

Hearing of the

United States House of Representatives

Permanent Select Committee on Intelligence

Subcommittee on Intelligence Community Management

Moving from Plans to Action:

The Imperative for Implementing Intelligence Reform

Thursday, December 5, 2007

Testimony of Suzanne E. Spaulding

Hearing of the
United States House of Representatives
Permanent Select Committee on Intelligence
Subcommittee on Intelligence Community Management
Thursday, December 5, 2007

Moving from Plans to Action:

The Imperative for Implementing Intelligence Reform

Testimony of Suzanne E. Spaulding

Chairwoman Eshoo, Ranking Member Issa, Members of the Committee. Thank you for this opportunity to testify today on implementing intelligence reform initiatives, particularly the DNI's 500-Day Plan.

I am here today to offer an outsiders' perspective, with all the limitations inherent in relying upon observations of a classified world by one who no longer holds a clearance. However, I spent nearly 20 years as an "insider", working national security and intelligence reform issues on Capitol Hill, in the executive branch, including at CIA, and with four commissions examining intelligence community organization and effectiveness.

In 1996, as General Counsel for the Senate Intelligence committee, I helped to craft the committee's proposals for significant intelligence reform. Nearly two decades later, I was able to assist Members of the House Intelligence committee to develop their proposal for intelligence reform, modeled in large part on the Goldwater Nichols reform of the military. This proposal was introduced early in 2004 and was largely echoed in the subsequent recommendations of the

9/11 Commission. By the end of that year, after much difficult negotiation, Congress enacted the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA).

I think it is fair to say that no one thought the legislation that emerged from this difficult process was perfect. It is my sense, however, that, flawed as it may be, it provides an adequate basis upon which a Director of National Intelligence who has strong backing from the President can significantly improve the management of the IC to achieve greater unity of effort in order to provide better intelligence.

Good intelligence is essential for the success of virtually every element of national security policy. We depend upon the intelligence community to collect information using sensitive sources and methods, combine that classified information with relevant “open source” information and expertise and, through rigorous analysis, provide information and assessments to decision-makers in national security arenas at the federal, state, and local levels that is as accurate as possible, timely, and actionable.

Having said that, expecting the intelligence community to meet this standard with respect to every security and foreign affairs target all over the world at all times is not realistic—something Americans and, particularly, policymakers need to understand. The challenge is to maximize the effectiveness of intelligence capabilities so as to enable significantly better strategic and tactical awareness, understanding, and warning about today’s threats.

The 9/11 Commission Report delivered a significant blow to the public’s confidence in the intelligence community, and the depiction of intelligence as having supported the WMD case for war in Iraq dramatically undermined its credibility. Neither impression is entirely accurate; intelligence community analysts identified the serious threat to the homeland posed by Al Qaeda and Osama Bin Laden many years before 9/11 (“State Dept. Says It Warned About bin Laden in 1996,” by Eric Lichtblau, *New York Times*, August 17, 2005.), and policy-maker misuse of intelligence created an image of certainty about Iraqi weapons programs that was lacking in the many of the intelligence reports. Nevertheless, the community is left needing to restore its credibility and the trust of the American people. In part that will come from improving the

quality of intelligence. But it will also take increased transparency, enhanced oversight, and proactive steps to reassure that analysis reflects intelligence rather than policy preferences at either end of Pennsylvania Avenue.

With those initial thoughts as a backdrop, let me comment briefing on the DNI's 100-Day and 500-Day plans.

The DNIs Plans for Integration and Collaboration

First, these plans must be viewed in the context of the understandable frustration within and from outside the IC with what certainly appears to be a slow pace of change in the community. For example, six years after 9/11 and more than two years after the enactment of IRTPA, the IC is still just "developing a plan" to recruit first and second generation Americans and has a "pilot program" to "pave the way for a standard and uniform clearance process enabling us to hire and move people where and when we need them." (*Follow-up Report on the 100-Day Plan*, at p.2.)

However, Director McConnell has at least laid out a clear set of priorities and has set forth plans for achieving them. The public documents reflecting these plans are somewhat thin on details, making them harder to evaluate, but let me offer a few observations.

The most important element in the success of any enterprise is the quality of its workforce. This has obvious implications for recruitment, hiring, training, deployment, and retention. The second essential element for producing better intelligence in today's dynamic environment is to enable freer flow of people, information, and resources to enable the level of agility required to meet evolving threats that do not fit into static organizational structures or stovepipes. Networked threats require a networked response--not just technologically but in terms of fully and effectively tapping resources inside and outside the IC, in order to understand and defeat these threats. And third, these people and resources need excellent management. They must be deployed and managed in a way that maximizes their potential. A high-quality

workforce enabled and empowered by effective management will produce high quality intelligence.

