

nonintelligence agencies for the purpose of collecting intelligence on counterterrorism or weapons of mass destruction. While this bill sits on the calendar, that information is now outside the reach of the intelligence community.

Many of my colleagues have decried the seemingly endless stream of leaks of classified information. I join them in denouncing the leaks of sensitive material. The authorization bill includes provisions strengthening the authority of the DNI and the Director of the CIA to protect intelligence sources and methods. It also includes a provision, authored by Senator WYDEN and adopted by the committee unanimously, to increase the penalties for the unauthorized disclosure of a covert agent.

Finally, the authorization bill contains numerous provisions intended to improve oversight of the intelligence community, both from within and from the Congress itself.

Section 408 is interesting. Section 408 of the bill proposes the establishment of a statutory inspector general for the intelligence community. I have said that. The Intelligence Reform Act of 2004 took a first step toward that end by authorizing the Director of National Intelligence to appoint an inspector general within the Office of the Director. The DNI has done that, and I applaud him for doing so. But the bill will strengthen that position and make it more accountable to the Congress.

Section 434 of the bill strengthens accountability further and oversight of the technical agencies by providing that the heads of the National Security Agency, the National Reconnaissance Office, the National Geospatial-Intelligence Agency are to be appointed by the President with the Senate's advice and consent.

This is in the authorization bill, and if we were to pass it, this would become effective. I think it actually comes as a surprise to many of my colleagues that the head of an agency with as central a role in the intelligence community as the National Security Agency is not appointed with Senate confirmation. In fact, heads of the National Security Agency have customarily only gone through confirmation in connection with their military rank but not for their appointment to the position of the Director of NSA. That is not considered.

Section 107 of the bill, sponsored in committee by Senators LEVIN and HAGEL, seeks to improve the timely flow of information to the congressional Intelligence Committees. Similar language was included in the intelligence reform legislation that passed in the Senate in 2004 but did not survive the conference. I applaud Senators LEVIN and HAGEL for their efforts with respect to this issue.

There are other provisions requiring specific information, including a report on the implementation of the Detainee Treatment Act and a separate report on the possibility of existence of clan-

destine detention facilities. I am at a loss to understand what the objection to this legislation is. Maybe somebody does not like the enhancement of oversight. That is our job. That is why the committees were formed. Maybe somebody doesn't want the DNI to have more authority or maybe somebody thinks the Congress should not be getting timely access to information about intelligence programs that are so important. But let me remind all my colleagues that the authorization bill passed the Intelligence Committee unanimously. If somebody has a problem with a provision, bring up the bill, offer an amendment, debate, and vote. That is the way the Senate works.

#### AMENDMENT NO. 4906

Because of the importance of getting the authorization bill enacted and because I and all the members of the Senate Intelligence Committee have been totally unable to make any headway on this at all now for 2 years, and because I have concluded that it will once again be ignored by the majority leader, I send an amendment to the desk to strike section 8086 of the pending legislation, the fiscal year 2007 Department of Defense appropriations bill.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER] proposes an amendment numbered 4906.

The amendment follows:

(Purpose: To strike the section specifically authorizing intelligence and intelligence-related activities)

On page 206, strike lines 10 through 16.

Mr. ROCKEFELLER. Mr. President, striking section 8086 would mean the following: that none of the funds in this bill could be spent for intelligence activities without an authorization bill. I do not know how else to do it. I am reluctant to take this step because I do not want our intelligence agencies to be caught without funding. But I see no other way to force the Senate to bring into the consciousness, the cerebral cortexes of the various Senators, that it is important to take up and pass authorization bills.

This legislation is too important to be allowed to languish in legislative limbo. I am at a loss to understand why the Senate cannot complete action. It would be in no one's interest to not complete this, not the Senate, not the Congress, not the intelligence community, nor would it be in the national security interest of the United States.

Democrats are more than willing to quickly debate and pass much needed national security legislation. Democrats know that it is essential that we permit the men and women of the intelligence agencies to continue their critical work on the front lines of the war in Iraq and the war on terror.

In the meantime, to the men and women of the intelligence agencies, I say that we stand with you. We are

proud of your bravery and your patriotism, and we thank you for your sacrifice, working in silence, and in the shadows, against the threat that America faces.

(At the request of Mr. ROCKEFELLER, the following statement was ordered to be printed in the RECORD.)

#### FAILURE TO PASS AN INTELLIGENCE AUTHORIZATION BILL

• Mrs. FEINSTEIN. Mr. President, I join Vice Chairman ROCKEFELLER in calling for the Senate to take up and pass the Intelligence Authorization Act for Fiscal Year 2007. As has been said already, this legislation is the primary way in which the Congress directs the Nation's 16 intelligence agencies.

In writing this legislation, the committee worked closely with the Director of National Intelligence, or DNI, to identify new authorities needed to protect our national security. The bill authorizes a pilot program to allow intelligence agencies to better share information that could help uncover and thwart a terrorist; empowers the DNI to build information-sharing systems across the Federal Government; and creates a strong inspector general for the intelligence community.

