by Inspectors General and the House and Senate Intelligence and Judiciary Committees.

• Section 703 governs the targeting of U.S. persons who are reasonably believed to be outside the United States when the acquisition of foreign intelligence is conducted inside the United States. It establishes procedures, drawn from Titles I and III of FISA, which provide for renewable FISC determinations that there is probable cause to believe that the U.S. person is a foreign power or an agent, officer, or employee of a foreign power.

• Section 704 governs other acquisitions that target U.S. persons outside the United States. It addresses any targeting of a U.S. person outside of the United States under circumstances in which that person would have a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted in the United States. It thus covers not only communications intelligence but the physical search of a home or office of a U.S. person by an element of the U.S. Intelligence Community outside of the United States. For the first time, in accordance with section 704, any targeting of a U.S. person outside the United States now requires a renewable 90-day FISC determination that there is probable cause to believe that the U.S. person is a foreign power or an agent, officer, or employee of a foreign power.

• The FAA, in section 102, reiterates that FISA and designated chapters of Title 18 of the United States Code are the exclusive means by which electronic surveillance and interception of certain communications may be conducted and provides that only an express authorization may be an additional exclusive means for electronic surveillance or domestic interception.

• The FAA provides for the sunset of these authorities on December 31, 2012, so that Congress and the Executive must review them before the end of the term of the current President.

• Title II of the FISA Amendments Act of 2008 establishes a new Title VIII of FISA on the "Protections of Persons Assisting the Government." Section 802 establishes procedures for implementing statutory defenses. No civil action may lie or be maintained against a person for providing communications information or access to an IC element if the Attorney General certifies one of five things. Three of the grounds for certification are that the assistance was provided pursuant to a FISC order, a certification under Title 18 of the U.S. Code, or a directive under the PAA or FAA. The fourth ground is related specially to the President's program. It authorizes an immunity certification for actions against a carrier for the provision of assistance to the Intelligence Community in connection with an intelligence activity authorized by the President between September 11, 2001 and January 17, 2007, that was designed to detect or prevent a terrorist attack against the U.S., and for which there was a written request or directive that the activity was authorized by the President and determined to be lawful. The fifth ground for a certification is that the defendant in a lawsuit had not provided the alleged assistance. The court is to give the certification effect unless it determines that the certification is not supported by substantial evidence. In making that determination, the court may review the written requests or directives to carriers, among other materials. While classified material shall be considered in camera, section 802 protects the opportunity of plaintiffs to take part in the briefing and argument of legal issues. The underlying premise of the new Title VIII is that carriers who responded to the request for assistance after September 11, upon receiving written high-level representations of authorization and legality, should not be subject to liability for their assistance during that period. The Committee also determined that the Intelligence Community cannot obtain the intelligence it needs without assistance from electronic communication service providers, and expressed in its report the concern that without retroactive immunity the private sector might be unwilling to cooperate with lawful Government requests in the future without unnecessary court involvement and protracted litigation. Nevertheless, in the future, as the Committee explicitly admonishes in its report, the Government and carriers should adhere to the precise statutory requirements for surveillance assistance. Nothing in Title VIII diminishes any right to relief from Government parties.

• Title III of the FISA Amendments Act of 2008 provides for a comprehensive review, within the oversight authority and responsibility of each, by Inspectors General whose departments or IC elements participated in the TSP. A final report in unclassified form, but which may include a classified annex, shall be submitted to the House and Senate Intelligence and Judiciary Committees within a year (July 10, 2009) of the enactment of the FISA Amendments Act of 2008.

B. Intelligence Authorization Bills for 2007, 2008, and 2009

Our last biennial report observed that the 109th Congress was the first since establishment of the Intelligence Committee in the 94th Congress which did not enact an Intelligence Authorization. S. Rep. No. 110–57, at 3. Unfortunately, the 110th Congress fared no better.

The Committee's first legislative endeavor in the 110th Congress was to attempt to revive the fiscal year 2007 bill by again reporting it to the Senate. S. 372; S. Rep. No. 110–2 (Jan. 24, 2007). After a sequential report by the Committee on Armed Services, S. Rep. No. 110–5 (2007), the Senate invoked cloture on a motion to proceed to consideration of the bill, but on April 16, 2007, by a vote of 41–40, cloture was not invoked on the bill itself. 153 Cong. Rec. S 4471–72 (daily ed.). During debate on April 16 and 17, amendments were offered and a number were agreed to by unanimous consent. After a motion to reconsider the vote by which cloture was not invoked, cloture again failed, by a vote of 50–45. 153 Cong. Rec. S 4580 (daily ed., Apr. 17, 2007). The bill was returned to the calendar and efforts to pass a fiscal year 2007 authorization ended.

In the first months of both 2007 and 2008, the Committee conducted its annual review of the President's budget recommendations for the civilian and military agencies and departments comprising the Intelligence Community for fiscal years 2008 and 2009. These reviews included the National Intelligence Program and the Military Intelligence Program (concerning which the Committee makes recommendations to the Senate Armed Services Committee).

The intelligence entities covered by the annual reviews included the Office of the Director of National Intelligence (ODNI), the Central Intelligence Agency (CIA), the Defense Intelligence Agency (DIA), the NSA, the National Geospatial-Intelligence Agency (NGA), the National Reconnaissance Office (NRO), the intelligence capabilities of the military services and the Coast Guard, as well as the intelligence-related components of the Federal Bureau of Investigation (FBI), the Departments of State, Treasury, Energy, and Homeland Security, and the Drug Enforcement Administration.

As part of its reviews in 2007 and 2008, the Committee held closed budget hearings at which senior IC officials testified. During briefings at the Committee and on site at IC agencies, Committee staff members, designated as budget monitors for particular IC elements, evaluated detailed budget justifications submitted by the Executive Branch. On the basis of those reviews, the Committee prepared a classified annex to each annual bill and report. Each annex contained a classified schedule of appropriations and classified directions to IC elements that addressed a wide range of issues identified during the annual budget reviews and other Committee oversight activities.

While these annual budget reviews were in progress, the Committee also reviewed the Administration's proposals for the public part of each annual bill, consisting of new or amended legislative authority requested by the IC. The Committee also considered other legislative proposals originating in the Committee, notably provisions that had been included in the proposed fiscal year 2007 bill. From this part of its work, the Committee produced an original bill and also a public report for each of fiscal years 2008 and 2009. The reports explained the provisions of each bill and also provided comments, including directions to the IC, which could be stated in an unclassified form.

As a result of this extensive process in 2007 and again in 2008, the Committee reported two Intelligence Authorizations bills with

accompanying reports and classified annexes, one for fiscal year 2008 and the second for fiscal year 2009.

On May 31, 2007, the Committee reported S. 1538, its proposed Intelligence Authorization Act for Fiscal Year 2008, accompanied by S. Rep. No. 110–75 (2007). The bill was sequentially referred to the Armed Services Committee and then reported by that Committee. S. Rep. No. 110–92 (2007). On October 3, 2007, the Senate passed S. 1538 with a managers amendment and sent it to the House in the form of an amendment to H.R. 2082, the fiscal year 2008 authorization bill passed by the House of Representatives. A conference committee reported H.R. 2082 on December 6, 2007. H.R. Rep. No. 110–478 (2007). By a vote of 222–199, the House agreed to the conference report on December 13, 2007. 153 Cong. Rec. H15426 (daily ed.). On February 13, 2008, by a vote of 51–45 the Senate also approved the conference report. 154 Cong. Rec. S 937 (daily ed.). On March 8, 2008, the President vetoed H.R. 2082 by returning it to the House with his objections. 154 Cong. Rec. H1419 (daily ed.). By a vote of 225–188, the House failed to override. 154 Cong. Rec. H1502 (daily ed., March 11, 2008).

On May 8, 2008, the Committee reported S. 2996, its proposed Intelligence Authorization Act for Fiscal Year 2009, accompanied by S. Rep. No. 110–333 (2008). S. 2996 included many of the legislative provisions that had been in the conference report on the fiscal year 2008 bill. No Senate floor action occurred on the 2009 bill, which expired at the end of the 110th Congress together with H.R. 5959, the Intelligence Authorization Act for Fiscal Year 2009 that had passed the House on July 16, 2008.

Thus, the 110th Congress became the second Congress since the 94th not to enact an intelligence authorization bill. For three straight fiscal years, 2006, 2007, and 2008, and for at least the beginning of fiscal year 2009, authorization for IC activities has been provided by stop-gap provisions in the appropriations acts for the Department of Defense (and similar provisions in other appropriations) which provide that funds appropriated by them are deemed to be authorized during the fiscal year until enactment of an intelligence authorization act for that year (e.g., Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110–329, Section 8080).

As the Committee noted in its 109th Congress report, the effect of failure to complete action on an intelligence authorization bill is not limited to the authorization of appropriations. Apart from the rare major restructuring of the Intelligence Community that occurred by virtue of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458), and for occasional intelligence items that are enacted in other laws (see parts II(C)–(E) below), annual intelligence authorization acts have been the regular means for adjusting, as needs are recognized, the statutory authorities of the IC. The last time that occurred on a regular basis was four years ago in the enactment in December 2004 of the Intelligence Authorization Act for Fiscal Year 2005.

The Committee's legislative proposals during the 110th Congress are explained in detail in our reports on the 2007, 2008, and 2009 bills and in the conference report on the 2008 bill. The principal recommendations included:

• Measures to enhance the authority and flexibility of the DNI to manage personnel. These included added authority over IC personnel levels, the movement of personnel to where they are needed through details from one IC element to another IC element, and enhanced pay for critical positions such as those requiring special technical abilities. In its 2008 and 2009 bills, the Committee supported increasing the DNI's ability to manage IC personnel as part of a community, such as by extending scholarship programs to IC elements that now lack them. This enhanced management authority, however, was not contained in the conference report on the 2008 bill, and will require further study in the House. The enhanced personnel management authority was accompanied by provisions to improve IC personnel planning, to account for the number and use of the Intelligence Community's burgeoning number of contractors, and to facilitate the replacement of contractors with regular IC employees.

• Measures to improve information sharing by authorizing interagency funding to quickly address deficiencies or needs that arise in intelligence information access or sharing capabilities, and also to improve the DNI's ability to finance national intelligence centers and other means to address intelligence issues through coordinated efforts in the Intelligence Community.

• Acquisition reforms, including vulnerability assessments of major systems, establishment of requirements for a business enterprise architecture to enhance IC business system modernization, and a measure to curb excessive cost growth of major systems.

• Establishment of a strong and independent Inspector General (IG) for the Intelligence Community, appointed by the President with the advice and consent of the Senate, to review programs of the Intelligence Community and the relationships among the elements of it, and to report to the DNI and Congress. The President's veto message on the fiscal year 2008 bill asserted that the office is duplicative and unnecessary, stating that each component already has an Inspector General and that the existing IG for the ODNI has been vested with all legal powers of any DNI. In again reporting the IG provision as part of its proposed 2009 bill, the Committee reaffirmed its conviction in the importance of an independent, statutory Inspector General for the IC. The IG position created by the provision would not duplicate the existing ODNI position, which would be replaced by it. The provision has been carefully refined, in conjunction with the Senate Armed Services Committee, to avoid duplication or conflict with any IG in the Department of Defense. A statutory IG for the Intelligence Community is especially needed to address issues that run across the jurisdiction of individual IC elements and that cannot be fully addressed by Inspectors General for individual IC elements whose jurisdictions are bounded by the elements in which they serve.

• In recognition of the critical responsibilities of the Directors of the NSA, NRO, and the NGA, a requirement that their appointments by the President be confirmed by the Senate. In an effort to reach a compromise with the Executive Branch, the conference report on the 2008 bill limited this to the confirmation of the NSA and NRO Directors. In his veto message, the President nevertheless listed the provision among his objections, asserting that the

provision would subject the filling of the positions to harmful delays and risk injecting political pressure into positions of technical expertise and public trust. After consideration of the President's objection, in reporting its fiscal year 2009 bill the Committee returned to its original view that all three positions should be subject to confirmation. Each official plays a critical role in the national intelligence mission and spending by their agencies comprises a significant portion of the entire intelligence budget. In addition, as the conference report on the 2008 bill states, the Committee is seeking that these positions be subject to confirmation because of the important role each plays. For NSA, that role includes ensuring that its intelligence collection is consistent with the protection of the civil liberties and privacy interests of U.S. persons; for NRO, it includes ensuring that the NRO appropriately manages its mission and the significant budget resources and mission entrusted to it. With respect to the specter of confirmation delays, the Committee has a record of expeditious, non-political consideration of nominations to positions in the IC.

• An increase in the penalties for the disclosure of the identity of undercover intelligence officers and agents.

The conference report on the fiscal year 2008 bill also included a provision, added during conference, to prohibit the use of any interrogation treatment or technique not authorized by the United States Army Field Manual on Human Intelligence Collector Operations (Army Field Manual) against any individual in the custody or effective control of any element of the Intelligence Community. While other provisions in the 2008 bill were also listed in the veto message, the President's objection to the Army Field Manual provision was the central objection in the veto message. By a vote of 9–6, the Committee included this provision in its fiscal year 2009 bill. The continuing dispute over the provision was a contributing factor to the bill not receiving floor consideration during the 110th Congress.

Minority views submitted with the Committee's report on the 2009 bill asserted that a better alternative to limiting interrogation techniques would be to prohibit the use of techniques that are explicitly banned by the Army Field Manual. S. Rep. No. 110–333, at 79 (2008).

