

COMMITTEE ACTIVITIES

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Mr. ROBERTS, from the Select Committee on Intelligence,
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SPECIAL REPORT

I. INTRODUCTION

The Senate Select Committee on Intelligence (SSCI) dedicated much of its oversight efforts during the 108th Congress to the study of the Iraqi weapons of mass destruction issue, which resulted in the Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq (Senate Report 108-301), published on July 9, 2004. In addition to this effort, the Intelligence Authorization Acts for Fiscal Years 2004 and 2005 reflect the Committee's attention to six priority areas: (1) revitalization of the National Security Agency (NSA); (2) improving human intelligence collection; (3) increased emphasis on advanced research and development; (4) greater access to and sharing of information across the Intelligence Community (IC); (5) elimination of unnecessary programs; and (6) greater organizational efficiency of the IC.

The SSCI was established in 1976 by Senate Resolution 400 to strengthen congressional oversight of the programs and activities of U.S. intelligence agencies. Throughout its history, the Committee has sought to carry out its oversight responsibilities in a non-partisan manner. During the 108th Congress, the Committee continued this tradition in crafting important intelligence legislation, conducting investigations and audits into IC and other national security issues, and authorizing—and as necessary, increasing or reallocating—funding for a wide array of U.S. intelligence activities.

As part of its oversight responsibilities, the Committee performs an annual review of the intelligence budget submitted by the President and prepares legislation authorizing appropriations for the various civilian and military agencies and departments comprising the IC. These entities include the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance

Office, the intelligence capabilities of the military services, as well as the intelligence-related components of the Department of State, the Federal Bureau of Investigation, the Department of the Treasury, the Department of Energy, and the Department of Homeland Security. The Committee makes recommendations to the Senate Armed Services Committee on authorizations for the intelligence-related components of the U.S. Army, U.S. Navy, U.S. Air Force and U.S. Marine Corps. The Committee also conducts periodic investigations, audits, and inspections of intelligence activities and programs.

The Committee's charge is to ensure that the IC provides the accurate and timely intelligence necessary to identify and monitor threats to the national security and to support the Executive and Legislative branches in their decisions on national security matters; to ensure that U.S. military commanders have intelligence support to allow them to prevail swiftly and decisively on the battlefield; and, to ensure that all intelligence activities and programs conform with the Constitution and laws of the United States of America.

II. LEGISLATION

A. INTELLIGENCE BUDGET

During the 108th Congress, the Committee conducted annual reviews of the fiscal year 2004 and fiscal year 2005 budget requests for the National Foreign Intelligence Program, the Joint Military Intelligence Program and the Tactical Intelligence and Related Activities programs of the Department of Defense. In addition, the Committee reviewed supplemental funding requests for the same fiscal years in support of ongoing operations in Iraq and the global war on terror. As part of its review, the Committee received testimony from senior IC officials and evaluated the detailed budget justification documents submitted by the Executive branch.

For fiscal years 2004 and 2005, the Administration continued its requests for substantial increases in funds for the National Foreign Intelligence Program. Combined with large supplemental budgets for both fiscal years, the IC received unprecedented levels of funding during the 108th Congress. The Committee endorsed these increases but expressed concern that the IC is approaching a point where it will be difficult to absorb further increases.

B. INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2004

On May 8, 2003, the Committee reported an original bill, S. 1025, the Intelligence Authorization Act for Fiscal Year 2004. The bill and its classified supplement contained recommendations for annual authorization levels of funds appropriated for the intelligence and intelligence-related activities of the United States Government. In addition to authorized funding levels and certain technical amendments, the bill contained several unclassified substantive provisions, including:

An amendment to Section 504 of the National Security Act of 1947 to remove the criterion that reprogrammings or transfers under that provision be based on "unforeseen requirements";

Modifications to Section 602 of the Intelligence Authorization Act for Fiscal Year 1995 (Public Law 103–359) to change unprogrammed construction notice-and-wait periods and to raise notification thresholds for certain construction and renovation projects;

Authorization for use of certain funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities;

Establishment of a pilot program to provide analysts throughout the IC with access to data collected by the National Security Agency (NSA);

Establishment of a pilot program to assess the feasibility of a Reserve Officers' Training Corps-like program to train intelligence analysts;

Extension of the National Commission for the Review of the Research and Development Program of the United States Intelligence Community;

Clarification and Modifications to Section 224 of the USA PATRIOT Act of 2001 (Public Law 107–56) to preserve valuable and necessary intelligence exemptions contained in Section 204 of that Act;

Requirements for certain one-time reports and repeal of some statutory reporting requirements that were deemed of little continuing utility to the legislative oversight process;

Extension for an indefinite period of the Congressionally-directed reorganization of the Diplomatic Telecommunications Service Program Office;

Modifications to the Safe Explosives Act (Secs. 1121–28, Public Law 107–296) to ensure sufficient authority for the Secretary of Defense and Director of Central Intelligence to conduct the military and intelligence activities of the U.S. Government;

Amendments to Section 313 of the Immigration and Naturalization Act to reflect the establishment of the Department of Homeland Security and to ensure consistency with other similar provisions of law;

Expansion of the definition of “financial institution” for purposes of Section 1114 of the Right to Financial Privacy Act to reflect the growth in the types of entities that provide financial services to the public;

A requirement for a joint report by the National Science Foundation and the Office of Science and Technology Policy designed to enhance the U.S. Government's approach to security evaluations;

Amendments to the Central Intelligence Agency's (CIA) notification requirements under the CIA Act of 1949 regarding its personnel allowances and benefits similar to those authorized for members of the Foreign Service;

Protection for certain CIA and NSA personnel from tort liability when those personnel take reasonable action to prevent or stop a “crime of violence” or to protect an individual from bodily harm;

Exemption of certain NSA “operational files” from the search and review requirements of the Freedom of Information Act (FOIA);

Provision of affordable living quarters for certain students working at NSA laboratories; and

Authorization for IC elements within the Department of Defense to award personal services contracts.

