

from the President to the Secretary of Defense to the combatant commander involved. There must be no confusion about who is in charge in the execution of military operations. The conference report provides the DNI with a broad coordinating and integrating role to ensure that the nation does not endure another intelligence failure, but the conferees have not bestowed upon the DNI the authority to independently direct and manage elements of the intelligence community that are part of other government departments, such as Justice, Treasury, Homeland Security, and most critically, Defense.

It has been suggested by managers in the other body that section 1018 does not authorize the President or department heads to override the DNI's authority contained in this legislation. That assertion is plainly wrong. The original language that the other body suggested for inclusion in the conference report would have made the DNI's authority in this legislation exempt from existing statutory language concerning the chain of command, such as sections 113(b) and 162(b) of title 10, United States Code. However, that language was not accepted by the conferees. The language of section 1018 that was finally agreed to specifically protects the military chain of command. Assertions that the President and the Secretary of Defense have no authority to override the DNI with regard to commanding and controlling all elements of the Department of Defense are not correct. Further, it is important to note that the President has consistently upheld this principle by endorsing the necessity of a clear "preservation of authorities" provision in this legislation. As stated in his letter to the conferees of December 6, 2004,

"Accordingly, in developing implementing guidelines and regulations for this bill, it is my intention to ensure that the principles of unity of command and authority are fully protected. It remains essential to preserve in the heads of the executive departments the unity of authority over and accountability for the performance of those departments. In particular, as we continue to prosecute the global war on terrorism, the integrity of the military chain of command must continue to be respected and in no way abrogated."

It is critical that there be no ambiguity about the intent of Congress as this legislation is implemented, and I will be particularly diligent in my oversight role to ensure that the intelligence needs of the Department of Defense are fully met as the various complex new relationships provided by this legislation are implemented in the years to come.

CONFERENCE REPORT ON S. 2845,
INTELLIGENCE REFORM AND
TERRORISM PREVENTION ACT
OF 2004

SPEECH OF

HON. PETER HOEKSTRA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 7, 2004

Mr. HOEKSTRA. Mr. Speaker, as chairman of the conference on the bill I would also like to briefly discuss the interpretation of this legislation.

The conference report embodies the substantial agreement between the House bill, H.R. 10, and the Senate bill, S. 2845, on the core reforms to be carried out by this legislation. It is also important to note, however, that

the conference faced many challenges in reconciling often fundamentally different philosophies and visions underlying those reforms and the specific provisions in each bill. Accordingly, the conferees agreed to submit only a very limited Joint Explanatory Statement on the conference report, relying on the text of the legislation to represent our agreements.

Only that text, which is controlling, and the Joint Explanatory Statement were agreed to by both houses and reflect the intent of the conferees. I should also note that Chairman HYDE intends to submit a statement for the record reflecting bipartisan and bicameral understandings with respect to certain foreign affairs provisions of the bill. Other statements by Members of Congress outside the scope of the Joint Explanatory Statement, media reports, or the reports or work product of any of the outside panels or commissions whose work contributed to this legislation reflect their own views and should not be construed as determinative guidance with respect to legislative intent.

While that framework ultimately controls interpretation of the bill, I would like to note my understanding as chairman of the conference of several matters within this legislation.

AUTHORITIES OF THE DIRECTOR OF NATIONAL
INTELLIGENCE

The nature of the authorities to be granted to the Director of National Intelligence, DNI, and the relationship of the Director to other Federal officials were delicate and precisely negotiated issues, with resulting agreements reflected in the legislative language of the conference report. Only that legislative language controls the authorities of the DNI.

This principle bears special emphasis in a number of areas. With respect to budget formulation, the text of the agreement carefully and explicitly specifies the authorities of the DNI and the relationships between the DNI, the heads of individual agencies and organizations within the National Intelligence Program, and the heads of executive departments containing those agencies and organizations. Those roles and authorities should be construed solely by reference to the provisions of the conference report and existing law—no more, and no less.

For example, the text explicitly provides that both the heads of executive departments containing agencies or organizations within the intelligence community and the heads of those discrete agencies may each provide annual budget proposals to the DNI, based on the DNI's guidance, for the DNI to use in determining and presenting an intelligence budget to the President. Beyond this direction, the legislation does not specify how the budget proposals are to be developed or provided, and it is properly for the executive branch to determine how to execute the statute consistent with its text.

Similarly, the legislation provides, in amended section 102A(e)(2)(A) of the National Security Act, that personnel transfers are to be made in accordance with procedures developed by the DNI and the heads of affected departments and agencies. It does not specify what role is to be played in the transfers by department and agency heads pursuant to such procedures. Presumably, that matter will be determined by the executive branch within the agreement on procedures developed under the legislative text.