C. Implementing Recommendations of the 9/11 Commission Act of 2007

The Intelligence Reform and Prevention Act of 2004, Pub. L. 108–458, addressed many but not all recommendations in the 2004 report of the National Commission on Terrorist Attacks Upon the United States. In the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), Pub. L. 110–53, Congress enacted responses to a list of remaining unfulfilled recommendations of the 9/11 Commission. Title VI of the 9/11 Act is entitled "Congressional Oversight of Intelligence." The 9/11 Commission's report had stated: "Of all our recommendations, strengthening congressional oversight may be among the most difficult and important." In addition to provisions that respond to specific recommendations of the 9/11 Commission, Title VI contains other matters designed to augment oversight and accountability.

In the Senate, primary responsibility for the 9/11 Act (most of which addressed homeland security matters such as incident response and transportation security) rested with the Committee on Homeland Security and Governmental Affairs. With regard to the IC matters addressed in Title VI, the Committee on Homeland Security and Governmental Affairs worked closely with this Committee, particularly in preparation for conference with the House.

1. Section 601: Declassification of the total amount appropriated for national intelligence

The 9/11 Commission had recommended that "the overall amounts of money being appropriated for national intelligence and to its component agencies should no longer be kept secret." In support of the recommendation, the Commission had urged that "when even aggregate categorical numbers remain hidden, it is hard to judge priorities and foster accountability."

The Senate had sought, in S. 2845 of the 108th Congress, its version of the Intelligence Reform and Terrorism Prevention Act of 2004, to implement the 9/11 Commission recommendation by requiring the declassification of the overall amounts requested, authorized, and appropriated for national intelligence. The Senate provision, however, was not included in the conference agreement on the 2004 Act. This Committee then sought legislation, as part of several annual intelligence authorization bills, to require the President to disclose the aggregate amount of funds requested for the National Intelligence Program in the annual budget submission for the program, the aggregate amount authorized, and the aggregate amount appropriated. The Committee's proposals also would have required the DNI to conduct a study on the advisability of disclosing the aggregate amounts requested, authorized, and appropriated for each of the 16 elements of the Intelligence Community. See S. Rep. No. 110–2, at 5 (2007) (report on FY 2007 Authorization); S. Rep. No. 110–75, at 55 (2007) (report on FY 2008 Authorization). These proposals became part of the Senate's 9/11 bill.

The conference agreement adopted the Senate provision with modifications. It required, in section 601 of the 9/11 Act, that the DNI disclose the aggregate amount of funds finally appropriated (but not the funds initially requested or authorized) for the National Intelligence Program within 30 days of the end of the fiscal year. By limiting the disclosure to a single amount, the amount appropriated for the entire fiscal year-an amount that includes both regular and supplemental appropriations—and not requiring disclosure of amounts requested and authorized, the conference agreement sought to avoid public speculation about intelligence programs involved in differences between the President and Congress, or the Senate and House, in enacting appropriations. The conference agreement also deleted the study of further declassification down to the level of the total amounts for individual IC elements. Finally, the conference agreement limited mandatory declassification to fiscal years 2007 and 2008. For fiscal years 2009 and after, the President may waive or postpone disclosure by submitting to the congressional intelligence committees, within 30 days of the end of a fiscal year, a statement in unclassified form that disclosure would damage national security and a further statement,

which may be classified, detailing the reasons. These requirements are set forth in 50 U.S.C. 415c.

On October 30, 2007, the DNI implemented the top line declassification provision of the 9/11 Act by disclosing that the aggregate amount appropriated to the National Intelligence Program for fiscal year 2007 was $43.5 billion. On October 28, 2008, the DNI publicly announced that the aggregate amount appropriated for fiscal year 2008 was $47.5 billion.

Section 346 of the Committee's proposed authorization for fiscal year 2009 (S. 2996; S. Rep. No. 110–333, at 19) would have made mandatory disclosure of the top line appropriated for that fiscal year and provided that the waiver authority in section 601 of the 9/11 Act not apply until fiscal year 2010. Whether to make disclosure for fiscal year 2009, and possibly subsequent years, not subject to waiver is a matter for consideration in the 111th Congress.

2. Sections 602 and 604: Public Interest Declassification Board

As described in its report on the intelligence authorization act for fiscal year 2008, S. Rep. No. 110–75, at 6–7, the Committee was impeded in obtaining the assistance of the Public Interest Declassification Board in reviewing several Executive Branch classification decisions regarding Committee reports on prewar intelligence about Iraq. The White House had interpreted the Board's authorizing legislation to require presidential approval for the Board to conduct a review at the request of Congress. The Committee recommended, in section 308 of its proposed intelligence authorization bill for fiscal year 2008, S. 1538, that the Board be authorized to conduct reviews upon receiving a congressional request, regardless of whether the review is requested by the President. The Committee also proposed that the life of the Board be extended for four years until the end of 2012.

In section 602, the conference agreement on the 9/11 Act incorporated, with minor technical changes, the Senate proposal on the authority of the Public Interest Declassification Board to conduct reviews upon receiving a congressional request as well as the Senate proposal to extend the life of the Board. Section 604 of the 9/11 Act provided for funding of the Board during fiscal year 2007.

During the 110th Congress, the Public Interest Declassification Board issued a comprehensive report, including recommendations, on declassification policies and programs within the federal government: Improving Declassification, A Report to the President from the Public Interest Declassification Board (December 2007). The report is posted on the National Archives website. While the main part of the report concerns declassification programs and policies in the Executive Branch, including matters that have been of concern to the Committee such as the treatment of the President's Daily Brief, the report also addresses the declassification of congressional records that contain classified information provided by the Executive Branch. As evidenced by the further extension of the life of the Board, the work and reports of the Public Interest Declassification Board are important to the congressional oversight of declassification programs and policies.

3. Section 603: Structure of congressional oversight

The 9/11 Commission made several recommendations about congressional oversight.

In 2004, the Senate acted on one of the Commission's oversight recommendations by eliminating, in S. Res. 445 of the 108th Congress, the eight-year term limit provision on committee membership contained in the Committee's authorizing resolution, S. Res. 400 of the 94th Congress. The 9/11 Commission urged that "Members should serve indefinitely on the intelligence committees, without set terms, thereby letting them accumulate experience."

In 2004, the Senate also sought to address a 9/11 Commission recommendation on the structure of oversight in the Senate by providing in S. Res. 445 for an intelligence subcommittee in the Committee on Appropriations. That subcommittee, however, has not been established. The Commission had reported in 2004 that it had considered and proposed two alternatives to the present oversight structure in the House and Senate: a joint committee modeled after the old Joint Committee on Atomic Energy and separate committees in each House that combine authorizing and appropriations powers.

Section 603 of the 9/11 Act set forth a Sense of the Senate that the Committee on Homeland Security and Governmental Affairs and this Committee should review the recommendations of the 9/11 Commission on congressional oversight as well as other suggestions and submit to the Senate recommendations for carrying out reforms.

On November 13, 2007, this Committee held a public hearing to receive testimony from members of the 9/11 Commission and others. On March 6, 2008, fourteen members of the Committee joined in a letter to the Senate leadership that the Senate should adopt one of two means of implementing oversight reform. One was to consolidate authorization and appropriations authority in this Committee, an approach taken by S. Res. 375 in the 110th Congress. The other was to amend and implement the determination made by the Senate in S. Res. 445 of the 108th Congress to establish an intelligence subcommittee in the Committee on Appropriations.

The Committee's letter to the Senate leadership (reprinted at 154 Cong. Rec. S. 8419 (daily ed., Sept. 11, 2008)) offers specific proposals to enhance coordination of intelligence authorization and appropriation responsibilities, such as placing on the appropriations subcommittee any Intelligence Committee member who is on the Appropriations Committee and making the Intelligence Committee Chairman and Vice Chairman ex officio members of the subcommittee if they are not already on it by virtue of Appropriations Committee membership. A resolution implementing these proposals, S. Res. 655, was submitted on September 11, 2008, and referred to the Committee on Rules and Administration.

4. Section 605: Public release of declassified executive summary of CIA Inspector General 9/11 accountability report

In its report for the 109th Congress, the Committee described its efforts to obtain public release of a declassified executive summary of a 2005 accountability report, with respect to the Agency's pre

and post-9/11 activities, prepared by the CIA Inspector General in response to a recommendation of the 2002 House and Senate Joint Inquiry Into Intelligence Activities Before and After the Terrorist Attacks of September 11, 2001 (S. Rep. No. 110–57, at 24–26).

In the 110th Congress, the Committee included a requirement for the declassification of the executive summary of that IG report in its authorization bill for fiscal year 2008 (S. 1538; S. Rep. No. 110–75, at 27). The proposed requirement was also included in the Senate version of the 9/11 Act, and became part of the conference agreement on that act.

As enacted, Section 605 required that the CIA Director, not later than 30 days after the enactment of the 9/11 Act, prepare and publicly release the Executive Summary of the CIA Inspector General report "declassified to the maximum extent possible, consistent with national security." Section 605 also required the Director to submit to Congress a classified annex explaining any redactions.

The Director released a declassified executive summary on August 21, 2007. The summary and the Director's statement on its release may be found on the CIA's website.

D. National Defense Authorization Act for Fiscal Year 2008

During the 110th Congress, the defense authorization bill for fiscal year 2008 (S. 1547, the National Defense Authorization Act for Fiscal Year 2008) that had been reported by the Armed Services Committee was subsequently referred to this Committee. The Intelligence Committee's report, S. Rep. No. 110–25 (2007), addressed provisions on three matters: (1) protection of classified information in the proceedings of Combatant Status Review Tribunals; (2) IC responses to requests of the House and Senate Committees on the Armed Services; and (3) standards for disqualification from issuance of security clearances by the Defense Department. Of the three, the second and third matters appeared in some form in the final legislation.

With respect to IC responses to requests of the congressional armed services committees, S. 1547 sought to establish rules on responses to requests by elements of the Intelligence Community for documents or information. As enacted in section 1079 of Pub. L. No. 110–181 (2008), the provision requires the DNI, the Director of the National Counterterrorism Center, and the head of any element of the Intelligence Community to make available, not later than 45 days after receiving a written request from the chairman or ranking member of the Senate or House Armed Services Committee, any existing intelligence assessment, report, estimate, or legal opinion that relates to a matter within the jurisdiction of the committee. It states that the DNI and other officials covered by the section shall provide these documents unless the President determines that the document or information shall not be provided because the President is asserting a constitutional privilege. Section 1079 became the subject of a presidential signing statement that it would be construed "in a manner consistent with the constitutional authority of the President."

The Intelligence Committee's sequential report preceding final enactment stated that it shared with the Armed Services Committee the conviction that it is critically important that the Intel-

ligence Community provide to Congress the documents it needs to perform its responsibilities. But, in the Intelligence Committee's view, if there is a need for legislation on any lack of timely response by the IC, the legislation should address the problem comprehensively. The Intelligence Committee opined that the Congress should not enact separate rules on access to IC documents by its various committees outside of the congressional intelligence committees.

The other matter addressed by S. 1547 that was included (with changes) in the final legislation involved a proposed repeal of a Title 10 provision on security clearances that had been added in 2000. The underlying provision had disqualified from being granted security clearances any active duty member of the Armed Forces or officer or employee of the Department of Defense (DOD) or a DOD contractor who fell into one of four categories: (1) had been convicted and sentenced in any U.S. court to a prison term of more than one year; (2) is an unlawful user or is addicted to a controlled substance; (3) is mentally incompetent as determined by a mental health professional approved by the DOD; or (4) has been discharged from the Armed Forces under dishonorable conditions. Disqualification for conviction or dishonorable discharge could be waived by the Secretary of Defense or the Secretary of a military department. The DOD requested the provision be repealed because, in its view, it unduly limited its ability to manage its security clearance program and could create unwarranted hardships for individuals who have rehabilitated themselves as productive and trustworthy citizens.

This Committee, by a vote of 10–5, opposed the Armed Services Committee proposal to repeal the Title 10 provision. Our report expressed the concern that blanket repeal could lead to unintended compromises or mishandling of national security information. S. Rep. No. 110–125, at 4. Members of the Committee who supported deferring to the views of the DOD and the Armed Services Committee filed additional views, noting that there is no comparable security clearance statute applicable to any other individual department or agency and that Congress recently had legislated in favor of the implementation of uniform and consistent policies throughout the Government. Id. at 6–7.

Following the sequential report and discussions with this Committee, the Armed Services Committee produced a compromise that was enacted as section 1072 of Pub. L. No. 110–181, which adds section 3002 to the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. 435b. The compromise limited the absolute prohibition on security clearances, at any classification level, to officers or employees of any federal agency (not just the DOD) or of a federal agency contractor, or active duty military personnel, who are unlawful users of a controlled substance or addicts.

For U.S. agency officers or employees, military, or contractor personnel who are incarcerated for not less than one year on the basis of a U.S. court conviction and sentence, dishonorably discharged, or determined in accordance with approved adjudicative guidelines to be mentally incompetent, the compromise provides, subject to waiver, for disqualification from a limited set of security clearances,

namely, special access programs or sensitive compartmented information, rather than for all security clearances.

E. Inspector General Reform Act of 2008

Within the Senate, the Inspector General Reform Act of 2008 was introduced by Senator McCaskill and reported by the Committee on Homeland Security and Governmental Affairs. It was signed into law on October 14, 2008 as Pub. L. 110–409. The Committee on Homeland Security and Governmental Affairs consulted with this Committee on provisions involving Inspectors General (IGs) within the Intelligence Community.