The Armed Services Committee took S. 1025 on sequential referral and reported the measure favorably with recommended amendments, S. Rep. 108–80 (June 26, 2003).

S. 1025 was considered by the Senate on July 31, 2003. The measure, with the amendments recommended by the Armed Services Committee and additional amendments jointly proposed by Chairman Roberts and Vice Chairman Rockefeller, was adopted by unanimous consent. Of particular note, the amendments adopted by the Senate:

Mandated the submission of Independent Cost Estimates by elements of the IC concerning the costs of acquisitions of major systems;

Required a report on the operations of the Directorate of Information Analysis and Infrastructure Protection and the Terrorist Threat Integration Center; and

Permitted CIA employees to deposit certain bonus pay to Thrift Savings Plan Accounts.

The Senate then proceeded to consideration of H.R. 2417, the version of the Intelligence Authorization Act for Fiscal Year 2004 passed by the House of Representatives, struck all after the enacting clause, and inserted the text of S. 1025. As amended, H.R. 2417 was passed by unanimous consent.

In conference on H.R. 2417, the conferees from the House receded from their disagreement to the amendments of the Senate, and the conferees agreed to an amendment containing many provisions from both the House-passed and Senate-amended versions of H.R. 2417. In addition to modifications or deletions of some of the provisions noted above, the conferees:

Established an Office of Intelligence and Analysis within the Department of the Treasury;

Authorized the Federal Bureau of Investigation to award certain personal services contracts;

Modified the sunset provision governing the effect of certain sanction laws to intelligence activities;

Established a training program through the Department of Homeland Security for State and local officials to enhance information sharing activities between such officials and the Federal Government;

Mandated a pilot project to promote the recruitment and retention of women and minorities throughout the IC and encouraged the IC to recruit former members of the Armed Forces for civilian positions;

Authorized several counterintelligence reforms;

Required a report on the Terrorist Screening Center;

Ensured protection for classified information related to certain judicial proceedings concerning money laundering;

Required the Director of Central Intelligence and Secretary of Defense to incorporate basic sensor research into the meas-

urement and signatures intelligence (MASINT) systems of the United States; and

Authorized additional funds for NSA national security scholarships.

The conference report passed both houses and was signed by the President on December 13, 2003, becoming Public Law 108–177.

C. EXTENSION OF THE NATIONAL COMMISSION ON TERRORIST ACTS
AGAINST THE UNITED STATES

Following requests by the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) and the President, on February 26, 2004, the Committee reported a bill, S. 2136, extending the report deadline of the 9/11 Commission by two months, but requiring completion of all 9/11 Commission’s activities in 30 fewer days. The bill also authorized additional funding for the 9/11 Commission in order for it to complete its work.

On February 27, 2004, the Senate passed S. 2136 by unanimous consent.

The bill was referred to the House and passed without objection on March 3, 2004.

The President signed the bill on March 16, 2004, enacting the measure as Public Law 108–207.

D. INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2005

On May 5, 2004, the Committee reported an original bill, S. 2386, the Intelligence Authorization Act for Fiscal Year 2005. The bill and its classified supplement contained recommendations for annual authorization levels of funds appropriated for the intelligence and intelligence-related activities of the United States Government. In addition to authorized funding levels, the bill contained several unclassified substantive provisions:

Authorizing, for purposes of Section 504(a)(3) of the National Security Act of 1947, funds appropriated for fiscal year 2004 in excess of amounts specified in the classified Schedule of Authorizations accompanying the Intelligence Authorization Act for Fiscal Year 2004;

Amending Section 504 of the National Security Act of 1947 to remove the “unforeseen requirements” criterion governing reprogrammings or transfers under that provision;

Authorizing the use of the Foreign Intelligence Surveillance Act (FISA) to collect intelligence information concerning non-United States persons who engage in international terrorism without a known affiliation with an international terrorist group;

Requiring additional reports from the Attorney General under the FISA;

Repealing from S. Res. 400 (94th Cong.) the limitation on length of service as a member of the Senate Select Committee on Intelligence;

Authorizing a permanent extension of the CIA voluntary separation incentive program;

Providing additional authority to enhance the cover and ensure the secure operations of individuals serving at the CIA under nonofficial cover;

Repealing the sunset provision governing the use of commercial activities as security for intelligence collection activities of the Department of Defense;

Providing an exemption from certain Privacy Act requirements for human intelligence operations by the Department of Defense; and

Authorizing the use of certain funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities.

The bill, S. 2386, was reported unanimously by the Committee. It was referred to the Armed Services Committee and reported favorably (S. Rep. 108–300) on July 8, 2004, with recommendations for certain amendments.

S. 2386 was considered by the Senate on October 11, 2004. The measure, with the amendments recommended by the Armed Services Committee and additional amendments jointly proposed by Chairman Roberts and Vice Chairman Rockefeller, was adopted by unanimous consent. Of particular note, the amendments adopted by the Senate:

Required an intelligence assessment on sanctuaries for terrorists;

Extended the filing deadline for the report of the National Commission for the Review of the Research and Development Program of the United States IC; and

Provided a four-year extension for the activities of the Public Interest Declassification Board;

Following passage of S. 2386, the Senate proceeded to consideration of H.R. 4548, the version of the Intelligence Authorization Act for Fiscal Year 2005 passed by the House of Representatives, struck all after the enacting clause, and inserted the text of S. 2386. As amended, H.R. 4548 was passed by unanimous consent.