Consistent with basic constitutional principles, the legislation provides that the DNI's

authority is "[s]ubject to the authority, direction, and control of the President." Accordingly, the text does not specify who is to perform the President's daily intelligence briefing or under what specific operational circumstances the President will interact with the Director of the CIA, which should be matters for the President to decide himself.

The legislation also contains a detailed provision dealing with the apportionment of funds. That provision textually speaks only to the apportionment of funds, not to apportionment plans or any other related matter. Similarly, the conference report does not specifically authorize the creation of an entity within the Office of the DNI to perform common services or of a Chief Financial Officer for the DNI. Nor does it provide that an open source intelligence center, if created, should be a new element of the intelligence community. Nor is the conforming amendment to section 105(a) of the National Security Act contained in section 1072(a)(2) of the legislation intended to substantively amend the authority of the Secretary of Defense. That provision merely clarifies that section 105(a) of the National Security Act should be construed in conjunction with the specified statutory authorities of the DNI. Had the conference intended to address any of these matters in this legislation, appropriately specific provisions would have been included to do so.

NATIONAL COUNTERTERRORISM CENTER AND NATIONAL
INTELLIGENCE CENTERS

The authorities of the National Counterterrorism Center were issues of great and delicate debate during the conference. This is particularly true with respect to the balance between the authority of the NCTC to conduct "strategic operational planning" and the authority of individual departments and agencies to plan and direct the conduct of the resulting operations. There was full agreement that the NCTC properly should assign "roles and responsibilities" to agencies participating in Counterterrorism operations. However, the text of the legislation specifies that the assignment of "roles and responsibilities" does not extend to directing the execution of any resulting operations. The legislation does not, for example, authorize the NCTC to determine which personnel or specific capabilities should be utilized by agencies in mission execution.

Similarly, careful discussions took place in the conference with respect to the detail of personnel to the NCTC, with the outcome memorialized in the legislative text. There is no specific direction to concentrate personnel holding scarce and desirable skills in the NCTC, nor is such concentration prohibited. In exercising authorities to transfer or detail personnel, it will be important for the DNI to weigh the needs of an effective NCTC with the needs of other agencies and the intelligence community as a whole.

The conference also reached compromise on the scope and authorities of any future National Intelligence Centers that might be created by the Director of National Intelligence. The conference report authorizes the DNI to establish, if appropriate and necessary to complete the mission, national intelligence centers that are administratively distinct from the other agencies of the intelligence community. However, it does not require that all National Intelligence Centers be created as separate and administratively distinct entities. As with the NCTC, it will be important for the DNI

to weigh the needs of any additional National Intelligence Centers against the needs of the agencies within the intelligence community, with due consideration for the expert personnel that make the intelligence community effective.

INFORMATION FLOW AND INFORMATION SHARING

The legislation specifies that the information sharing system created in section 1016 is to facilitate the sharing of terrorism information, as specifically defined in section 1016(a)(4). The conference specifically chose to remove references to any specific system, network, or proposal as a model. As provided in section 1016(b)(1)(a), the system is to be established consistent with "applicable legal standards" relating to privacy and civil liberties.

Further, the conference did not establish specific qualifications for the program manager to be designated under the bill. While experience with managing an "enterprise architecture" is desirable, that expertise is a narrow category of necessary qualifications and it is equally important that the manager have program management and systems development expertise. I should also note that the legislation refers to the "Information Sharing Council." This is intended to refer to the "Information Systems Council" established by Executive order.

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

The Privacy and Civil Liberties Board also was a carefully negotiated provision in conference. Once again, only the text of the legislation reflects our final agreement. The conference dropped a proposed provision that would have limited the board to providing advice only when requested by the head of an agency, choosing to remain silent on the specifics. Such silence should not be construed, however, as a requirement for executive branch officials to routinely or affirmatively consult with the Board. Such a requirement does not appear in the legislation, and again this is a matter for the Executive to carry out consistent with the legislative text.

In addition, there was extensive discussion of the exemption that is included in section 1061(d)(4) of the bill with respect to the authority of the DNI to withhold information from the Board for national security reasons. The legislation speaks for itself, but I would like to emphasize that the possession of a security clearance does not automatically provide a "need to know" classified information, especially where it is uniquely sensitive. This provision should not be used to routinely withhold information, but is instead intended to come into play where preventing potential harm to national security from disclosure precludes the "need to know" served by the interests of the Board.

It is also important to note that the conference did not have an opportunity to consider the relationship of section 1062, a sense of Congress provision dealing with designation of agency privacy officers, to similar provisions contained in the Omnibus Appropriations Bill dealing with Chief Privacy Officers.