The Act contains measures to strengthen the independence of IGs throughout the Government. While various provisions do not relate to the Intelligence Community (although they might serve as a model for subsequent IC legislation), the Act's provisions on compensation and the establishment of a Government-wide council of IGs apply to particular IC IGs.

As reported to the Senate, section 4 increased the compensation of statutory IGs to Executive Level 3 plus 3 percent and section 5 prohibited cash awards or bonuses to those IGs. The Homeland Security Committee report explained the importance of these related provisions. The compensation of some IGs had depended on the award of bonuses by officials that they oversee. While the report noted that presidentially-appointed IGs had generally agreed to forego them, bonuses have been an important part of the pay structure for IGs. S. Rep. No. 110–262, at 4 (2008). The Act balances the prohibition against bonuses with an improvement in compensation, establishing the pay level of IGs at Executive Level 3 plus 3 percent. However, as the Act neared passage, these two compensation reforms had not been applied to the CIA IG. With the full support of this Committee, the bill was amended to apply these important pay provisions to the CIA IG.

Section 11 of the Act establishes a Council of the Inspectors General on Integrity and Efficiency to address matters of integrity, economy, and effectiveness that transcend individual government agencies. Section 11 makes the DNI IG and the CIA IG statutory members of the Council. One function of the Council is to develop plans for coordinated, government-wide activities that include interagency and inter-entity audits, inspections, and evaluations. The Act creates, within the Council, an Integrity Committee which shall investigate allegations of wrongdoing against an Inspector General or a staff member of an IG Office.

F. Administration Views on Bills Referred to the Intelligence Committee

Rule 12.2 of the Committee's Rules of Procedure provides that "Unless otherwise ordered by them, measures referred to the Committee shall be referred by the Chairman and Vice Chairman to the appropriate department or agency of the Government for reports thereon." Pursuant to this rule, during the 110th Congress the Chairman and Vice Chairman made two referrals for comments.

1. GAO Participation in Intelligence Community audits and evaluations

On January 30, 2007, the Chairman and Vice Chairman referred to the DNI and the Comptroller General for comment S. 82, a bill referred to the Committee entitled the Intelligence Community Audit Act of 2007. S. 82, which had been introduced by Senator Akaka, would "reaffirm" the authority of the Comptroller General to perform audits and evaluations of the financial transactions, programs, and activities of the Intelligence Community. The bill proposed a number of limitations on this authority including that the Comptroller General may conduct an audit or evaluation of intelligence sources or methods, or covert actions, only on the request of one of the congressional intelligence committees or the House or Senate majority or minority leader.

On March 7, 2007, the DNI responded to the Chairman and Vice Chairman. The DNI stated that the approach of his office has been to provide the General Accountability Office (GAO) with appropriate assistance while protecting sources and methods, and that the ODNI has occasionally sought the views of GAO on appropriations matters and review of GAO reports. However, "[p]ursuant to obligations to protect intelligence sources and methods, the IC has traditionally declined to participate in GAO inquiries that evaluate intelligence activities, programs, capabilities, and operations." The DNI also expressed concern about the effect that GAO activities could have on "the existing relationship—based on comity and mutual understanding—that has developed between the IC and the Oversight Committees." A particular concern identified by the DNI is that the Comptroller General might seek to carry out work in the Intelligence Community beyond work directed by the Congress or to do so at the request of committees that do not have jurisdiction over IC activities. Overall, the DNI objected that "S. 82 has no provision for curbing such requests or recourse for the IC in addressing the predictable drain on resources." Consequently, "S. 82 would have an impact on the ability of the Intelligence Community to respond to [Intelligence] Committee requests in a timely manner."

In a letter dated March 1, 2007, the Comptroller General expressed GAO's support for the bill. He stated that with limited exceptions existing law provides GAO with "clear audit and access authority with respect to elements of the Intelligence Community," but noted that the Department of Justice has questioned GAO's authority. The letter described the GAO's understanding of the history of the GAO's interaction with the Intelligence Community. It cited the need, as identified in various reports following 9/11, for "major business transformation" in the Intelligence Community as one area in which GAO could be of assistance to the Intelligence Community. Subsequently, in testimony before the Committee on Homeland Security and Governmental Affairs (HSGAC) on February 29, 2008, the Comptroller General expanded on his support for S. 82. His full written testimony, under the heading of "Intelligence Reform: GAO Can Assist the Congress and the Intelligence Community on Management Reform Initiatives," is posted on the websites of both HSGAC (with other testimony from the hearing)

and the GAO. Neither this Committee nor the full Senate took any further action on S. 82.

2. Detention and interrogation

On August 7, 2008, the Chairman and Vice Chairman referred to the Director of National Intelligence for comment three bills on detention and interrogation: S. 3386, introduced by the Vice Chairman; S. 3437, introduced by Senator Feinstein, and cosponsored by the Chairman; and S. 1943, introduced by Senator Kennedy. S. 3386 and S. 3437 had been referred to the Intelligence Committee. S. 1943 had been referred to the Judiciary Committee.

S. 3386, entitled the "Limitations on Interrogation Techniques Act of 2008," would bar subjecting anyone in the custody or under the control of an IC element to any of a list of interrogation techniques taken (with two modifications) from prohibitions in the Army Field Manual. S. 3437, entitled "Restoring America's Integrity Act," would bar any person in the custody or under the control of an IC element from being subjected to a treatment or technique of interrogation not authorized by the Army Field Manual. It would require notice, in a manner consistent with the practices of the U.S. Armed Forces, to the International Committee of the Red Cross of an IC detention. It would bar CIA interrogations by contractors, requiring that all CIA interrogations be conducted by Agency employees. S. 1943 would bar interrogation by any U.S. Government agency that is not authorized by the Army Field Manual and prohibit in statute the list of techniques taken from the prohibitions in the Army Field Manual.

On October 3, 2008, the DNI replied. The DNI wrote that "[a]s a general matter, we do not believe that further legislation in this area is necessary." He asserted that the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 had been "drafted and passed by Congress to allow the Central Intelligence Agency (CIA) to continue a program for interrogation of high-level terrorist leaders or facilitators separate from the Department of Defense interrogation programs."

With respect to the future of the program, the DNI stated: "Although the Administration does not believe that additional legislation is necessary at this time, we are open to discussing with the Committee the guidelines and restrictions applicable to the program as a matter of both law and policy. With respect to the proposal to require notice and access to the International Committee of the Red Cross (ICRC) regarding detainees who may be held by the CIA, the Department of State has facilitated constructive discussions between the CIA and the ICRC on these issues. We believe these discussions have been constructive and will keep the Committee fully informed of the progress of this dialogue."

G. Committee Views on Law of the Sea Convention

In September 2007, Chairman Rockefeller and Vice Chairman Bond wrote to the Chairman and Ranking Member of the Committee on Foreign Relations in connection with that Committee's consideration of the Law of the Sea Convention. The purpose of the letter was to provide their assessment, based on a closed Intelligence Committee hearing in 2004 and the reconfirmation in 2007

by the Secretary of State, Secretary of Defense, and DNI of views that had been expressed to the Intelligence Committee by their predecessors, on whether the Law of the Sea Convention would have an adverse impact on U.S. intelligence activities.

Senators Rockefeller and Bond concluded: "the Law of the Sea Convention neither regulates intelligence activities nor subjects them to settlement procedures under the Convention. It is therefore our judgment that accession to the Convention will not adversely affect U.S. intelligence collection or other intelligence activities." S. Hrg. 110–592, at 49–50 (2007) (hearing record of Committee on Foreign Relation reprinting Rockefeller-Bond letter). Their letter appended a letter from the DNI that declassified closed session testimony by the Director of Naval Intelligence before the Intelligence Committee in 2004 that the Convention would not prohibit U.S. maritime intelligence activities. *Id.* at 50.

H. Amendment of Senate Resolution 400 (94th Congress)

On January 30, 2007, the Committee unanimously reported an original resolution, S. Res. 50, with an accompanying report, S. Rep. No. 110–3, to amend the basic charter of the Committee, S. Res. 400 of the 94th Congress (1976), in order to formally align the jurisdiction of the Committee with changes made to the structure of the Intelligence Community by the Intelligence Reform and Terrorism Prevention Act of 2004. The resolution, which the Senate agreed to on February 14, 2007, also made several technical changes to S. Res. 400, all of which are described in the Committee report.

The debate in 1976 on establishment of the Intelligence Committee, which was resolved by adoption of S. Res. 400, centered in large part on the allocation of jurisdiction between the new committee and existing committees that had exercised jurisdiction over elements of the Intelligence Community. The Intelligence Committee was assigned jurisdiction over the CIA and the Director of Central Intelligence. It was also assigned jurisdiction over the intelligence activities of all other departments and agencies, such as the NSA. In a special provision on sequential referrals, however, S. Res. 400 recognized the continuing legislative interest of other Senate committees in IC elements that are within departments that are generally within the jurisdiction of those committees. By its express language, the special sequential referral provision in S. Res. 400 did not apply to matters pertaining to either the CIA or the Director of Central Intelligence.

S. Res. 50 amended S. Res. 400 to apply these jurisdictional principles to the ODNI and the DNI. As amended, S. Res. 400 places matters concerning the ODNI, the DNI, the CIA, and the Director of the CIA, within the core jurisdiction of the Intelligence Community and not subject to the authority of other committees to invoke the special sequential referral provisions of S. Res. 400. Nevertheless, as the Committee advised the Senate (S. Rep. No. 110–3, at 3), the amendment does not alter the provision of S. Res. 400 which ensures that nothing in S. Res. 400 shall be construed to effect the authority of any committee to study or review an intelligence activity that "directly affects" a matter otherwise within that committee's jurisdiction.

S. Res. 400, as amended, is printed in the most recent publication of the Committee's Rules of Procedures, S. Prt. 110–22, at 11–17, and is available on the Committee's Web site.

III. OVERSIGHT ACTIVITIES

A. Annual Worldwide Threat Hearings

It is the Committee's long-standing practice to begin each session of the Congress with a hearing to review the Intelligence Community's assessment of the current and projected national security threats to the United States. The hearings in the 110th Congress covered a wide range of issues. The hearings provided the heads of various all-source analytic agencies an opportunity to inform the Committee and the American public about the threats facing the country and about the abilities of their organizations to provide information and analysis about such threats, as well as, in the case of some agencies, the capabilities within their organizations to counter such threats.

On January 11, 2007, the Committee held an open and closed hearing on the current and projected threats to the United States. Testifying before the Committee were John D. Negroponte, DNI; General Michael V. Hayden, Director of the CIA; Lieutenant General Michael Maples, Director of the DIA; Robert S. Mueller, Director of the FBI; and Randall Fort, Assistant Secretary of State for Intelligence and Research. Their unclassified prepared statements for the record are available in the Hearings section of the Committee's Web site.

Director Negroponte stated "The Nation requires more from our Intelligence Community than ever before because America confronts a greater diversity of threats and challenges than ever before." He addressed in his opening remarks only a few of those challenges and threats, focusing on: the threats posed by international terrorist organizations, especially al-Qa'ida but also including Hizbollah; the challenges confronting Iraq and Afghanistan in forging national institutions; the actions of Iran and North Korea to develop or acquire weapons of mass destruction; Iran's influence in the Middle East; "turmoil in Africa;" "democratization in Latin America;" China's modernization; and "energy security and the foreign policy benefits which high prices offer states that are hostile to United States interests."

On February 5, 2008, the Committee held an open and closed hearing on the current and projected threats to the United States. This was the first worldwide threat hearing since the confirmation of the new Director of National Intelligence and Director J. Michael McConnell presented a consolidated statement (with a classified version submitted for the record) on behalf of the Intelligence Community. Director McConnell was accompanied by General Michael V. Hayden, Director of the CIA; Lieutenant General Maples, Director of the DIA; Robert S. Mueller, Director of the FBI; and Randall Fort, Assistant Secretary of State for Intelligence and Research. Director McConnell's unclassified statement for the record is available in the Hearings section of the Committee's Web site.

Director McConnell focused his oral testimony on the continuing "preeminent terror threat" of al-Qa'ida; ongoing efforts of nation

states and terrorists to develop and acquire dangerous weapons and delivery systems; the evolving threat of cyber attack; conditions in Iraq, Afghanistan, the Middle East and Africa; Russian and Chinese military modernization; and the effect of high oil prices, especially for Venezuela and Cuba.

B. Study Groups

During the 110th Congress, the Committee initiated five study groups and continued a sixth that had begun during the previous Congress. These study groups were each composed of four to seven professional staff members from different career backgrounds and with different committee responsibilities. The subjects were chosen in response to Members' determination that the Committee should conduct proactive, in-depth analysis and research into areas of increasing relevance to its intelligence authorization and oversight responsibilities. Staff participants received briefings from and undertook extensive interviews of intelligence officials at headquarters and in the field, and examined relevant documents. They prepared written records of these meetings and briefed Members on their findings and recommendations. They also arranged for hearings, which offered opportunities for Members to explore the subjects of study directly with IC officials, both to evaluate the effectiveness of intelligence agency activities under the new IC structure established by the Intelligence Reform and Terrorist Prevention Act, and to direct legislative remedies as needed.

1. Iran intelligence collection and analysis

The Committee continued and expanded the review of intelligence on Iran that it began in 2005. The study group mapped the U.S. Intelligence Community's collection efforts worldwide, visiting sites in the United States and abroad, and studied key analytical products on Iran. The study group provided a briefing to Members in March 2007.