In conference on H.R. 4548, the conferees from the House receded from their disagreement to the amendments of the Senate, and the conferees agreed to an amendment containing many provisions from both the House-passed and Senate-amended versions of H.R. 4548. In addition to modifications or deletions of some of the provisions noted above, the conferees:

Established a Chief Information Officer for the IC;

Enhanced the authorities of the National Virtual Translation Center;

Encouraged the cooperation of the IC with Congressional investigation of the Iraq Oil-for-Food Program of the United Nations;

Established an Emerging Technologies Panel for the NSA;

Provided additional funding and authorized additional programs relating to the education, training, and recruitment of IC personnel;

Authorized a pilot project to establish a civilian linguist reserve corps;

Required a report on the status, consolidation, and improvement of education programs that are supported, funded and carried out by the IC or otherwise intended to aid in the recruitment, retention, or training of IC personnel;

Mandated a report on the recruitment and retention of Defense Language Institute instructors; and

Required additional information on terrorist groups to be included in certain reporting requirements under Section 140 of the Foreign Relations Authorization Act, Fiscal Year 1988 and 1989 (22 U.S.C. 2656f)

The conference report passed both houses and was signed by the President on December 23, 2004, becoming Public Law 108-487.

III. OVERSIGHT ACTIVITIES

A. INQUIRY INTO THE U.S. INTELLIGENCE COMMUNITY'S PREWAR INTELLIGENCE ASSESSMENTS ON IRAQ

In June 2003, the Senate Select Committee on Intelligence initiated a review of U.S. intelligence on the existence of weapons of mass destruction in Iraq, Iraq's ties to terrorist groups, Saddam Hussein's threat to stability and security in the region, and his violations of human rights.

The Committee staff had, for the previous several months, already been examining aspects of intelligence activities regarding Iraq, including the IC's intelligence support to the United Nations Monitoring, Verification, and Inspection Commission (UNMOVIC) weapons inspections in Iraq and the IC's analysis and collection of reporting related to the alleged Niger-Iraq uranium deal.

On June 20, 2003, the Committee agreed to also examine: (1) the quantity and quality of U.S. intelligence on Iraqi weapons of mass destruction programs, ties to terrorist groups, Saddam Hussein's threat to stability and security in the region, and his repression of his own people; (2) the objectivity, reasonableness, independence, and accuracy of the judgments reached by the IC; (3) whether those judgments were properly disseminated to policymakers in the Executive branch and Congress; (4) whether any influence was brought to bear on anyone to shape their analysis to support policy objectives; and (5) other issues identified in the course of the Committee's review.

In the months that followed, the Committee staff reviewed approximately 100,000 pages of intelligence documents and interviewed more than 200 individuals including intelligence analysts and senior officials with the Central Intelligence Agency (CIA), Defense Intelligence Agency, Department of Defense, Department of Energy, Department of State, National Ground Intelligence Center, the Air Force, and the Federal Bureau of Investigation. Staff also interviewed the Director of Central Intelligence, Deputy Director of Central Intelligence, National Intelligence Officers, former intelligence analysts, operations officers, signals intelligence collectors, imagery analysts, nuclear experts with the International Atomic Energy Agency, Ambassadors, former United Nations inspectors, Department of Defense weapons experts, State Department officials, and National Security Council staff members. As part of the investigative effort, the Committee held four closed hearings on aspects of U.S. intelligence on Iraq: the Iraq-Niger connection, the CIA and State Department Inspectors General report on the review of the Iraq-Niger issue, the history and continuity of weapons of mass destruction assessments pertaining to Iraq, and Iraq prewar intelligence.

These efforts enabled the Committee to develop a full understanding of the quality and quantity of intelligence reporting on Iraq's WMD programs, Iraq's ties to terrorist groups, Saddam Hussein's threat to stability and security in the region, and his violations of human rights. The Committee also gained an understanding of how intelligence analysts throughout the IC used that intelligence to develop their assessments, how the assessments were disseminated to policymakers, whether the assessments were reasonable, objective, and independent of political consideration, and whether any influence was brought to bear to shape their analysis to support policy objectives.

In June 2004, the Committee unanimously approved a classified 500-page report on the Committee's findings and conclusions. An unclassified version of the report, which included Members' "Additional Views" was released in July 2004 (S. Report 108-301).

The Committee concluded that most of the major key judgments in the IC's National Intelligence Estimate on Iraq's Continuing Programs for Weapons of Mass Destruction, either overstated, or were not supported by, the underlying intelligence reporting. A series of failures, particularly in analytic trade craft, led to the mischaracterization of intelligence. In particular, the Committee concluded that the IC suffered from "group think" in that there was a collective presumption that Iraq had an active and growing weapons of mass destruction program. This led analysts and managers to interpret ambiguous evidence as conclusively indicative of a WMD program as well as to ignore or minimize evidence to the contrary. This "group think" dynamic was so strong that formalized IC mechanisms to challenge assumptions, such as alternative analysis and red teams, were not used. A number of continuing systemic weaknesses, including a lack of information sharing and short-comings in human intelligence collection, contributed to the IC's failure to develop a reasonable assessment of Iraq's weapons of mass destruction capabilities. The Committee found no evidence that Administration officials attempted to pressure analysts to change their judgments related to Iraq's WMD programs.