The DNI's plan addresses all three of these essential objectives: quality workforce, freer flow of people, resources, and information, and effective management.

The Workforce

Ultimately, the greatest strength of the IC, and its most valuable asset, is its people. The IC must attract, hire, and train individuals with the right skill sets and experience, and then provide them with the right tools and incentives.

Appropriately, the first core initiative is "Treat Diversity as a Strategic Mission Imperative." A more diverse workforce produces better results in any place of employment but it is a particularly urgent imperative for the IC. Analysts with varied cultural background, or who have at least traveled outside the United States, provide insights that are difficult, if not impossible, to gain from academics alone. Similarly, as HUMINT moves into non-traditional platforms, diversity in the case officer cadre becomes increasingly vital.

But we have known this for many years. Greater progress should have been made long ago. This is not so much a criticism of the DNI as it is a plea for impatience; for a sense of urgency not apparent in the Plan--or in the component agencies. Moreover, only one of the enabling initiatives in Focus Area One relates directly to the core initiative of increasing diversity, "Improve Recruiting, Hiring and Retention of Heritage Americans (1st and 2nd Generation Americans)." There are no specifics in the 500 Day Plan for how this will be accomplished. Other enabling initiatives, such as strengthening recruiting relationships with colleges and universities and improving foreign language capability, can also support the goal of diversity but only if that goal is clearly defined as part of the enabling initiative--which it is not in the Plan. Is diversity viewed as simply a hoped-for by-product of those initiatives, or will they be specifically designed with the goal of diversity in mind?

Strengthening recruitment efforts in colleges and universities is also a worthy but long overdue objective. Congress has appropriated funds for several years to initiate analyst training for college students to give them a head start in an intelligence career. These programs at colleges and universities can also help to identify and attract the kind of diversity the IC desperately needs. This is a program with great promise that needs strong support from the DNI in order to finally move off the planning desk and into classrooms at colleges and universities.

At the same time, the IC, particularly CIA, should reexamine its traditional preference for recruiting young people right out of school and assuming they will work there for their entire careers. This is no longer practicable or wise for many reasons, including the influence of a more transient workforce generally in America. Moreover, there is a serious gap in the IC between relatively new employees and very senior employees. For example, nearly 50% of analysts today have 5 years or less of experience in the IC.

Instead, the community should increasingly consider recruiting individuals who are in mid-career or even nearing the end of a career elsewhere. These workers can bring specialized skills and ready-made experience that would take many years and significant resources to duplicate in the IC. Moreover, while the IC may not be able to offer the kind of competitive compensation necessary to recruit specialized skills at the outset of a career, individuals with those skills may be more interested in serving their country in the IC for a few years later in their career or as a second career. (That said, compensation at every level may need to be reexamined in order to enhance the ability of the IC to attract the quality workforce necessary to meet today's challenges.)

Hiring people later in their careers would also help address the continuing difficulty in the clandestine service with developing adequate collection platforms and case officers with the skills necessary to interact with today's intelligence targets.

Similarly, performance appraisals are an important motivator if they measure the right things in the right way. They can also distort behavior in ways that do not contribute to better intelligence. The DNI's plan focuses on standardizing performance appraisal reviews (PARs) to

“reward collaboration.” While the 500-Day Plan does not provide specifics, the 100-Day Plan Follow-up Report cites the need to “[e]stablish personnel evaluation criteria focusing on ‘responsibility to provide’ for analysts and collectors.” (at p. 18). Countering the current incentives for defaulting to classification will be key in overcoming the over-classification problem that threatens information sharing--and thereby threatens our security. Including this as an aspect of performance evaluations would be a significant step in the right direction.

Beyond the collaboration concern, however, PARs can also sometimes work at cross-purposes with the goal of speaking truth to power. When candidates for Senior Executive Service are told they are more likely to get the promotion if policymakers ask for them by name, or customer satisfaction becomes key to advancement, it makes it harder for an analyst to be the bearer of bad news.