In addition to reporting to Members on the substance of the 2005 National Intelligence Estimates (NIEs) on Iran, the study group identified possible methodological problems, which it attempted to explore further with the Intelligence Community prior to the publication of new Iran NIEs, then under preparation. Unfortunately, IC delays in providing responses to questions for the record and requested documents relating to the 2005 estimates prevented those efforts from reaching fruition. A decision by the DNI to refuse study group access to key intelligence source documents for the 2007 Iran NIE prevented the type of rigorous review of the estimate the Committee had anticipated. The study group nonetheless continued to monitor closely other intelligence produced on Iran, receiving frequent briefings from intelligence agency elements on a variety of subjects, but particularly on Iran's nuclear program and support for terrorism. The study group prepared or supported eight hearings held by the Committee on Iran during the period of this activity report.

2. Terrorist safehavens

The Committee established the Terrorist Safehavens Study Group to examine the Intelligence Community's intelligence pos-

ture toward and understanding of those regions that were serving or would be likely to serve as safehavens for terrorist activity. The scope of effort included not only the areas of most acute current concern, like Pakistan's Federally Administered Tribal Areas, but also other areas where weak governmental controls and other factors could foster future safehavens. Study group members were briefed by the National Counterterrorism Center and other IC elements and by the State Department's Coordinator for Counterterrorism on the Government's analytic frameworks and knowledge management systems for assessing safehavens and on the effectiveness of counterterrorist operations in these regions. The work of the study group contributed to two hearings in 2007 and led to five recommendations for Committee Members on ways to enhance the effectiveness of intelligence support for counterterrorism efforts.

3. Clandestine human source intelligence (HUMINT)

The reorganization of the Intelligence Community under the 2004 Intelligence Reform and Terrorism Prevention Act has had a significant effect on the HUMINT function—particularly regarding the interface between activities of the Department of Defense, CIA, and FBI. The HUMINT Study Group was established in 2007 to examine the dynamic transition underway and to make recommendations to improve effectiveness in the conduct of HUMINT. The study group held numerous in-depth discussions with IC leaders and senior officials involved in HUMINT management. It met with the principal HUMINT specialists and intelligence directors of the Combatant Commands and the Military Services, intelligence and operations officers from the U.S. Special Operations Command, and the unconventional warfare expert of the U.S. Army Special Forces Command, as well as officials of the FBI and CIA. The study group also conducted numerous interviews with case officers. It contributed to preparations for 15 closed hearings that related to HUMINT during the period of this report.

As a result of the HUMINT Study Group's efforts, nine Congressionally Directed Actions were incorporated into the Committee's report accompanying the Fiscal Year 2009 Intelligence Authorization bill. The Intelligence Community has initiated a number of organizational and policy changes consistent with these recommendations.

4. Terrorist ideology

Early in the 110th Congress, the Committee established a study group on terrorist ideology, with the goals of mapping the IC's contribution to understanding the ideological component of conflict, as well as the media methods our opponents use to support their efforts. The group used the oversight tools available to the Committee to understand where research and analysis was being conducted on the question of counter-ideology, and how this knowledge was being provided to policymakers throughout the Government.

The Committee encouraged the study group to expand the scope of the review and include an assessment of the entire U.S. Government's efforts on what would eventually become recognized as "strategic communications." In particular, the study group sought to understand how IC research and analysis contributed to U.S.

diplomatic efforts—especially in determining where there is connectivity and where disconnects exist. Elements within the Departments of Defense and State shared their progress on questions of ideological engagement throughout the world. The study group also was able to interview numerous former government officials, as well as representatives of other non-governmental organizations, who drew on vast and relevant experience.

The study group prepared three hearings for the Committee during the reporting period, including a June 12, 2007, open hearing on "Terrorism Ideology," S. Hrg. 110–348 (2007), addressing global ideology, regional differences, and the role of ideology in Iraq.

5. China

The Committee directed the China Study Group to examine the DNI's China strategy and to focus on two large issue areas: (1) intelligence collection and analysis posture, resource allocation, and gaps; and (2) China's counterintelligence and espionage threats to the United States. By the end of the reporting period, the study group had conducted a thorough review of the existing capabilities and activities of the Intelligence Community with respect to China. The study group received numerous briefings from intelligence agency representatives and conducted two field visits to China. The study group prepared one closed hearing for the Committee during this period.

6. Cyber security

The many dramatic benefits of the Internet have been accompanied by what the Committee views as a serious threat—the danger of computer network ("cyber") attack, cyber espionage, and cyber crime against U.S. interests by amateur programmers, criminal organizations, and sophisticated nation-state adversaries—to our national security including economic security. The Committee created a new cyber security study group, consisting of seven Committee staff members with expertise in national security law, technology, foreign policy, military affairs, and counterintelligence, to investigate in further detail the wide range of U.S. Government cyber-related challenges and to prepare recommendations for future Committee action. The study group began working with departments and agencies across the Executive branch, other Congressional committees, and private sector leaders to broaden the Committee's understanding of cyber issues.

The Committee held two closed hearings and numerous briefings examining the cyber threat and the IC's response to it. The first hearing on the cyber threat was held in 2007; a second was held in 2008. In parallel with the hearings, the Committee's Technical Advisory Group was asked to study technology and policy aspects of cyber security and to report its findings and actionable recommendations on priorities for Congress. The Committee's second hearing on Cyber Security explored the President's new Comprehensive National Cyber Security Initiative, initiated in January 2008, focused on improving the security of U.S. federal government computer networks. The Committee's annex to its fiscal year 2009 intelligence authorization bill formally requested documents detail-

ing the legal foundations and privacy implications of the Comprehensive National Cyber Security Initiative.

C. Committee Reviews

1. Inquiry into the prewar intelligence assessments on Iraq

In June 2003, the Committee began a formal review of U.S. intelligence related to the existence of Iraq's weapons of mass destruction programs, Iraq's ties to terrorist groups, Saddam Hussein's threat to stability and security in the region, and his violations of human rights including the actual use of weapons of mass destruction against his own people.

In February 2004, the Committee announced a second phase (Phase II) of its Iraq review that included prewar intelligence about postwar Iraq, whether prewar public statements were substantiated by intelligence information, the Intelligence Community's use of information provided by the Iraqi National Congress, and intelligence activities within the Office of the Under Secretary of Defense for Policy.

On September 8, 2006, the Committee submitted to the Senate redacted unclassified reports on two Phase II matters: (1) Postwar Findings About Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments, S. Rep. No. 109–331 (Accuracy Report); and (2) The Use by the Intelligence Community of Information Provided by the Iraqi National Congress, S. Rep. No. 109–330 (INC Report).

On May 8, 2007, the Committee filed with the Senate the redacted unclassified report entitled "Prewar Intelligence Assessments About Postwar Iraq," S. Rep. No. 110–76 (Prewar/Postwar Report). Two sets of additional views to the report were filed. One set was filed by Chairman Rockefeller and Senators Wyden, Bayh, and Whitehouse. Another was filed by Senator Feinstein. Three sets of minority views were filed: (1) by Vice Chairman Bond and Senators Warner, Hatch, and Burr; (2) by Vice Chairman Bond and Senators Hatch and Burr; and (3) by Senators Chambliss, Hatch, and Burr. These views, and the amendments offered by Vice Chairman Bond to the report and conclusions, are described in the report.

On June 5, 2008, the Committee filed with the Senate two additional redacted unclassified reports on Phase II matters: (1) Whether Public Statements Regarding Iraq by U.S. Government Officials were Substantiated by Intelligence Information, S. Rep. No. 110–345 (Public Statements Report); and (2) Intelligence Activities Relating to Iraq conducted by the Policy Counterterrorism Evaluation Group and the Office of Special Plans within the Office of the Under Secretary of Defense for Policy, S. Rep. No. 110–346 (Rome Report).

Chairman Rockefeller, Vice Chairman Bond, and Senators Feinstein, Warner, Hagel, Chambliss, Hatch, Feingold, Snowe and Burr all filed additional or minority views with the Public Statements report. Vice Chairman Bond and Senators Hatch, Chambliss, and Burr filed minority views with the Rome report. Those views, along with the amendments to both reports filed by the Vice Chairman

on behalf of the Minority, are printed in the reports themselves, and all are available on the Committee's Web site.

Redacted copies of these reports are available on the Committee's website. Unredacted classified copies of the reports are available to all Members of the Senate for reading at the Committee.

2. Electronic surveillance

a. President's surveillance program

As described in Section II of this report, consideration of measures to modernize the FISA and to address lawsuits brought against private carriers for alleged participation in the presidential electronic surveillance program that came to be known as the Terrorist Surveillance Program was a major focus of the Committee during the 110th Congress. Prior to the disclosures of December 2005, and the President's subsequent acknowledgment that he had authorized a program outside of the FISA, information concerning the program had been limited by the Executive branch to very few members of Congress—the leadership of the Senate, the House of Representatives, and the congressional intelligence committees plus senior members of the Defense Appropriations Subcommittee and a few other members of the congressional leadership.

During the 109th Congress, the Chairman and Vice Chairman of the Committee sought to have access to the program expanded to all of the Members of the Committee. In March 2006, the Committee reached an agreement with the Executive branch to establish an ad hoc subcommittee of seven Members, including the Chairman and Vice Chairman, to oversee the program. In May 2006, the restriction was further modified and all members of the Committee, and three members of the staff, were given access to information about the NSA program.

At the beginning of the 110th Congress, restrictions on access to the program were further modified to allow a larger number of staff to have access to information about the program. In tandem with the effort to determine whether legislation was needed to amend FISA, the Committee conducted a series of classified hearings, briefings, and interviews to understand the historical context of the program and the sources and methods that were involved.

As described in the report (S. Rep. No. 110–209) to accompany the Committee's legislation to amend FISA, under the President's surveillance program, beginning soon after September 11, 2001, the Executive branch provided written requests or directives to U.S. electronic communications service providers at regular intervals. The activities of the National Security Agency under the program were reauthorized by the President on a periodic basis through January 2007. The Committee reviewed all of the relevant correspondence from the Executive branch to the providers that participated in the program, as well as each of the presidential authorizations and accompanying documents.

Over time, the program was modified to reflect new contingencies. These modifications, and the resulting documents arising from the modifications, were examined by the Committee. Throughout the duration of the program, attorneys from the Office of Legal Counsel generated legal opinions on the program. The Committee

reviewed these opinions and discussed their development with relevant attorneys.

The Committee's effort to secure information pertaining to the program was more difficult than it should have been. The Committee repeatedly requested to see the text of the presidential authorizations for intelligence collection outside of FISA and the legal opinions of the Department of Justice that supported the authorizations. Although the Committee had been learning about the substance of these documents from witnesses who appeared before the Committee in 2006 and 2007, the Committee only gained access to the actual texts for the first time on October 9, 2007, and for a limited period of time afterward, but was not allowed to retain copies of the opinions.

b. Transition to FISC orders in 2007

As described earlier in this report, Attorney General Gonzales wrote to the Senate and House Judiciary and Intelligence Committees in January 2007 that a judge of the FISC had issued orders authorizing the Government to target for collection international communications into or out of the United States where there was probable cause to believe that one of the parties to the communication is a member of al Qaeda or a related terrorist organization.

The Committee received access to the FISC orders and the supporting documentation, including the memoranda filed by the Department of Justice in support of its application. The Committee also examined the subsequent ruling of a second FISC judge, and related documents, concerning renewal of the January 2007 orders, as described earlier in the report. The Committee received extensive briefings from the DNI and others on the impact of that ruling in light of the terrorist threat environment.

c. Oversight of implementation of the Protect America Act of 2007

After enactment of the Protect America Act of 2007 on August 5, 2007, the Committee immediately began to review the Act's implementation. This review included a Committee hearing, on-site briefings at the NSA, and briefings from the Department of Justice attorneys responsible for compliance reviews during the duration of the PAA.

The Committee was provided the certifications issued under the PAA by the Attorney General and DNI, and supporting documents. The Committee also examined documents related to judicial review of the PAA.

d. Oversight of implementation of the FISA Amendments Act of 2008

The Committee continues to examine issues related to electronic surveillance, FISA, and the President's surveillance program. With respect to implementation of the authorities under the FISA Amendments Act of 2008 for targeting certain persons outside the United States other than United States persons, the Committee has reviewed with Department of Justice officials the Attorney General guidelines issued under section 702(f) to ensure compliance with limitations to prevent reverse targeting and targeting of

purely domestic communications. The Committee is also reviewing opinions of the FISC, and related documents, pertaining to the implementation of the FAA.

The Committee has received extensive briefings from the National Security Division of the Department of Justice and the NSA with respect to the conduct of electronic surveillance under FISA. These briefings, and access to the relevant court documents, have greatly assisted the Committee in its oversight responsibilities.

Title III of the FAA, as described earlier in this report, provides for a comprehensive review of the President's surveillance program by the IGs whose departments or IC elements participated, within each IG's oversight authority and responsibility. The Committee has received the interim report required under the FAA and has reviewed it with the relevant IG offices. The Committee originally received the report in classified form. Following our request, the Committee also received an unclassified form of the interim report in November 2008. A final report of the IGs in unclassified form, which may include a classified annex, is to be submitted to the House and Senate intelligence and judiciary committees within a year of the enactment of the Act (July 10, 2009). The Committee is monitoring the work of the IGs and the cooperation of the relevant components of the Executive branch.

e. Allegation of improper intelligence activities at Fort Gordon, Georgia

In early October 2008, a series of press reports raised allegations from former U.S. military reserve personnel regarding the improper collection of communications at an NSA facility located at Fort Gordon, Georgia. The press articles stated the former U.S. military reserve personnel had alleged that the conversations of U.S. personnel in Iraq, as well as those of U.S. aid workers and journalists, were listened to as part of their unit's support to the war on terrorism. In response to these reports, the Committee Chairman issued an October 9, 2008, press release stating the allegations were extremely disturbing and the Committee was examining the matter. Since that date the Committee staff has held three meetings with the appropriate DOD and NSA personnel, and reviewed the inquiries related to these allegations already conducted by those entities.