The Committee found that the IC's analysis of Iraq's links to al-Qaida prior to the start of Operation IRAQI FREEDOM was reasonable and objective based on the information available. Moreover, the categories outlined by the CIA to help define the "links" between Iraq and al-Qaida—contacts, training, safe haven, and operational cooperation—were an appropriate and reasonable approach to the question. The Committee found that the CIA had an extensive historical knowledge of Iraq's ties to secular Palestinian groups and to the Mujahiddin e-Khalq, but far less information on any potential Iraqi regime ties to al-Qaida. Additionally, the Committee concluded that the CIA reasonably assessed that Saddam Hussein was most likely to use his own intelligence service operatives to conduct attacks.

Many IC agencies have taken the Committee's findings and conclusions, in conjunction with the results of post-war investigations of Iraqi weapons of mass destruction programs, seriously and have implemented changes and reforms. The Committee continued to monitor those efforts and call for additional reform. On February 12, 2004, the Committee agreed to include the following additional matters in its review:

The collection of intelligence on Iraq from the end of the Gulf War to the commencement of Operation Iraqi Freedom;

Whether public statements and reports and testimony regarding Iraq by U.S. Government officials made between the Gulf War period and the commencement of Operation Iraqi Freedom were substantiated by intelligence information;

The postwar findings about Iraq's weapons of mass destruction and weapons programs and links to terrorism and how they compare with prewar assessments;

Prewar intelligence assessments about postwar Iraq;

Any intelligence activities relating to Iraq conducted by the Policy Counterterrorism Evaluation Group (PCTEG) and the Office of Special Plans within the Office of the Under Secretary of Defense for Policy; and

The use by the Intelligence Community of information provided by the Iraqi National Congress (INC).

The review was ongoing at the conclusion of the 108th Congress.

B. HEARINGS

1. Intelligence reform

Following release of the Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq (July 9, 2004), the Committee turned its attention to the reform and reorganization of the IC. On July 20, 2004, the Committee received testimony from two panels regarding the need for IC reform, including reexamination of the responsibilities and authorities of the Director of Central Intelligence. The first witness, Senator Dianne Feinstein, testified concerning her proposed legislation, S. 190, the IC Leadership Act of 2003. Following Senator Feinstein, the Committee heard testimony from Dr. John J. Hamre, Lieutenant General William E. Odom (United States Army (Ret.)), and Mr. James R. Woolsey. During the August recess and following the July 22, 2004, release of the Final Report of the National Commission on Terrorists Attacks upon the United States (9/11 Commission), the Committee conducted additional hearings on the need for intelligence reform. On August 18, 2004, Dr. David Kay, Dr. Amy B. Zegart, and General Charles G. Boyd (United States Air Force (Ret.)) testified before the Committee. On September 7, 2004, the Committee held an open hearing on the 9/11 Commission report. The Committee heard testimony from 9/11 Commission Chairman Thomas H. Kean, Vice Chair Lee H. Hamilton, and Commissioner John F. Lehman. In addition to these open hearings, the Committee also held a closed meeting on September 16, 2004, with Lieutenant General Brent Scowcroft, United States Air Force (Ret.), then-Chairman of the President's Foreign Intelligence Advisory Board.

2. National security threats to the United States

Early in each session of the 108th Congress, the Committee held hearings to review the IC's assessments on the current and projected national security threats and issues of concern to the United States. These hearings covered a wide range of issues and were held in open and closed sessions. They provided the heads of various IC organizations an opportunity to inform the Committee and

the American public about the threats facing the country and how their organizations were poised to provide information on and counter these threats.

On February 11, 2003, the Committee held open and closed hearings on the current and projected threats to the United States. Testifying before the Committee in open session were the Director of Central Intelligence, George J. Tenet, the Director of the Federal Bureau of Investigation, Robert Mueller, the Director of the Defense Intelligence Agency, Vice Admiral Lowell Jacoby, and the Assistant Secretary of State for Intelligence and Research, Carl Ford.

On February 24, 2004, the Committee held open and closed hearings on the current and projected threats to the United States. Testifying in open session before the Committee were the Director of Central Intelligence, George J. Tenet; the Director of the Federal Bureau of Investigation, Robert Mueller; and the Director of the Defense Intelligence Agency, Vice Admiral Lowell Jacoby. Testifying in closed session were the Deputy Director of Central Intelligence, John McLaughlin; the Director of the Federal Bureau of Investigation, Robert Mueller; and the Director of Intelligence for the Joint Chiefs of Staff, Major General Ronald Burgess, United States Army.

The Committee also routinely held hearings and received threat updates from IC personnel. These issues frequently covered the global war on terrorism, threats to major events (such as the U.S. election, the Olympics, and the Democratic and Republican National Conventions), and other substantive developments of interest to the Committee in its oversight role.

The transcripts of the open hearings, “Current and Projected National Security Threats to the United States” [S. Hrg. 108–161, dated February 11, 2003, and S. Hrg. 108–588, dated February 24, 2004] were printed and made available to the public.

3. Counterterrorism

The Committee focused on counterterrorism initiatives in several hearings and received numerous briefings on worldwide terrorist threats during the 108th Congress. While intelligence briefings covered threats to U.S. and allied interests worldwide, the Committee focused on the sustained threat to the U.S. Homeland from al-Qaida, and on the IC’s measures to counter and disrupt the group. The IC briefed the Committee weekly on current intelligence topics, which included terrorism threat updates. In addition to these Member briefings, Committee staff routinely received briefings on a range of counterterrorism issues. These briefings covered substantive and administrative issues to include resources, office structure, and interagency cooperation.