The bill also requires the intelligence community to explain how it is complying with the Detainee Treatment Act and provide Congress with information on any "alleged clandestine detention facilities" that it may be operating and continues the process of intelligence reform begun in 2004.

It is not surprising that the creation of the DNI and major organizational changes across the Government's national security apparatus left some things undone. This Intelligence authorization bill makes a number of small but useful changes to allow the DNI and the Nation's 16 intelligence agencies to operate on a day-to-day basis more effectively.

These are a few of the important provisions in this legislation. But here I would like to focus on language in the bill that was adopted on a bipartisan basis at committee. The provisions, sections 304 and 307 of the bill, ensure that the congressional Intelligence Committees are fully informed of all intelligence activities.

The National Security Act of 1947 requires the President to "ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States. . . ."

Even more than other committees, the Intelligence Committee relies on the executive branch to provide it with information. Without full and timely notification of intelligence programs, problems, and plans, the committee cannot judge whether agencies have adhered to the law, nor can we judge whether changes in authorities or resources are needed to better protect national security.

It was, in fact, Congress's lack of regular oversight that led to the creation

of the Senate Intelligence Committee in 1976. Following the Church Committee's report on Executive abuses, the Senate established the Committee to "provide vigilant legislative oversight over the intelligence activities of the United States to assure that such activities are in conformity with the Constitution and laws of the United States."

Thirty years after the Senate Intelligence Committee was created, however, it is not living up to its charge. Members of the committee are not provided with sufficient information on intelligence programs and activities to legislate or oversee to intelligence community. Provisions in the stalled legislation—the Intelligence authorization bill—would fix this problem.

A good example of how the system fails to work is the so-called Terrorist Surveillance Program, which was publicly revealed last December but which had not previously been briefed to the committees.

According to the White House, this National Security Agency program was too sensitive to be briefed to the 15 Senators on the committee—the 15 Senators hand-selected by the majority and minority leaders for this assignment.

Instead, the President and Vice President decided to inform only 8 of the 535 Members of Congress: the party leadership in both houses and the leadership of the two intelligence committees.

The National Security Act does provide for limited briefings to these eight Members of Congress but only for especially sensitive covert actions. The NSA program is not a covert action.

The administration also points to statute saying that it must take "due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters. . ."

The 1980 Senate report accompanying this "due regard" provision explained

this provision more directly—and makes clear that it does not allow the administration to restrict information from the committee indefinitely as was done with the Terrorist Surveillance Program.

The report recognized "that in extremely rare circumstances a need to preserve essential secrecy may result in a decision not to impart certain sensitive aspects of operations or collection programs to the oversight committees in order to protect extremely sensitive intelligence sources and methods."

The "due regard" language that the administration cites was intended, at most, to limit briefings on the most sensitive aspects of operations, in extremely rare circumstances. It was also expected that withholding this sensitive information would be a temporary measure. This language was not intended to conceal the existence of entire programs from all committee members.

So in effect, the White House has broadly interpreted the National Security Act to void meeting its responsibility to inform Congress.

This Intelligence authorization bill's changes to the National Security Act close the loopholes but, in fact, are far more generous to the executive branch than many would like. The bill acknowledges that there are times when not all Members have to be "fully and currently" briefed on all intelligence matters. However, in those cases, it requires that all committee members receive a summary of the intelligence collection or covert action in question.

This arrangement would allow the intelligence agencies to protect the most sensitive details of sources and methods, but crucially, it would allow the full committee to assess the legality, costs and benefits, and advisability of an intelligence operation.

The authorization bill also changes a definition in the National Security Act to make clear that the requirement to

keep the committees "fully and currently informed" means that all Members will be kept informed. Congress has allowed the intelligence community to brief only the chairman and vice chairman on too many programs for too long.

I do not need to remind my colleagues that full committees, not a single Democrat and Republican, vote to authorize programs and funding. All Members must be informed if they are to perform their Constitutional duties.

The pending authorization bill would make one additional change to what it means for an intelligence activity to be authorized by Congress.

Stemming from the wiretapping abuses in the 1970s and because of the special challenges to conducting oversight of classified programs, the National Security Act prohibits the use of appropriated funds for any intelligence activities unless they are authorized by Congress. The pending bill would specify that an activity can only be "authorized" if the members of the authorizing committees have been fully briefed on it—or given a summary in the especially sensitive cases I described before.●

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RECESS UNTIL 9:30 A.M.  
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9:30 a.m. tomorrow.

Thereupon the Senate, at 9:25 p.m., recessed until Thursday, September 7, 2006, at 9:30 a.m.

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#### NOMINATIONS

Executive nomination received by the Senate September 6, 2006:

DEPARTMENT OF THE TREASURY

ROBERT K. STEEL, OF CONNECTICUT, TO BE AN UNDER SECRETARY OF THE DEPARTMENT OF THE TREASURY, VICE RANDAL QUARLES.