The Committee also has been advised that in response to the new information contained in the current press reporting, current investigations are being undertaken by the IGs of the NSA and the U.S. Army Intelligence and Security Command. In addition, the DNI has tasked his Civil Liberties Protection Officer to review the investigations of these allegations to determine if there is a need for improvements to the IC's handling of U.S. person information. Upon receipt of the final reports of investigation from the IGs and the findings of the Civil Liberties Protection Officer, the Committee will take the appropriate action to ensure the suggested corrective actions are implemented.

3. Iraq

The Committee held frequent hearings on Iraq with the purpose of overseeing the Intelligence Community's ability to collect intel-

ligence and provide assessments to policymakers. Hearings provided Senators with intelligence assessments about the situation and trends in Iraq and in other nations in the region that affect Iraqi security and stability. In addition, the hearings provided information on the Intelligence Community's collection posture, and the Intelligence Community's plans to support decision makers as the conflict and U.S. presence in Iraq changes.

In addition to hearings, the Committee received regular briefings and reports from the National Intelligence Council, Central Intelligence Agency, elements of the Department of Defense, Department of State, and nongovernmental organizations. The Committee provided intelligence assessments and briefings to support travel to Iraq by members of the Committee and other Senators. These activities supported intelligence oversight activities and helped to inform the legislative debate over the appropriate U.S. policy for Iraq.

4. Information security in the intelligence community

Although the Committee's examination of the cyber threat to the United States includes all U.S. interests, the Committee is concerned in particular about potential threats to IC information systems. The Committee's Fiscal Year 2009 Intelligence Authorization bill sought improved accountability for IC information security. The Committee requested that the DNI provide a report that sets forth the specific roles and responsibilities for IC information security under relevant legislation, executive orders, and current practices, and discuss how accountability for IC information security could be improved.

Also, the Committee requested a joint assessment by the DNI and the Secretary of Homeland Security on how cyber threat intelligence information, including classified information, is shared with the U.S. critical infrastructure leadership. This assessment should combine the best threat information from the Intelligence Community and the best vulnerability information from the Department of Homeland Security to examine the cyber threat to U.S. critical infrastructure.

5. Research and development

In early 2008, the Committee's Technical Advisory Group (TAG) conducted a review of research and development spending in the Intelligence Community. The TAG found that, while the Intelligence Community had in the past been in the forefront of significant scientific breakthroughs, the Intelligence Community for the past two decades has been trailing the private sector in advances in computer and other information technologies. The Committee and the TAG concluded that the Intelligence Community must regain its capabilities in advanced research and development to develop new sensors, analytical enablers, knowledge management tools, and other capabilities to provide our nation's policymakers and warfighters with an information advantage.

To that end, in the Fiscal Year 2008 and Fiscal Year 2009 Intelligence Authorization bills the Committee strongly supported the new Intelligence Advanced Research Projects Activity (IARPA), a dedicated, community-wide research activity freed from the pres-

sures of an intelligence operational mission, founded to take great scientific risks and reap great technological rewards for the Intelligence Community. Wishing to ensure that the IARPA has the appropriate authorities and stature to be effective in fulfilling its unique mission, the Committee requested that the DNI evaluate IARPA's location in the ODNI organization and consider delegation of personnel, contracting, and other authorities to improve the effectiveness of IARPA.

Additionally, the Committee recommended significant changes to the fiscal year 2009 budget request to increase research and development spending in the Intelligence Community to four percent of its total budget. Further, the Committee stated its intention to recommend further growth in research and development spending in future authorization bills to approximately five percent of the total IC budget and to keep this funding stable in the out years to ensure the United States will be able to develop the next sensor or system that will help prevent the next attack or strategic surprise.

6. The ODNI and revision of E.O. 12333

The Committee continued its oversight of the ODNI throughout the 110th Congress. The position of the DNI was established by the Intelligence Reform and Terrorism Prevention Act of 2004, and was given a variety of statutory authorities and responsibilities. The ODNI includes a management staff which assists the Director in coordinating the resources and activities of the various intelligence agencies. It also includes several functional organizations, including the National Counterterrorism Center, the National Counterproliferation Center, the National Counterintelligence Executive, and the National Intelligence Council.

The Committee held an open hearing on the status of ongoing intelligence reform efforts on January 23, 2007. The positions of Director and Principal Deputy Director of National Intelligence were vacant at that time, so the four other Deputy Directors, along with the Chief Information Officer and the Deputy Program Manager for the Information Sharing Environment, served as witnesses. Witnesses discussed the impact of structural changes made to the IC, as well as the status of various efforts to reform management, information sharing, and coordination throughout the intelligence agencies, and efforts to improve the quality of intelligence collection and analysis.

After his confirmation in February 2007 (see Section IV.A), Director McConnell and his deputies appeared before the Committee for numerous briefings and hearings throughout the 110th Congress and the Committee monitored the progress of his two major management initiatives, the "100 Day Plan" and the "500 Day Plan".

The Committee held an open hearing on the authorities of the DNI on February 14, 2008. Director McConnell, the sole witness, discussed the challenges of having a national intelligence leadership role without operational control over most of the elements of the Intelligence Community. He also discussed his vision for the Intelligence Community writ large and the ODNI in particular. Several Committee members expressed the view that the Director's authorities may be inadequate to fulfill the position's various statu-

torily-mandated responsibilities. In particular, it was noted that the Director's authorities to transfer resources and personnel from one intelligence agency to another have been used relatively rarely, and that this may be the result of administrative obstacles that prevent them from being used efficiently.

During his tenure, Director McConnell led an effort to update Executive Order 12333, which is a foundational document for the Intelligence Community. Revisions to the Executive Order were promulgated on July 30, 2008. They represented the first comprehensive change (though not the first modifications) of the Executive Order since its issuance in 1981 and primarily addressed Part 1 (duties and responsibilities with respect to the national intelligence efforts). The rewritten Executive Order has been adjusted to account for the creation of new elements of the Intelligence Community, such as the Director of National Intelligence, the National Geospatial Intelligence Agency, and the FBI's National Security Branch. It clarifies the role of the DNI in particular, and includes the new definition of "national intelligence" adopted by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004.

The Committee was consulted on the revision process, and held a closed hearing on the rewritten Executive Order shortly after its release. Committee staff was also able to review drafts of the proposed revisions shortly before they were finalized. The Committee noted that the revised Executive Order contains more than a dozen sections that call for the drafting of new rules or guidelines on various topics, including information access, security standards, intelligence collection and analysis, acquisition of major systems, classification and declassification, and intelligence relationships with foreign governments. At the close of the 110th Congress, many of these new rules and guidelines remained works in progress.

The Committee also examined the fiscal year 2008 and 2009 budget requests for the ODNI as part of the annual intelligence authorization process, and recommended various adjustments in resource and funding levels. In particular, the Committee noted that the Civil Liberties Protection Officer, who holds a wide range of statutorily-mandated responsibilities, had a staff of only two deputies, plus himself. The Committee recommended a significant increase in the size of this office. This recommendation was eventually enacted in other legislation for fiscal year 2008, and sustained in the President's budget request for fiscal year 2009, essentially tripling the size of the office.

7. Consideration of supplemental requests

During its consideration of the Fiscal Year 2008 Intelligence Authorization Act, the Committee also included recommendations for the Fiscal Year 2008 Global War of Terrorism/Iraq Requirements supplemental appropriations request. Unlike most other years, the Administration's fiscal year 2008 supplemental request was forwarded to Congress at the same time as the regular budget request. The Committee has reviewed supplemental requests in prior years and believes that most, if not all, of such requests can and should be included in the base budget request.

The Fiscal Year 2008 Global War of Terrorism/Iraq Requirements supplemental appropriations request marked the seventh year the Intelligence Community had relied upon supplemental funding to pay for the conflict with al Qaeda and the fifth year of funding for continuing military operations in Iraq. The Committee noted how the reliance on supplemental appropriations to pay for known budget expenses hinders long-term planning; causes uncertainty in all programs funded through this process; increases costs due to a reliance on contractors; and otherwise discourages fiscal discipline by presenting additional opportunities to fund questionable projects. The fact that the Administration forwarded the supplemental request at the same time as it forwarded the base budget request belied its inability to foresee these costs more than a year prior to their need. The Committee found that the costs associated with the intelligence operations against al Qaeda and in Iraq are not unforeseen emergencies traditionally funded in supplemental bills. The Administration did not heed the Committee's advice nor did it forward its fiscal year 2009 supplemental request for the Global War of Terrorism and Iraq in time for Committee consideration of the Fiscal Year 2009 Intelligence Authorization Act.

8. Information sharing

a. Information technology

The Committee conducted reviews of the DNI's efforts to improve information sharing across the Intelligence Community. While the Intelligence Community has created centers such as the National Counterterrorism Center and National Counterproliferation Center where intelligence information on terrorism and proliferation can be shared, the Committee remains concerned that individual IC agencies still do not routinely provide other intelligence agencies broad and seamless access to intelligence information regarding other subject matter. The Committee undertook this review to help the Intelligence Community change its former practices to ensure the establishment of a truly synergistic, collaborative intelligence environment.

The Committee found that, while the DNI has improved information sharing within the Intelligence Community, much more needs to be done. Specifically, the Committee found that the Intelligence Community must expedite the implementation of its Information Sharing Strategy. This strategy includes the creation of a Single Information Environment which will develop common email and other communications services, provide common data centers, integrate information technology communications lines, and consolidate software license purchases.

The Committee recommended in its Fiscal Year 2009 Intelligence Authorization bill that the IC Chief Information Officer be empowered to ensure acceptance and compliance with the Information Sharing Strategy and Single Information Environment initiatives. The Committee report accompanying the authorization bill also recommended that a percentage of each IC agency's enterprise information technology funding not be obligated until the IC Chief Information Officer confirmed that agency's cooperation with these efforts.

b. Information security

As part of its review of the IC efforts to improve information sharing, the Committee recognized that increased sharing inherently increases the need to ensure the security of the intelligence information being shared as well as the sources and methods used to collect that information. The same information technology that enables improved sharing of intelligence also may permit the loss of large volumes of sensitive information unless the proper security is in place. As a result, the Committee made recommendations in its Fiscal Year 2009 Intelligence Authorization bill to increase funding for counterintelligence and security to help ensure improved information security proceeds at the same pace as improved information sharing.

9. Attorney General guidelines

In 1976, Attorney General Edward Levi issued guidelines intended to reassure the Congress after congressional investigations had raised concerns over abuses in the intelligence activities of the FBI and of the rights of Americans. The Levi guidelines began with domestic security investigation guidelines issued on March 10, 1976 and were followed the same year with a memorandum to the Director of the FBI on the use of informants in domestic security, organized crime, and other criminal investigations. Subsequent Attorneys General modified the domestic security guidelines or issued additional guidance, including new guidelines issued by Attorney General Ashcroft for FBI national security investigations and foreign intelligence collection after the attacks of September 11, 2001.

In early August 2008, Attorney General Michael Mukasey notified the leadership of the congressional intelligence and judiciary committees that he intended to issue revised guidelines governing the domestic investigations of the FBI. The new guidelines would consolidate and amend the existing Attorney General guidelines pertaining to general crimes investigations, national security investigations, foreign intelligence information collection, reporting on civil disorders and demonstrations, and participation in otherwise illegal activities.

During August and September, officials from the Department of Justice and the FBI conducted briefings for congressional staff and select representatives of civil liberties and media organizations and provided access to the draft guidelines under the condition that they could be read but not retained.

The Committee held a hearing on the proposed guidelines on September 23, 2008. The witnesses were Elisebeth Collins Cook, Assistant Attorney General for Legal Policy, and Valerie Caproni, General Counsel of the FBI. The Committee also requested statements from outside experts on the proposed consolidated guidelines. Kate Martin of the Center for National Security Studies submitted a statement. The prepared statements for the record are available at the Committee website.

At the hearing, the witnesses testified that the Attorney General sought to consolidate and revise the guidelines for three primary reasons: (1) the national security guidelines were too restrictive for the FBI to become an intelligence-driven organization "capable of anticipating and preventing terrorist and other criminal acts as

well as investigating them after they are committed;" (2) certain distinctions between what could be done by FBI agents under the general crimes guidelines and national security guidelines were "illogical and inconsistent with sound public policy;" and (3) having inconsistent sets of guidelines for FBI investigations was "problematic from a compliance standpoint."

At the hearing, the Committee examined whether the proposed guidelines, and the implementing policy directives to be issued by the Director of the FBI after the guidelines were finalized, would contain appropriate safeguards (and be buttressed with sufficient oversight resources) to prevent abuse and ensure accountability for FBI operations and activities. Particular concern was raised about the greater latitude proposed in the guidelines for the use of sensitive investigative techniques, especially outside the terrorism context, without the factual predicates, higher level approval, and periodic review and renewal that have been required not only before September 11, 2001, but in Attorney General guidelines issued since then. These techniques include physical surveillance and pretext interviews that may be intended to mislead law-abiding Americans.