The Committee closely monitored the development of the Terrorist Threat Integration Center (TTIC), and continued to monitor its evolution into the National Counterterrorism Center (NCTC). The TTIC was the first entity of its kind in the IC, and housed analysts and “assignees” from not only the IC agencies, but also representatives from agencies that constitute the largest consumers of threat reporting and analysis.

4. *Detainee abuse hearings*

In the wake of specific revelations of detainee abuse at the Abu Ghraib prison in Iraq, the Committee held hearings—in addition to staff briefings—to ascertain the nature of the involvement, if any, of intelligence entities in this scandal.

5. *Counterproliferation*

The accelerating proliferation of weapons of mass destruction (WMD) and their means of delivery remains a central threat to U.S. national security. The IC's ability to monitor, accurately assess and respond to WMD and delivery threats from both state and non-state actors is essential. Because of the importance of these capabilities, particularly as the nation is engaged in the global war on terrorism, the Committee reviewed the scope and trend of proliferation, in order to assess and improve the IC's counter-proliferation capabilities.

The Committee held numerous hearings and briefings on proliferation topics including global proliferation trends, non-state proliferators, North Korean, Libyan, and Iranian proliferation activities, and, as part of its formal review of intelligence assessments on Iraq, the existence of Iraqi weapons of mass destruction. In addition, the Committee reviewed numerous IC products addressing the production and proliferation of weapons of mass destruction, held several staff briefings, and conducted hundreds of staff interviews regarding intelligence assessments of Iraqi WMD programs.

6. *Human intelligence*

Human Intelligence (HUMINT) was a prominent topic of concern for the Committee during the entire period of the 108th Congress. The Committee held one hearing dedicated solely to the Future of HUMINT, but the issue was a central facet of other closed and open hearings. The number of formal hearings, however, does not convey the full sense of urgency concerning HUMINT in the 108th Congress. Committee Members and staff combined dozens of visits to IC facilities and other staff-level discussions with experts to further examine HUMINT processes.

In particular, the Committee examined HUMINT as part of its inquiry into prewar analysis of Iraq's WMD capabilities. The Committee noted the poor condition of U.S. HUMINT capabilities focused on the Iraqi target. The Committee's concerns are documented at length in the Committee's report on The U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq. The HUMINT concerns also guided Committee Members in deliberations related to the enactment of the "Intelligence Reform and Terrorism Prevention Act of 2004."

7. *USA PATRIOT Act*

In addition to receipt of reports under the Foreign Intelligence Surveillance Act, continuing oversight of Federal Bureau of Investigation (FBI) intelligence activities, and review of IC information access concerns, the Committee held a closed hearing on October 23, 2003 to review the modifications to intelligence and national security authorities made by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct

Terrorism (USA PATRIOT) Act of 2001, Public Law 107–56 (October 26, 2001). Witnesses appearing at this hearing from the Department of Justice and FBI testified regarding the continuing intelligence and national security importance of the modifications to law found in the USA PATRIOT Act. The witnesses explained how the USA PATRIOT Act removed barriers to information sharing, closed investigative gaps where existing authorities had not provided sufficient legal authority, and updated authorities to reflect advances in technology. The witnesses also addressed civil liberties and privacy concerns, explaining how authorities provided by the Act are consistent with the Constitution, and reiterating the importance of Congressional oversight to the intelligence process.

8. The United Nations Convention on the Law of the Sea

The Committee held a closed hearing on the potential effects of the United Nations Convention on the Law of the Sea on the intelligence and intelligence-related activities of the United States Government. Administration officials from the Office of the Director of Central Intelligence, Department of State, and the United States Navy (and, on a separate panel, a former Judge Advocate General for the United States Navy) testified that United States accession to the treaty would do no harm to the intelligence activities of the United States and would provide useful protections for United States military and commercial maritime operations. At two other panels, two former Secretaries of the Navy and a former United States Permanent Representative to the United Nations expressed continued reservations about the treaty, including particular concerns about the potential impact of the treaty's dispute resolution procedures on United States national security.

9. Covert action quarterly review

The Committee continued to conduct rigorous oversight of covert action programs during the 108th Congress. Unlike intelligence collection and analysis, which are intended to gather and understand information about national security issues, covert action programs are policy tools that can be a significant factor in accomplishing foreign policy objectives. The Committee reviewed these programs to ensure their means and objectives were consistent with U.S. foreign policy goals, were conducted in accordance with all applicable American laws and were consistent with the ideals and principles of our nation. During the 108th Congress, the Committee reviewed written quarterly reports and held periodic hearings and briefings with Central Intelligence Agency and Department of State officials.

C. COMMUNITY ISSUES

1. Independent cost estimates

The Committee became increasingly concerned by the cost growth of major IC acquisitions. These substantial cost increases reduce the availability of funds for other programs and new initiatives within the IC. Additionally, to address funding shortfalls resulting from unanticipated acquisition costs, IC funds are often shifted from program to program and from fiscal year to fiscal year, hindering effective financial management.

Prior to Committee action to address the growth in acquisition costs, the budget for major systems generally reflected cost estimates prepared by the IC component responsible for acquiring and operating the system. The magnitude and frequency of cost growth in major systems indicated to the Committee a systemic bias within the IC to underestimate the costs of such acquisitions. The Committee recognized that the use of independent cost estimates prepared by offices outside the acquiring and operating components had resulted in more accurate projections of the costs of major systems.

During floor consideration of the Intelligence Authorization Act for Fiscal Year 2004, the Senate adopted a Committee amendment formalizing the process for development of independent cost estimates for major IC acquisitions. Section 312 of that Act required the Director of Central Intelligence, in consultation with the head of the element responsible for acquiring and operating the system at issue, to prepare, and update as required, an independent cost estimate of the full life-cycle cost of development, procurement, and operation of any system projected to cost more than \$500 million. The provision also required the President's budget request to reflect the amounts identified in the independent cost estimates, or if not, explain why the amount requested differed from the independent cost estimate. The Committee will monitor Executive branch compliance with this provision, including prohibitions on the obligation or expenditure of funds for the development or procurement of major systems without statutory independent cost estimates.