PUBLIC INTEREST DECLASSIFICATION BOARD

Section 1102 of the conference report, dealing with the Public Interest Declassification Board, provides that the board may conduct review and make recommendations to the President with respect to requests from congressional committees of jurisdiction to declassify certain records or reconsider a declination

to declassify certain records. It is important to emphasize that the text of section 1102(b) and, by reference, section 1102(e) refer only to requests from committees of jurisdiction and not individual Members of Congress, and that no authority for individual members to make such requests should be inferred.

DRIVERS LICENSE AND PERSONAL IDENTIFICATION CARD PROVISIONS

Finally, I note two provisions that were the subject of negotiation in section 7212 of the conference report, dealing with standards for drivers' licenses. First, a detailed specification of which "interested parties" should participate in the negotiated rulemaking provided for in this section was specifically omitted from the text. It is therefore erroneous to infer or suggest that a requirement for mandatory participation by any particular "interested party" or group in the rulemaking is intended in the bill. Second, a provision was removed from section 7212(b)(3)(E) that would have required the regulations developed in the rulemaking to include requirements to protect unspecified "civil and due process" rights of individuals applying for and holding drivers licenses and personal identification cards. This legislation is not intended to create or infer the creation of any civil or due process right relating to drivers' licenses or identification cards, nor is any such provision included in the text of the legislation.

My statement is not exhaustive and is without prejudice to interpretation of other items in the conference report, which I again emphasize in closing should be made solely by reference to the text of the conference report and the Joint Explanatory Statement.

IN RECOGNITION OF THE DISTINGUISHED CAREER OF MR. ARTHUR LIBERTUCCI

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 20, 2004

Mr. THOMPSON of California. Mr. Speaker, I rise today to honor the career of Arthur Libertucci. On January 3, 2005 Mr. Libertucci will retire from his post as Administrator of the Alcohol and Tobacco Tax and Trade Bureau, capping a long and distinguished career of public service.

Mr. Libertucci's service has spanned four decades. He joined the Bureau of Alcohol Tobacco and Firearms in 1972 as an inspector in New York City. Over the years he has served in a number of positions at ATF headquarters and in field offices throughout the country.

Mr. Speaker, after working his way through the ranks of the ATF, Mr. Libertucci became a federal executive in 1989. He has held many executive positions in the ATF from Associate Director for Compliance Operations to Assistant Director for the Office of Alcohol and Tobacco.

Following the establishment of the Department of Homeland Security and the reorganization of the ATF, Mr. Libertucci was charged with establishing a new bureau to regulate the alcohol and tobacco industries. Mr. Libertucci's experience and commitment to public service made him the clear choice to lead the new Alcohol and Tobacco Tax and Trade Bureau.

Mr. Speaker, I have the privilege of representing some of America's premier wine regions and consequently, I have had the pleasure of working very closely with Mr. Libertucci over the years. He is a consummate professional who has gone to great lengths to ensure that the TTB is a partner of the American wine industry and not just a regulator. Under Mr. Libertucci's leadership, the TTB has played a significant role in fostering the growth and economic vitality of the domestic wine industry.

Mr. Speaker, it is appropriate that we recognize Mr. Libertucci for his service to our country and his commitment to public service. His efforts in the organization of the Alcohol and Tobacco Tax and Trade Bureau will have a lasting impact on the United States Government. I thank Mr. Libertucci for his service and I wish him well in his new endeavors.

A TRIBUTE IN HONOR OF THE STAFF OF CONGRESSMAN NICK SMITH

HON. NICK SMITH

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, December 20, 2004

Mr. SMITH of Michigan. Mr. Speaker, I rise on behalf of all of us in the United States House of Representatives to pay tribute to several individuals who have contributed significantly to the operation and success of the 108th Congress of the United States.

I take this opportunity to especially recognize and thank the members of my personal staff for their outstanding work and dedication in serving the constituents of the Seventh Congressional District of Michigan. I want to commend their exemplary service in helping citizens, especially when the federal government bureaucracy was bogged down or hadn't addressed the real needs of the people. I praise my staff for their efforts to analyze and develop legislation that will make our country stronger and better in the future.

The individuals I pay tribute to today are: Keith Brown, Jennifer Burg, Dan Byers, Mary Christ, Soren Dayton, David Finger, Alan Knapp, Ruth Mayday, Greg Moore, Ammani Nagesh, Jared Page, David Rawson, Lindy Salem, Peter Saling, Kurt Schmautz, Ed Sharkey, Heather Smith, Priscilla Smith, Lee VanWychen, and Wendy Wieringa, and Gary Wolfram.

I applaud my staff's commitment to serving the people of this great nation and I extend my heartfelt thanks to them for their insight and hard work. It is individuals such as these that make members of Congress successful, enabling us to perform and serve in the best possible manner. On behalf of the United States Congress, I wish each of them the very best and every success in all their future endeavors.