The Assistant Attorney General for Legal Policy testified that the Department was in the process of considering changes in the draft guidelines in response to concerns raised during the course of the Department's briefings. The FBI General Counsel testified that FBI policy directives would be made available to the Committee when issued.

The Attorney General signed the consolidated Attorney General Guidelines for FBI Domestic Operations (AGG) on September 29, 2008, and directed they go into effect on December 1, 2008. The unclassified guidelines are available on the Department of Justice website.

In response, in part, to suggestions emanating from the Committee, some modifications were made in the proposed Attorney General guidelines prior to their issuance. These included changes in provisions related to civil disorders and demonstrations to ensure protections found in the 1976 guidelines were not reduced. Clarifications also were made in requirements in the guidelines on conducting assessments with respect to the FBI operating openly and consensually with Americans and respecting the First Amendment.

In mid-November, the FBI provided a briefing for staff of the intelligence and judiciary committees on the development of the new FBI policies to implement the AGG. The FBI provided access, on a read and return basis, to draft sections of the FBI's Domestic Investigations and Operations Guide (DIOG), a collection of procedures, standards, approval levels, and explanations to govern FBI activities under the AGG. The DIOG also went into effect on December 1, 2008.

By letter to Chairman Rockefeller dated December 15, 2008, Valerie Caproni, the General Counsel of the FBI, summarized the steps taken by the FBI and the Department of Justice to implement the AGG, through the development and issuance of the DIOG. (The letter may be found on the Committee's website.) Ms. Caproni discussed in detail the investigative category of Assess-

ments allowed under the AGG, particularly those "furthest removed from traditional notions of predication," and the newly available assessments techniques. She noted that "we understand that the expansion of techniques available . . . has raised privacy and civil liberties concerns [but] we believe that our policies and procedures will mitigate those concerns."

In her letter, Ms. Caproni laid out the areas where the DIOG placed limitations and prohibitions on the conduct of Assessments. She stated that under the DIOG, the FBI is expressly prohibited from opening an Assessment based on "arbitrary or groundless speculation," or solely based on the exercise of First Amendment rights, or the race, ethnicity, national origin, or religious practice of any person or group. She also specified areas where additional levels of supervisory approval were required to initiate an Assessment and where time limits were imposed on the use of certain intrusive techniques.

According to Ms. Caproni, the FBI will "reassess the policy judgments made in the DIOG in one year." She stated that the reassessment will be "informed by our experience in the coming year, as well as by comments and suggestions received from Congress and interested parties." She made the commitment that to the extent "our experience reveals that, in execution, the DIOG has not mitigated legitimate concerns, our policies will be changed."

The Committee will continue to monitor the implementation of the Attorney General Guidelines and the FBI policy directives.

10. FBI intelligence transformation

The Committee spent considerable time examining the efforts of the FBI to transform itself into a premier intelligence and national security organization, including efforts to improve its intelligence-enabling infrastructure. This included briefings with current and former FBI officials, oversight visits to FBI domestic field offices and Legal Attaches overseas, meetings with representatives of other intelligence agencies regarding FBI transformation efforts, and exchanges with academics and think tank experts on the structure and functions of FBI national security components. Additionally, in October 2007, the Committee held an open hearing with the Chairman and Vice Chairman of the National Commission on Terrorist Attacks Upon the United States (also known as the 9–11 Commission) and FBI officials, who provided their assessment of FBI intelligence reform efforts.

The Committee's 2009 authorization bill required the DNI, in coordination with the Director of the FBI, to establish performance metrics and timetables for FBI reform initiatives. In addition, the DNI was required to submit a report on FBI reform efforts to the congressional intelligence committees on a semi-annual basis for five years. Additional and specific funding recommendations were made to improve the effectiveness of FBI intelligence programs. For example, noting the lack of basic Internet connectivity for FBI Intelligence Analysts and Special Agents, the Committee recommended an additional amount of funding for information technology within the FBI to ensure desktop access to the Internet. Broadly, the Committee affirmed that it was anxious to assist the FBI in its transformation efforts, but noted the FBI must improve

its cooperation and transparency with Committee oversight activities.

Finally, the Committee held several closed hearings related to the domestic collection of intelligence, including the revisions of Executive Order 12333, which included a detailed examination of FBI national security capabilities.

11. IC Counterterrorism analysis and operations

The Committee maintained a constant focus on counterterrorism matters throughout the 110th Congress. In addition to open hearings on Worldwide Threats, the Committee held more than three dozen formal briefings on counterterrorism related topics. Committee members regularly requested briefings on terrorism threats to the United States and attended several offsite visits with IC executives that included discussions of the terrorist threat to the United States.

In addition to ensuring that the Intelligence Community received the resources and authorization needed to combat terrorism, the Committee worked to ensure American civil liberties were being protected and that United States values remained intact as we confronted the threat from terrorism. To that end, the Committee held extensive hearings on the presidential electronic surveillance program that came to be known as the Terrorist Surveillance Program and the CIA's use of enhanced interrogation techniques and destruction of videotapes associated with the interrogation program.

The Committee continued to track the performance and standup of the National Counterterrorism Center (NCTC). The Committee held hearings on the status of the NCTC and conducted an intelligence oversight visit to the center to meet with its Director, analysts and other staff. In May 2008, the Committee held a hearing to confirm Michael Leiter as the second Director of the NCTC (see Section IV.D.).

Committee oversight of United States Government counterterrorism efforts was not confined to formal hearings. The Committee's staff received biweekly briefings from the NCTC and the FBI on current threats to United States interests. Committee Members also received monthly updates on these terrorist threats that helped to ensure counterterrorism resources and activities were being used effectively and efficiently. Moreover, Committee Members and staff spent considerable time visiting regions of the world that were confronting domestic and international terrorism threats.

Finally, the Committee established two staff-led study groups related to terrorism: the Terrorist Safe Havens Study Group and the Terrorist Ideology Study Group (described in Section III. B.).

12. Covert action

Under the National Security Act, the DNI shall keep the congressional intelligence committees fully and currently informed of all covert actions that are the responsibility of, are engaged in by, or are carried out for or on behalf of any department or agency of the United States, including significant failures. The National Security Act defines a covert action to be an activity of the U.S. Government to influence political, economic, or military conditions abroad, where it is intended that the role of the U.S. Government will not

be apparent or acknowledged publicly. The DNI shall furnish the committees with any information concerning covert actions that is in the possession of any U.S. Government entity and which is requested by either intelligence committee in order to carry out its responsibilities. The only qualification on this reporting responsibility is consistency with due regard for protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.

Under the Committee's rules, the Staff Director shall ensure that U.S. government covert action programs receive appropriate consideration by the Committee no less frequently than once a quarter. This is one of the Committee's most important functions. Every quarter, the Committee receives a written report on each covert action that is being carried out under a presidential finding. Committee staff then devote several sessions, often over a couple of days, to review with IC personnel the reports on each subject, and pose follow up questions and receive further briefings or written answers. The Committee usually schedules a closed hearing to examine a selected number of the programs in greater detail.

As the Committee has written in past reports, the purpose of these program reviews includes ensuring that their means and objectives are consistent with U.S. foreign policy goals, were conducted in accordance with U.S. law, are producing or can be expected to produce reasonable benefits for the resources expended, and are consistent with U.S. ideals and principles.

13. CIA presidentially directed growth

On November 23, 2004, the White House issued a Memorandum for the Director of Central Intelligence on Strengthening Central Intelligence Agency Capabilities. This memorandum called for a 50 percent increase in the number of analysts, fully qualified National Clandestine Service officers, and language proficient officers. There also was a requirement to double the number of CIA officers involved in research and development.

During the 110th Congress, the Committee monitored this growth through numerous oversight visits, briefings, and hearings, and has expressed its concern that the CIA was not supporting the personnel increases across all Directorates with potentially adverse impacts on the overall goal of strengthening the CIA's capabilities. It has been the Committee's intent for the CIA to achieve a more balanced and sustainable pattern of growth. While the Committee noted that the CIA has modified its initial steps to address the challenges associated with personnel growth, the Committee will continue to monitor the CIA's progress toward achieving the stated goals and objectives.

14. CIA Lessons Learned Program

During the 110th Congress the Committee commended the CIA for establishing a Lessons Learned Program. The Committee fully supports its growth at the operational and tactical level in the individual components of the CIA. The Committee encouraged the CIA to increase the number and type of studies, to create web-based lesson-sharing environments, to modernize its oral history programs,

to support component-based lessons learned activities throughout the CIA, and to hire additional lessons learned subject matter experts as well as additional officers to enable the CIA to conduct interviews to record the insights of officers in key positions as they rotate on to new assignments or move into retirement.

The Committee has conveyed to the CIA leadership that it expects the CIA to improve its internal processes for self-examination, including increasing the use of formal lessons learned studies to learn from its successes and mistakes and to anticipate and be ready for new challenges. The Committee has prodded and encouraged the CIA to follow the lead of other high-risk, high-reliability organizations by investing time and resources in continuous learning and knowledge sharing.

15. Oversight of Department of Homeland Security intelligence activities

The Committee recommended funding levels for the Department of Homeland Security Office of Intelligence and Analysis (DHS I&A) and Coast Guard Intelligence in its Fiscal Year 2008 and Fiscal Year 2009 Intelligence Authorization bills. Although the Committee supported the President's budget request, the Committee expressed a few misgivings pertaining to DHS I&A programs. Specifically, the Committee closely followed the development of the National Applications Office (NAO) within the Department of Homeland Security as well as other important matters.

The NAO is intended to centralize and facilitate the sharing of imagery from intelligence agency systems under appropriate circumstances for purposes related to law enforcement, homeland security, and civil applications. Because the NAO relates to the use of intelligence resources for domestic purposes, the Committee has been and continues to be attentive to civil liberties and privacy concerns associated with the NAO.

The Committee concurred with the fiscal year 2008 Department of Homeland Security appropriations act, which stated that "none of the funds provided in this Act shall be available to commence operations of the National Applications Office . . . until the Secretary certifies that th[is] program[] compl[ies] with all existing laws, including all applicable privacy and civil liberties standards, and that certification is reviewed by the Government Accountability Office." The former Secretary of Homeland Security informed Congress that he had "determined that the standard set forth in Section 525 . . . [was] met" thereby certifying that the NAO complies with all existing laws, including all applicable privacy and civil liberties standards, with respect to its planned operations in what are known as the civil application and homeland security domains.

The Committee assessed that the NAO should proceed pending the review of the certification. The Committee explicitly stated, however, that it strongly opposed the NAO fielding any law enforcement requests until the legal framework and standard operating procedures of the law enforcement domain were completed, certified by the Secretary, reviewed by the GAO, and provided to the appropriate congressional oversight committees. The Government Accountability Office completed its review on November 6,

2008, concluding that "DHS has not resolved legal and policy issues associated with NAO support for law enforcement" underscoring the need for such legal framework and standard operating procedures of the law enforcement domain before any law enforcement requests are fielded.

The Committee also stressed the need for basic counterintelligence computer-based training at DHS I&A and Coast Guard Intelligence and sought to reduce the costs to the taxpayer associated with contractor support by providing much needed stability to the mission workforce by converting the contractor positions to full-time equivalents or full-time government positions. The Committee expressed its support of the Coast Guard initiative to create the intelligence specialist rate and emphasized the importance of human resources management at DHS I&A where recruitment and retention are at distressingly low numbers.

The Committee requested the Secretary of Homeland Security complete a formal national fusion center strategy outlining the federal government's clear expectations of fusion centers as, according to the GAO, the fusion centers have "increasingly gravitated toward an all-crimes and even broader all-hazard approach."

Finally, the Committee noted its concerns about certain reports issued by DHS I&A, which included U.S. person information or sought such information. These reports used certain questionable open source information as a basis of their conclusions and raised fundamental questions about the role and mission of DHS I&A.

16. Defense Intelligence Officers

The Committee conducted numerous staff interviews with the leaders and representatives of the Defense Intelligence Agency (DIA), the Chairman of the Joint Chiefs of Staff Directorate for Intelligence, and officials of the Office of the Under Secretary of Defense for Policy. The Committee found that coordination and sharing of intelligence information and analysis, along with intelligence support to senior DOD policymakers could be significantly improved by reestablishing the Defense Intelligence Officer program, which in the Committee's view was imprudently discontinued in 2003.

The Committee directed a study be conducted and authorized additional funding for the DIA to reestablish the program. The Director of the DIA subsequently designated seven individuals as Defense Intelligence Officers for Latin America, Eurasia, the Middle East and North Africa, Europe and NATO, South Asia, Africa, and East Asia. Defense Intelligence Officers complement the National Intelligence Council's National Intelligence Officers. The Defense Intelligence Officers speak for the Director of the DIA and the Director's Functional Manager for Analysis, who oversees analysis by the DIA, the Military Service Intelligence Centers, and the Combatant Command intelligence centers.

17. Armed Forces Medical Intelligence Center

The Committee recognized the unique and valuable contributions of the DIA's Armed Forces Medical Center following a number of interviews with Agency analysts and staff officers and leaders of the Center. The Armed Forces Medical Center has been the na-

tion's only resource for scientific intelligence of a medical nature, to include analysis of infectious disease, effects of chemical and biological weapons and analysis of medical resources and capabilities around the world. Since September 11, 2001 and increased concern of chemical or biological attack in the United States, the Center has taken on new and greater responsibilities for homeland security and medical indications and warnings, as well as its traditional role of supporting and informing military units that serve in theaters of combat operations such as Iraq and Afghanistan. Recognizing this, the Committee recommended elevating the Center's command structure as well as additional funding. Given the Committee's concerns and focus, in mid-2008 the Center became a national intelligence center, the National Center for Medical Intelligence, under the DIA. The Under Secretary of Defense is studying the options for placing leadership of the Center under a senior civilian executive or a general officer.