2. Information access

The Committee took an active role in improving information access across the IC. The Committee remains extremely concerned that the Community is not managed as an information enterprise, but rather as a loose affiliation of agencies. As the Committee noted in its report accompanying S. 2386, the Intelligence Authorization Bill for Fiscal Year 2005, elements within the IC acted as though they own the intelligence data they collect, rather than treating that data as belonging to the U.S. Government. As a result of the Community's failure to repudiate outdated restrictions on information access and a refusal to revisit legal interpretations and policy decisions that predate the threats now confronting the United States, impediments to information access are re-emerging in the very programs designed to address the problem.

The Committee's review of the Community's pre-war assessments on Iraq highlighted the effect of such restrictions on data access by intelligence analysts. In its Report of the Select Committee on Intelligence on the U.S. Intelligence Community's Pre-War Intelligence Assessments on Iraq, the Committee concluded, *inter alia*, that the IC's failure to provide access to information across the Community to cleared analysts with a legitimate need-to-know contributed to the IC's flawed assessments on Iraq. For example, the Committee found that the CIA's excessive compartmentalization and failure to share information regarding Iraq's alleged mobile biological weapons program and unmanned aerial vehicle (UAV) program "left analysts and policymakers with an incomplete and, at

times, misleading picture of these issues.”¹ The Committee also concluded that the CIA’s practice of providing source information and operational detail only to CIA analysts “limited the level of discussion and debate that should have taken place across the Community on [Iraq’s interactions with al-Qaida].”² Emphasizing the importance of improving information access across the Community, the Committee wrote,

The process by which the IC calculates the benefits and risks of sharing sensitive human intelligence is skewed too heavily toward withholding information. This issue has been raised repeatedly with the IC, particularly after the lack of information sharing was found to have played a key role in the intelligence failures of 9/11. The Committee believes that the IC must reconsider whether the risks of expanding access to cleared analysts are truly greater than the risks of keeping information so tightly compartmented that the analysts who need it to make informed judgments are kept in the dark.³

In an effort to encourage management of the IC as an information enterprise, and thereby enhance the Community’s capacity to undertake “all source fusion” analysis, the Committee initiated a number of efforts to remove outdated restrictions on information and data access. For example, in S. Rept. 108–258, the Committee directed the Director of Central Intelligence, in coordination with the Attorney General and the Secretary of Defense, to complete by February 1, 2005, an Information Sharing Working Group (ISWG) review identifying impediments to information access in existing IC and Department of Defense policies and laws. Additionally, Section 317 of the Intelligence Authorization Act for Fiscal Year 2004, P.L. 108–381, established a pilot program to assess the feasibility and advisability of permitting analysts of various elements of the IC to access and analyze intelligence from the databases of other Community elements. Finally, Section 354 of P.L. 108–381 required the President to identify current policies and regulations that impede the sharing of classified information horizontally across and among Federal departments and agencies and vertically between the Federal Government and State and local agencies; and to propose appropriate modifications of policy, law, and regulations to eliminate these impediments in order to facilitate access to such classified information.

3. Oversight of IC Inspectors General

The Committee continued to monitor the activities of the Inspectors General (IGs) of the IC during the 108th Congress. This oversight included: review of numerous IG products, including audit reports, inspection reports, reports of investigation, and semi-annual reports of IG activities; visits to IG offices for updates on plans and procedures; and attendance and participation at several IG conferences. In addition to a variety of hearings focused on issues reviewed by the IC IGs, the Committee arranged a number of brief-

¹ Report of the Select Committee on Intelligence on the U.S. IC’s Pre-War Intelligence Assessments on Iraq, S. Rpt. 108–301, 26.

² Report of the Select Committee on Intelligence on the U.S. Intelligence Community’s Pre-war Intelligence Assessments on Iraq, S. Rpt. 108–301, 33.

³*Ibid.*, pp. 26–27.

ings 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, effective use of resources on new technology, covert action programs, and financial management practices.

During the 108th Congress, the Committee continued its work to ensure the effectiveness and independence of the administrative Inspectors General at the National Reconnaissance Office (NRO), the National Security Agency (NSA), the National Geospatial-Intelligence Agency (NGA), and the Defense Intelligence Agency (DIA). The Committee reinforced the importance of the IG function through its regular interaction with the agency directors, the IGs, and their staffs. In response to language in the Committee's Intelligence Authorization Bills, 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 programs and activities of their agency 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 year.

4. IC compliance with Federal financial accounting standards

The Committee continued to closely monitor the IC's financial management practices during the 108th Congress. During the previous Congress, in the report accompanying S. 1428 (S. Rpt. 107-63), the Committee instructed the Director of Central Intelligence and the Secretary of Defense to ensure that the NSA, the DIA, the NGA, and the CIA receive an audit of their financial statements no later than March 1, 2005, to be performed by a statutory Inspector General or a qualified independent public accountant.

Reports issued by the Department of Defense (DOD) and CIA Inspectors General in 2002 indicated that the NSA, DIA, NGA, and CIA were unable to produce auditable financial statements, and this remained the case in 2004. In recognition of the difficulties in acquiring the systems necessary to produce financial statements, the Committee indicated in Senate Report 108-44, accompanying S. 1025, the Intelligence Authorization Act for Fiscal Year 2004, that it would consider an extension of the auditable financial statement due date, provided that the relevant agencies offered evidence of significant progress in this area.

Based on information provided by the agencies in 2004, the Committee recognized that meaningful measures had been devoted to producing auditable financial statements but concluded that maintaining the original March 1, 2005, deadline would be counterproductive in that it would require audits that would divert resources from actual financial system improvements. Accordingly, in S. Rpt. 108-258, accompanying S. 2386, the Intelligence Authorization Act for Fiscal Year 2005, the Committee extended the due date set in the report accompanying S. 1428 (S. Rpt. 107-63), for the NSA, DIA, and NGA by two years, to March 1, 2007, to allow for audits of the Fiscal Year 2006 financial statements. This change

does not affect the CIA, which was required by Public Law 107-289 to submit audited financial statements for Fiscal Year 2004.

D. INVESTIGATIONS AND INQUIRIES

1. Captain Michael "Scott" Speicher

Following numerous hearings, Member briefings, staff-led meetings, and the production of a lengthy classified report in prior years, during the 108th Congress, the Committee continued its involvement in the case of U.S. Navy Captain Michael "Scott" Speicher, who was shot down over Iraq on January 17, 1991, the first night of Operation Desert Storm. He was declared Killed In Action (KIA) in May 1991; the Navy changed his status to Missing In Action (MIA) in January 2001; and the Navy designated him Missing/Captured in October 2002. Through staff and member briefings, the Committee continued its oversight of IC efforts to ascertain the fate of Captain Speicher.

E. AUDITS

The Committee's Audit and Investigations Staff was created in 1988 to provide "a credible independent arm for committee review of covert action programs and other specific IC functions and issues." During the 108th Congress, the staff of three full-time auditors led or provided significant support to the Committee's review of a number of administrative and operational issues relating to the agencies of the IC. In addition, the Audit and Investigations Staff completed five in-depth reviews of specific intelligence programs or issues. These reviews included the following:

1. The NRO's Future Imagery Architecture Program

During 2003, the Committee's Audit and Investigations Staff examined the acquisition management processes for the National Reconnaissance Office's (NRO) Future Imagery Architecture (FIA) program. The audit focused on the NRO's contract administration and financial management mechanisms as they related to FIA, in addition to a general overview of the FIA program. The National Geospatial-Intelligence Agency's segment of the FIA program also was examined.

2. Joint Inquiry Committee recommendations

The Report of the U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence Joint Inquiry into IC Activities Before and After the Terrorist Attacks of September 11, 2001 (the "Joint Inquiry"), was issued in December 2002. The Report contained 19 recommendations relating to improving the U.S. Government's ability to combat terrorism at home and abroad. During the 108th Congress, the Audit and Investigations Staff conducted a review of the status of these recommendations. The review determined that many of the recommendations had been or were in the process of being implemented, although several had yet to be fully addressed.

3. IC information sharing

In 2003, the Committee's Audit and Investigations Staff was tasked with reviewing the current status of information sharing

across the IC, to include its interactions with state, local, and private sector entities. The review determined that the Community has undertaken a number of initiatives since September 11, 2001, to enhance the sharing of information related to countering terrorism. The Audit and Investigations Staff found that progress in increasing the sharing of information was being made organizationally, technologically, and culturally throughout the IC. Problem areas noted during this review include the need for increased senior management attention, additional financial resources, electronic interconnectivity, and further breaking down of historical, cultural barriers.

4. Central Intelligence Agency Program

In 2004, the Audit and Investigations Staff reviewed the past several years of the Central Intelligence Agency Program, with a focus on emergency supplemental funding, to ensure that the CIA could accurately and efficiently track the use of its appropriated funding.

5. The Foreign Intelligence Surveillance Act

At the end of the 108th Congress, the Audit and Investigations Staff was completing a review of the Foreign Intelligence Surveillance Act (FISA). The last Committee review of the FISA was completed in July 1998. Since 1998 there have been a number of developments that have had an effect on the statute itself, as well as its implementation.

IV. CONFIRMATIONS

A. PORTER J. GOSS, DIRECTOR OF CENTRAL INTELLIGENCE

On September 7, 2004, the President formally submitted to the Senate the nomination of Congressman Porter J. Goss to serve as the Director of Central Intelligence. On September 13 and 14, 2004, the Committee held public hearings on Mr. Goss's nomination. At the time of his nomination, Mr. Goss had served in the House of Representatives for nearly 16 years as the Representative of the 14th Congressional District of Florida, and the final seven years as Chairman of the House Permanent Select Committee on Intelligence. From 1960 to 1962, Mr. Goss served as an intelligence officer in the United States Army and, from 1962 to 1972, served as a member of the clandestine service of the Central Intelligence Agency. Under the National Security Act of 1947, the Director of Central Intelligence serves as the head of the United States IC, as the principal advisor to the President on intelligence matters, as well as head of the Central Intelligence Agency.⁴

The Committee favorably reported Mr. Goss's nomination to the full Senate on September 20, 2004. The Senate considered and approved his nomination on September 22, 2004, following a roll call vote.