18. Defense Counterintelligence and HUMINT Center

In addition to the Committee's exploration of human source intelligence in the HUMINT Study Group, staff also performed research on the counterintelligence function and its relationship to HUMINT, spending considerable time meeting with HUMINT specialists of the DOD, particularly with professional staff officers of the Under Secretary of Defense for Intelligence, which had begun its own HUMINT and counterintelligence studies to determine how to update military organizations, missions and functions. Working closely with the Office of the Under Secretary for Intelligence, the Committee recommended a closer support and operational relationship between HUMINT and counterintelligence and a more unified effort among all Defense elements conducting or supporting HUMINT and counterintelligence operations. The Committee also expressed concerns regarding the oversight of HUMINT and the levels of collaboration and professional standards found within the Defense HUMINT community. In April 2008, the Secretary of Defense endorsed a plan by the Under Secretary of Defense for Intelligence to integrate the Counterintelligence Field Activity, the DIA's counterintelligence analysis assets and the Defense HUMINT Service, along with other important support offices under the DIA's new Defense Counterintelligence and HUMINT Center. As recommended by the Committee, the Center will dramatically improve counterintelligence support to HUMINT, professional oversight and collaboration, and save significant resources in the sharing of resources and infrastructure.

19. CIA interrogation tapes

In 2008, the Committee commenced an inquiry into allegations relating to destruction of CIA interrogation tapes, which is in process as of the date of this report.

D. Financial Accounting, Inspectors General, and Audits

The Committee's rules provide that within its staff there "shall be an element with the capability to perform audits of programs and activities undertaken by departments and agencies with intelligence functions. Such element shall be comprised of persons

qualified by training and/or experience to carry out such functions in accordance with accepted auditing standards." This element is called the Audits and Evaluations Staff and in addition to conducting such reviews, it has responsibility for assisting in the Committee's oversight of the IC's compliance with financial accounting standards and also the Committee's interaction with the various IGs whose work includes or covers the Intelligence Community.

1. IC Compliance with federal financial accounting standards

During the 110th Congress, the Committee continued to closely monitor the Intelligence Community's financial management practices. The foundation for these activities is the 1990 Chief Financial Officers Act, which requires public sector agencies to report financial information in a structured and uniform manner. One goal of the Act was to establish a process to provide reliable, useful and timely financial information to support decision making and accountability regarding the use of federal funds. The elements of the Intelligence Community were not included in the Chief Financial Officers Act's original 24 agency pilot program. To address this omission, the Committee's report accompanying the Intelligence Authorization Act for Fiscal Year 2002 directed the Director of Central Intelligence, in consultation with the Secretary of Defense, to "ensure that all agencies in the DoD-NFIP aggregation, including the CIA, receive an audit of their financial statements by March 1, 2005." This deadline was extended several times. Most recently, in December 2006, when it became evident that NSA, NGA, and DIA were still unable to comply, the Chairman and Vice Chairman granted another extension, providing that the fiscal year 2007 financial statement audits for all IC agencies should be completed by November 15, 2007. Also, this extension included a requirement for the DNI, in consultation with the Office of Management and Budget, to submit to the Committee by March 1, 2007, a plan for IC compliance with the financial statement audit requirement. The Chairman and Vice Chairman envisioned that this plan would include a business enterprise architecture and a transition plan to this architecture.

Financial auditability was a major concern raised by the Committee during the February 2007 confirmation hearing for DNI McConnell. In response to questions, he pledged to achieve a "workable solution with alacrity." In April 2007, DNI McConnell issued a Financial Statement Auditability Plan to the Committee. The plan offered a detailed description of the current status of the IC's ability to produce financial statements and outlined a plan with key milestones for achieving auditability at each agency by 2012. An important element of the plan was a proposed follow-on study to produce the enterprise architecture and transition plan sought by the Committee. This broad-based study would inventory existing and planned business systems, define requirements and key interfaces, provide inputs to investment decisions, and describe transition activities. The Chairman and Vice Chairman wrote the DNI in May 2007, granting him until December 2007 to produce this study.

When it became clear that the DNI would not be able to meet the December 2007 extension, the Committee in its fiscal year 2008

authorization bill (Section 316), prohibited funding for any new business system that did not comply with the business enterprise architecture, which was to be established by the DNI by March 2008. The provision made it a violation of the Anti-Deficiency Act to fund systems that were not certified as complying with that architecture. The bill also established a rigorous IC Business System Investment Review process that would guide investment decisions. As discussed in Section II, the conference report on the bill was vetoed by the President. The provision was adopted again in the fiscal year 2009 authorization bill but, as also discussed in Section II, that bill did not pass Congress.

The Committee received the follow-on study, titled Financial Management Systems Report, in April 2008. The report fell well short of expectations and merely outlined a plan to consolidate the current environment of four financial systems to two. The report did not offer insight into how common feeder systems would be developed or a transition plan. Once again, the report promised a second phase that would address feeder systems, which the ODNI promised by September 30, 2008. This second report had not been received as of February 1, 2009, and since April 2008 there has been significant turnover in the DNI's financial management personnel and several changes in the plan for business system transformation. Most recently, on October 6, 2008, a new Business Transformation Office was established within the office of the DNI Chief Financial Officer, but initial impressions are that first steps will include further study of the current situation, and establishment of another set of working groups, which to date have not been embraced by the IC agencies nor produced tangible results.

As further evidence of the poor status of IC financial management, in November 2007 the Committee received the first version of each agency's Annual Financial Report, which contained financial statements and related reporting by agency management. The Committee was generally disappointed in their content and prepared a detailed set of questions on each report in an attempt to gain further insight into agency management's plans for improving financial management practices. The agency responses, while generally complete, failed to offer definitive plans for fully addressing financial weaknesses. As an indication of the lack of senior management attention to this critical area, although the questions were addressed to the agency directors, only one response was signed by a director.

2. Oversight of Intelligence Community Inspectors General

During the 110th Congress, the Committee continued to monitor the activities of the IGs of the IC. This oversight included: review of numerous IG products, including audit reports, inspection reports, reports of investigation, and semi-annual reports of IG activities; numerous visits to IG offices for updates on plans and procedures; and attendance and participation at several IG conferences. In addition to a number of Committee hearings on issues reviewed by the IC IGs, staff conducted a number of briefings with Community program and IG personnel in order to follow up on the status of IG recommendations. Examples include employee grievances, management of operational activities, contracting procedures, em-

ployee recruitment and security processing, and effective use of resources on new technology.

During the 110th Congress, the Committee continued its work to ensure the effectiveness and independence of the administrative IGs at NRO, NSA, NGA, DIA, and the Office of the Director of National Intelligence. The Committee reinforced the importance of the IG function through its regular interaction with agency directors, the IGs, and their staffs. The administrative IGs also submitted annual reports to the Committee detailing their requests for fiscal and personnel resources, and the plan for their use. These reports included the agency programs and activities scheduled for review during the fiscal year, comments on the office's ability to hire and retain qualified personnel, any concerns relating to the independence and effectiveness of the IG's office, and an overall assessment of the agency's response to the IG's recommendations during the previous year. These annual reports served as a basis for Committee oversight throughout the 110th Congress.

Additionally, the Fiscal Year 2006, Fiscal Year 2007, and Fiscal Year 2008 Intelligence Authorization bills included provisions to add the National Reconnaissance Office, National Security Agency, National Geospatial-Intelligence Agency, and Defense Intelligence Agency IGs to Section 8G of the Inspector General Act of 1978. This statutory designation will provide the IGs with additional authorities to conduct investigations including the ability to compel production of information. The three authorization bills also included a provision amending the National Security Act of 1947 to establish a statutory charter for the DNI IG.

3. Audits

During the 110th Congress, the audit staff completed two audits—on Document Exploitation and a Compartmented Program—and made substantial progress toward completing a major review of the IC's acquisition processes.

a. Document exploitation

Beginning in December 2005, the Committee's audit staff reviewed the practice of collecting, processing, translating, and reporting on information obtained from overtly captured and/or clandestinely acquired paper documents and electronic media. This overall activity, called document and media exploitation or "DOMEX," is an effort that since 2001 has realized a rapid increase in funding because of the valuable intelligence information it provides to both tactical operations and strategic analysis. The Committee was concerned about the varied and disparate Community initiatives to process, translate, and exploit captured documents and electronic media. The audit analyzed the costs of the various document and media exploitation efforts and associated technology development programs. The audit also evaluated the intelligence value derived from these efforts and the budget implications for sustaining these initiatives over the long term.

Building on the results of its audit, the Committee, in the May 2006 report accompanying its Fiscal Year 2007 bill, encouraged the DNI to appoint a program manager for the National Intelligence Program DOMEX efforts, develop a national DOMEX strategy, and

form a DOMEX technology investments board to guide and develop a coordinated Community-wide research and development strategy. During the 110th Congress, the ODNI responded to the audit report by establishing the position of Senior Advisor for DOMEX, issued an IC Directive on the subject, and initiated efforts to develop a clear Community vision and strategic direction for the DOMEX enterprise.

b. Compartmented program

The Committee's Audit and Evaluation Staff conducted a review of a compartmented IC program. Given the significant amount of time and money that had been invested in that program, the Committee was concerned about the termination of a major program element and whether the Committee had been adequately informed about the program's overall status. The audit examined the series of events and activities that led to the current program status, as well as the associated cost, and made recommendations regarding program management, establishing an appropriate funding level, and revalidation of the requirements process.

c. Intelligence Community acquisition processes

In 2008 the Audit and Evaluations Staff began a review of the Intelligence Community's acquisition capability. The review was focused on the DNI's role in overseeing the Intelligence Community's acquisition processes and the performance at four primary agencies: the NSA, NGA, NRO, and CIA.

The audit found the ODNI is now providing valuable oversight, specifically with regard to major systems acquisitions. To increase oversight of the function the DNI established a new DDNI for Acquisition. That office has issued several policy documents that are driving standardization in IC acquisition management processes and begun conducting annual reviews of how Milestone Decision Authority should be delegated to the agencies.

The DDNI for Acquisition's most useful contribution has been the annual Program Management Plan report on major acquisitions, which was required by the Intelligence Reform and Terrorism Prevention Act. For the first time, in one document, the Committee receives information on the community's largest programs from satellite development to information technology systems. The most recent report noted progress in compliance with DNI guidance on establishing valid cost, schedule, and performance baselines. Key problem areas that remain include the need for improved acquisition management tools, failure to realistically price contracts, and cost and schedule baselines that remain vague and inconsistent.

The Committee's review of IC acquisition practices developed a number of preliminary conclusions. The most prevalent finding was that despite being recognized as critical to every IC mission and operation, senior management of the individual agencies has continually failed to dedicate adequate attention and resources to the acquisition function. The audit also found the Intelligence Community has insufficient experienced professionals to properly oversee the execution and management of billions of dollars in annual acquisitions, and there is a need for better management and training of the workforce. There is also a need for a skills assessment, es-

tablishment of tenure requirements for acquisition managers, and succession planning.

Other areas of Committee concern include: the use of contractors to perform administrative or source selection aspects of an acquisition; contractor involvement in monitoring the technical performance of another contractor; the need for increased government monitoring of contractor performance through formal progress measurement tools such as Earned Value Management; properly using fee/profit earning potential to incentivize contractor performance; and the need for wider use of the Defense Contract Audit Agency to provide contract audit services. The final report will contain a number of recommendations to address these findings.

IV. NOMINATIONS

During the 110th Congress, five nominations were referred to the Committee, four directly upon receipt of the nomination in the Senate and one sequentially after referral to and reporting by another committee. The Committee held hearings for all of the nominees and recommended to the Senate that it give its advice and consent to four of the five nominations. One nominee withdrew his nomination prior to a Committee vote. The Senate ultimately confirmed the four individuals recommended by the Committee.

Throughout the Congress, referrals to the Committee were governed by Section 17 of S. Res. 400 of the 94th Congress, which had been added by S. Res. 445 of the 108th Congress and was further augmented during the 109th Congress. As a result of S. Res. 445, all nominations to advice and consent positions in the Intelligence Community are referred to this Committee, even when they are positions—such as the Assistant Attorney General for National Security—that are within departments which are primarily under the jurisdiction of other Senate committees.

Three of the nominations received by the Committee were for positions created by the National Security Intelligence Reform Act of 2004 that were being filled for only the second time: the DNI; Principal Deputy DNI; and the Director of the NCTC. One other nomination was also being filled for the second time, the position of Assistant Attorney General for National Security, established by the USA PATRIOT Improvement and Reauthorization Act of 2005 (March 9, 2006).

A primary task of the Committee during the 110th Congress was to examine in detail the responsibilities of these relatively new leadership positions in the IC. The Committee accomplished this not only through questioning the nominees at their confirmation hearings but also through extensive prehearing questions, the responses to which have been or will be printed in the hearing volumes for these nominations. Through the nomination process and its traditional oversight, the Committee has been able to assess the unique role and contributions of each position within the Intelligence Community. For example, the Committee continues to explore whether the DNI has sufficient statutory authorities to lead the Intelligence Community.