⁴Following Mr. Goss's confirmation, the National Security Intelligence Reform Act of 2004, Title I of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-

B. LARRY C. KINDSVATER, DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT

On May 11, 2004, the President nominated Larry C. Kindsvater to serve as the Deputy Director of Central Intelligence for Community Management. On July 15, 2004, the Committee held a closed hearing on Mr. Kindsvater's nomination to permit a more thorough discussion of sensitive intelligence matters. At the time of his nomination, Mr. Kindsvater had served the United States in numerous positions within the IC, including the preceding four years as Executive Director for IC Affairs. From 1972 through 1994, Mr. Kindsvater served in various analytic and leadership positions in the Central Intelligence Agency. From 1994 through his nomination, Mr. Kindsvater served as a member of the DCI's Community Management Staff, focusing primarily on budget and resource management issues. Under the National Security Act of 1947, the Deputy Director of Central Intelligence for Community Management directs the operations of the Community Management Staff and provides management and oversight, through three Assistant Directors of Central Intelligence, for the collection, analysis and production, and management functions of the IC.⁵

The Committee favorably reported Mr. Kindsvater's nomination to the full Senate on July 21, 2004. The Senate considered and approved his nomination on July 22, 2004, by unanimous consent.

C. FRANK LIBUTTI, UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION, DEPARTMENT OF HOMELAND SECURITY

On April 28, 2003, the President nominated Frank Libutti to serve as Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security. The Committee held a public hearing on June 17, 2003 to consider Mr. Libutti's nomination. Prior to his nomination, Mr. Libutti had served as the New York City Deputy Police Commissioner for Counterterrorism. From 1966 to 2001, Mr. Libutti served as an officer in the Marine Corps. He retired as a lieutenant general.

The Committee favorably reported Mr. Libutti's nomination to the full Senate on June 18, 2003. The Senate considered and approved his nomination on June 23, 2003, by unanimous consent.

D. OTHER NOMINATIONS

Consistent with the Committee's jurisdiction over the intelligence activities and programs of the United States Government, the Committee held two additional closed sessions to discuss issues with Presidential nominees for IC positions within the Administration. On March 4, 2003, Dr. Stephen A. Cambone, then the President's nominee for the position of Under Secretary of Defense for Intelligence, briefed the Committee regarding the role of the new position in the management and oversight of the intelligence activities of the Department of Defense and the relationship of the position to the Director of Central Intelligence. On July 13, 2004, Mr.

⁵The National Security Intelligence Reform Act of 2004, Title I of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458 (December 17, 2004), dissolved the position of Deputy Director of Central Intelligence for Community Management as a statutory position.

Thomas Fingar, then the President's nominee for the position of Assistant Secretary of State for Intelligence and Research, appeared before the Committee to discuss his plans for the Bureau of Intelligence and Research, an element of the IC under the National Security Act of 1947.

Based on the amendments made to S. Res. 400, 94th Cong. (May 19, 1976), by S. Res. 445, 108th Cong. (Oct. 9, 2004), future Presidential nominees for all civilian positions within the IC, requiring the advice and consent of the Senate to the appointments, will be referred to this Committee. Under the terms of Sec. 17 of S. Res. 400, as amended, only this Committee will have jurisdiction to report such nominations to the full Senate.

V. SUPPORT TO THE SENATE

The Committee undertook a number of activities to support the Senate's deliberations. 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 prepared, and made available for the Senate, compendia of intelligence information regarding topics relevant to current legislation. Members outside the Committee frequently sought and received intelligence briefings by members of the Committee staff. Members also requested and received assistance in resolving issues through the actions of elements of the IC. Finally, the Committee routinely invited staff from other committees to briefings on intelligence issues of common concern.

VI. APPENDIX

SUMMARY OF COMMITTEE ACTIONS

A. Number of meetings

During the 108th Congress, the Committee held a total of 216 on-the-record meetings, briefings, and hearings. There were 13 hearings held on the IC budget, including the Conference sessions with the House. Three nomination hearings were held.

B. Bills and Resolutions originated by the Committee

1. S. Res. 27—An original resolution authorizing expenditures by the Select Committee on Intelligence.
2. S. 1025—Intelligence Authorization Bill for Fiscal Year 2004.
3. S. 2136—To extend the final report date and termination date of the National Commission on Terrorist Attacks Upon the United States.
4. S. 2386—Intelligence Authorization Bill for Fiscal Year 2005.

C. Bills referred to the Committee

1. S. 266—To provide for the access and handling by personnel of State and local governments of classified information to facilitate preparation and response to terrorist attacks, and for other purposes.

2. S. 410—To establish the Homeland Intelligence Agency, and for other purposes.

3. S. 190—To establish the Director of National Intelligence as head of the IC, to modify and enhance authorities and responsibilities relating to the administration of intelligence and the IC, and for other purposes.

4. S. 1212—To identify certain sites as key resources for protection by the Directorate for Information Analysis and Infrastructure Protection of the Department of Homeland Security and for other purposes.

5. S. 1520—To amend the National Security Act of 1947 to reorganize and improve the leadership of the Intelligence Community of the United States, to provide for the enhancement of the counterterrorism activities of the United States Government, and for other purposes.

6. S. 2040—To extend the date for the submittal of the final report of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission, and for other purposes.

7. S. 2672—To establish an Independent National Security Classification Board in the executive branch, and for other purposes.

8. S. 2854—To facilitate alternative analyses of intelligence by the Intelligence Community.

D. Publications

1. S. Hrg. 108–161—Current and Projected National Security Threats to the United States.

2. S. Hrg. 108–182—Hearing on Nomination of Frank Libutti to be Under Secretary for Information Analysis and Infrastructure Protection, Department of Homeland Security.

3. Report 108–52—Special Report of the Select Committee on Intelligence, Committee Activities January 3, 2001 to November 22, 2002.

4. Report 108–44—Report to Accompany S. 1025.

5. Report 108–258—Report to Accompany S. 2836.

6. S. Rept. 108–301—Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq.

7. S. Hrg. 108–655—Intelligence Community Reform.

8. S. Hrg. 108–588—Current and Projected National Security Threats to the United States.