The following were the nominations referred to the Committee during the 110th Congress, listed in accordance with the date of the nomination:

A. J. MICHAEL MCCONNELL, DIRECTOR OF NATIONAL INTELLIGENCE

The Intelligence Reform and Terrorism Prevention Act of 2004 created the position of DNI and assigned to the DNI the responsibility of serving as the head of the Intelligence Community and acting as the principal adviser to the President for intelligence matters relating to national security. The Reform Act provides that any individual nominated to be appointed as DNI shall have extensive national security experience.

Among the position's duties and responsibilities, the DNI is charged with determining the annual National Intelligence Program budget and ensuring the effective execution of it. The DNI is to determine requirements and priorities for the collection, analysis, and dissemination of national intelligence. The DNI shall ensure compliance with the Constitution and laws by the CIA and, through their host departments, by the other elements of the Intelligence Community.

On January 22, 2007, the President nominated J. Michael McConnell to be the DNI. Prior to his nomination, Admiral McConnell served as a Senior Vice President at Booz Allen Hamilton, a government contractor and consulting firm that he joined in 1996 after retiring from a distinguished career in the United States Navy. From 1992 through 1996, Admiral McConnell served as the Director of the NSA. During his twenty-nine year Naval career, he served as the Intelligence Officer for the Chairman, Joint Chiefs of Staff, and as the Director of Intelligence Pacific Fleet and Seventh Fleet. In addition to holding a Masters degree in public administration, Admiral McConnell is also a graduate of the National Defense University and the National Defense Intelligence College.

After receiving Mr. McConnell's responses to the Committee's standard questionnaire, and responses to the Committee's prehearing questions about his understanding of the duties and responsibilities of the office to which he had been nominated, the Committee held a nomination hearing on February 1, 2007. Admiral McConnell's testimony is printed in S. Hrg. 110–225. The Committee reported the nomination favorably on February 6, 2007, by a vote of 15–0. The Senate confirmed Mr. McConnell's appointment to be DNI on February 7, 2007, by a voice vote.

B. JOHN A. RIZZO, GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

Under section 403t of title 50, United States Code, the General Counsel of the Central Intelligence Agency is the chief legal officer of the CIA. The General Counsel shall perform such functions as the Director of the CIA may prescribe.

On January 9, 2007, the President nominated John A. Rizzo to be the General Counsel of the CIA. Mr. Rizzo had previously been nominated for this position during the 109th Congress, but the nomination was returned to the President under the provisions of Rule 31.6 of the Standing Rules of the Senate. Mr. Rizzo joined the CIA in 1976, the beginning of a lengthy tenure with the Agency. In 1985, Mr. Rizzo moved to the CIA's Office of Inspector General where he conducted investigations into alleged wrongdoing by chiefs of station. From 1986–1989, he served as the Deputy Direc-

tor of the Office of Congressional Affairs. As such, he was the CIA's lead counsel in dealing with the congressional committees investigating the Iran-Contra affair. Mr. Rizzo rejoined the Office of General Counsel in 1988 and became the Principal Deputy General Counsel in the Office of General Counsel in 1995. He served as Acting General Counsel during periods of vacancies in that office from November 2001 to November 2002 and from August 2004 through June 2006.

After receiving Mr. Rizzo's responses to the Committee's standard questionnaire, and responses to the Committee's prehearing questions about his understanding of the duties and responsibilities of the office to which he had been nominated, the Committee held an open and a closed nomination hearing on June 19, 2007. Following those hearings, members also posed additional questions in writing. Mr. Rizzo's open hearing testimony and answers to the written questions are printed in S. Hrg. 110–407. On September 25, 2007, the Committee was notified that the President had formally withdrawn Mr. Rizzo's nomination from consideration.

C. Donald M. Kerr, Principal Deputy Director of National Intelligence

The Intelligence Reform Act established the position of Principal Deputy Director of National Intelligence (PDDNI) to assist the DNI in carrying out the duties and responsibilities of the Director under the National Security Act. The Act provides that the PDDNI shall exercise the powers of the DNI during the DNI's absence or disability, or in the event of a vacancy. It also provides that an individual nominated for appointment as PDDNI shall not only have extensive national security experience (a requirement applicable to the DNI as well) but also management expertise. It contains a sense of Congress that under ordinary circumstances, one of the persons serving as DNI or PDDNI shall be a commissioned officer in active status or have, by training or experience, an appreciation of military intelligence.

On July 11, 2007, the President nominated Donald M. Kerr, who was then serving as the Director of the NRO, to succeed Michael V. Hayden as the PDDNI. Throughout his career, Dr. Kerr had held a number of positions within the government and private sector. He began his career as a staff member at the Los Alamos National Laboratory (LANL). After approximately 10 years at LANL, he assumed a Deputy Manager position at the U.S. Department of Energy, eventually attaining the title of Acting Assistant Secretary for Energy Technology. He subsequently became the Director of LANL, a position that he held for 6 years before entering the private sector. In 1997, he returned to government service to become the Assistant Director in Charge, Laboratory Division, at the FBI. In August 2001, he was named Deputy Director for Science and Technology at the CIA. He held this position until July 2005 when he became the Director of the NRO.

The Committee held a nomination hearing on August 1, 2007. Mr. Kerr's testimony and his responses to the Committee's questionnaire and prehearing questions are printed in S. Hrg. 110–452. The Committee reported the nomination favorably on September

24, 2007, by a vote of 12–3. On October 4, 2007, the Senate agreed by voice vote to the nomination.

D. Michael E. Leiter, Director of the National Counterterrorism Center

The Intelligence Reform Act of 2004 established the NCTC within the ODNI. The Act provides that the NCTC Director has two reporting responsibilities: to the DNI on the NCTC's budget and programs, the activities of its Directorate of Intelligence, and the conduct of intelligence operations implemented by other elements of the IC; and to the President on the planning and progress of joint counterterrorism operations other than intelligence operations.

The Act provides that the NCTC is the government's primary organization for the analysis of counterterrorism and terrorism intelligence, except for intelligence pertaining solely to domestic terrorism. Beyond analysis, the NCTC is to conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement. It also assigns roles and responsibilities to lead agencies, but does not direct the execution of resulting operations. The Director of NCTC serves as the principal adviser to the DNI on counterterrorism operations.

On March 31, 2008, the President nominated Michael E. Leiter to be the Director of the NCTC. Mr. Leiter had served as the Acting Director of the NCTC since November 2007, and before that was the NCTC's Principal Deputy Director. Before joining the NCTC, Mr. Leiter was the Deputy Chief of Staff for the ODNI and served as the Deputy General Counsel and Assistant Director of the President's Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (the "Robb-Silberman Commission"). From 2002 until 2005, he served with the Department of Justice as an Assistant United States Attorney for the Eastern District of Virginia. He also was a law clerk to Associate Justice Stephen G. Breyer of the Supreme Court of the United States and to Chief Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit. From 1991 until 1997, he served as a Naval Flight Officer flying EA–6B Prowlers in the U.S. Navy, participating in U.S., NATO, and UN operations in the former Yugoslavia and Iraq.

The Committee held a nomination hearing on May 6, 2008. Mr. Leiter's testimony and his answers to the Committee's prehearing questions have not yet been printed in the Senate record. The Committee acted favorably on Mr. Leiter's nomination on June 5, 2008, by voice vote. The Senate confirmed his appointment on June 10, 2008, by voice vote.

E. J. Patrick Rowan, Assistant Attorney General for National Security, Department of Justice

The National Security Division at the Department of Justice and the position of Assistant Attorney General for National Security were created by Congress in the USA PATRIOT Improvement and Reauthorization Act of 2005, which became law on March 9, 2006,

in an effort to coordinate national security investigations and prosecutions within the Department of Justice. The Assistant Attorney General (AAG) serves as the Attorney General's principal legal advisor on national security issues and is the primary liaison for the Department of Justice to the DNI.

On June 19, 2008, the President nominated J. Patrick Rowan, who was then Acting Assistant Attorney General, to fill the position of AAG. Mr. Rowan previously served as the NSD's Principal Deputy Assistant Attorney General. Prior to the establishment of the NSD, Mr. Rowan served as an Associate Deputy Attorney General where he assisted in the management of national security functions for the Justice Department. Before that, he held a number of positions in the Department, including Senior Counsel to the Assistant Attorney General for the Criminal Division, Special Counsel for the Office of General Counsel of the FBI, and Counsel to the Director of the Executive Office for United States Attorneys. From 1991 to 2002, Mr. Rowan served as an Assistant U.S. Attorney for the District of Columbia, where he prosecuted a range of offenses, including fraud, public corruption, and homicide.

Under a procedure established in the PATRIOT Act Reauthorization, and incorporated in Senate Resolution 400 of the 94th Congress on this Committee's jurisdiction and procedures, nominations for the position of Assistant Attorney General for National Security are referred first to the Judiciary Committee and then sequentially to this Committee. The nomination was reported favorably by the Judiciary Committee on September 11, 2008. It was then referred sequentially to this Committee which held a public hearing on September 25, 2008. Mr. Rowan's testimony and his responses to the Committee's prehearing questions have not yet been printed. The nomination was discharged from this Committee by unanimous consent on September 26, 2008. The Senate confirmed Mr. Rowan on that same day by voice vote.

V. SUPPORT TO THE SENATE

The Committee undertook a number of activities to support the Senate's deliberations. The Chairman and Vice Chairman began the 110th Congress by writing to all members to encourage them to make use of the Intelligence Committee's resources. The Chairman and Vice Chairman also wrote to new Senators to describe the special role of the Intelligence Committee and to make them aware of support the Committee provides to members.

In addition to its unclassified reports, the Committee sought to support Senate deliberations by inviting the participation of members outside the Committee in briefings and hearings on issues of shared jurisdiction or interest. The Committee has made available for members of the Senate intelligence information regarding topics relevant to current legislation. Because of the high level of interest in the topic, the Committee compiled and maintained the most recent intelligence reporting on Iran and made this reporting available to all members.

Members outside the Committee have frequently sought and received intelligence briefings by the Committee's professional staff. Members have also requested and received assistance in resolving issues with elements of the IC. Finally, the Committee routinely in-

vites staff from other Committees to briefings on intelligence issues of common concern.

VI. APPENDIX

SUMMARY OF COMMITTEE ACTIONS

A. Number of meetings

During the 110th Congress, the Committee held a total of 113 on-the-record meetings, briefings, and hearings, and numerous off-the-record briefings. There were 66 oversight hearings, 5 open and 1 closed confirmation hearings, 5 hearings on the IC budget, and 5 legislative hearings. Of these 82 hearings, 15 were open to the public and 67 were closed to protect classified information pursuant to Senate rules. The Committee also held 7 on-the-record briefings and 24 business meetings. Additionally, the Committee staff conducted 4 on-the-record briefings and interviews and numerous off-the-record briefings.

B. Bills and resolutions originated by the Committee

S. 372, Intelligence Authorization Act for Fiscal Year 2007

S. Res. 50, An original resolution amending Senate Resolution 400 (94th Congress)

S. Res. 51, An original resolution authorizing expenditures by the Select Committee on Intelligence

S. 1538, Intelligence Authorization Act for Fiscal Year 2008

S. 2248, Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007

S. 2996, Intelligence Authorization Act for Fiscal Year 2009

C. Bills referred to the Committee

S. 82, To reaffirm the authority of the Comptroller General to audit and evaluate the programs, activities, and financial transactions of the intelligence community, and for other purposes

S. 1018, To address security risks posed by global climate change and for other purposes

S. 1613, To require the Director of National Intelligence to submit to Congress an unclassified report on energy security and for other purposes

S. 3041, To establish the Foreign Intelligence and Information Commission to assess needs and provide recommendations to improve foreign intelligence and information collection, analysis, and reporting, and for other purposes

S. 3386, To prohibit the use of certain interrogation techniques and for other purposes

S. 3437, To limit the use of certain interrogation techniques, to require notification of the International Committee of the Red Cross of detainees, to prohibit interrogation by contractors, and for other purposes

C. Publications

S. Rep. 110–2, Report to accompany S. 372

S. Rep. 110–3, Report to accompany S. Res. 50

S. Rep. 110–57, Report of the Select Committee on Intelligence Covering the Period January 4, 2005 to December 8, 2006

S. Prt. 110–22, Rules of Procedure (Amended March 1, 2007)

S. Rep. 110–75, Report to accompany S. 1538

S. Rep. 110–76, Report on prewar intelligence assessments about postwar Iraq

S. Rep. 110–125, Report to accompany S.1547, National Defense Authorization Act for Fiscal Year 2008

S. Rep. 110–209, Report to accompany S.2248

S. Rep. 110–478, Conference report to accompany H.R. 2082

S. Hrg. 110–225, Nomination of Vice Admiral Michael McConnell to be the Director of National Intelligence

S. Hrg. 110–348, Terrorist Ideology

S. Rep. 110–333, Report to accompany S. 2996

S. Rep. 110–345, Report on whether public statements regarding Iraq by U.S. Government officials were substantiated by intelligence information

S. Rep. 110–346, Report on intelligence activities relating to Iraq conducted by the Policy Counterterrorism Evaluation Group and the Office of Special Plans within the Office of the Undersecretary of Defense for Policy

S. Hrg. 110–399, Modernization of the Foreign Intelligence Surveillance Act

S. Hrg. 110–407, Nomination of John A. Rizzo to be General Counsel of the CIA

S. Hrg. 110–452, Nomination of Donald M. Kerr to be Principal Deputy Director of National Intelligence

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