Policy maker evaluations can be a valuable tool for measuring the value of intelligence--and I would encourage the committee to consider bringing in consumers of intelligence to get their views on whether intelligence reform efforts are in fact producing more useful and accurate intelligence. However, policy-maker assessments must be taken with a grain of salt and filtered for bias based on preferred policy outcomes. Failure to do so, particularly in the context of evaluating individuals, invites politicization of intelligence. The classic management wisdom of placing the priority on pleasing the customer carries risks when applied in the intelligence context. The DNI’s plan for basing reviews on the evaluations of peers and others in addition to the employee’s immediate supervisor could provide a basis for guarding against this problem within the IC.

To balance the inevitable tendency to want to deliver “good” news to the policymaker, IC leadership at all levels must constantly reinforce the importance of independent analysis that goes where the intelligence and good tradecraft take it. The most effective way to convey this message is to lead by example.

There are many ways to politicize intelligence. Changing or distorting analytic products to support policy is only the most blatant. Limiting analysts to answering questions asked by

policymakers, rather than encouraging them to also consider what questions policymakers should be asking, can also produce one-sided analysis with a limited focus. The danger is not only that politicized intelligence is likely to be less accurate, but also that in limiting the scope of issues that analysts examine, we risk neglecting areas of looming national security importance. Another way to mitigate this risk is to treat Congress as a legitimate consumer of intelligence, with the ability to ask questions of the IC. This would promote a broader scope for analysis--if only because it is likely to broaden the scope of questions asked.

The Follow-up Report on the DNI's 100-Day Plan provides further insight into the vision for improving analysis. It includes technology that not only enables individual analysts to better cope with the massive amounts of information flowing across their virtual space but also to more fully interact with their colleagues in other agencies and experts outside the IC on a real-time, ongoing basis to share questions and ideas rather than just documents. This is essential. Similar trusted information networks need to be developed in other areas of the IC and with the national security elements of other nations at the working level.

Freer Flow of People, Information, and Resources

The government cannot reorganize every time the nature of the threat changes. Instead, organizational boxes need to become less significant, replaced by policies and technologies that permit people, information, and resources to flow far more freely between the inevitable stovepipes of bureaucracy so as to maximize deployment to meet changes in missions, opportunities, and the tactics of our adversaries.

The "joint duty" program advocated in the HPSCI legislation in early 2003 appears to finally be moving toward implementation with the promulgation of IC Policy Guidance 601.1. This will continue to need careful attention and Congress will need to ensure that the policy is being implemented fully. As we learned watching the Goldwater Nichols implementation process over many years in the military, it is not enough simply to mandate joint duty for promotion. The DNI's 500-Day Plan reflects some of the tasks that still must be undertaken, such as expanding the number of joint duty opportunities and monitoring promotion rates.

Promotion opportunities will be important motivators for employees, but it will be equally essential to attracting quality individuals that the joint positions offer opportunities to perform important and rewarding work--not just punching a ticket.

Unfortunately, the weakest aspect of the 500-Day Plan appears to be Information Sharing. The Report on the 100 Day Plan talks about having prepared memos and established interagency groups, but there is no real evidence in that report that information sharing actually increased in any significant way. Nor is it's vision for where the IC should be heading particularly inspired. The 500-Day Plan is similarly thin. The core initiative designed to accomplish the goal of accelerating information sharing is "Enhance Intelligence Information Sharing Policies, Processes, and Procedures." The only solid, measurable part of the plan for this goal seems to be to establish a single community classification guide, which will be helpful but hardly sufficient.

There are serious challenges to greater information sharing within the IC and with the wide range of intelligence consumers. Some of these are based on legitimate concerns about protecting sources and methods, law enforcement equities, or the privacy rights of individuals. Others, however, are a result of bureaucratic intransigence. It will require a strong commitment from the DNI to move this initiative forward.

Effective Management

The DNI was established to bring a greater unity of effort to the intelligence mission. This does not mean pulling in or replicating all elements of the IC within the Office of the DNI (ODNI). Nor does it mean eliminating the distinct cultures of these various entities. It means getting the 16 different elements of the community to work effectively together, maximizing the unique strengths and capabilities of each, to accomplish the mission. The most important aspect of this is ensuring that national priorities take precedence over agency priorities.

The primary benefit of Goldwater Nichols reforms in the military was bringing greater unity of effort to accomplish the mission. This was done in large part by reducing the role of the

service chiefs to that of “recruiting, training, and equipping” the men and women in uniform. The operational activity of these individuals was then dictated by the combatant commander to whom they were assigned. A key principle was to ensure that the military resources were maximized toward the same priority—established by the combatant commander in response to overall direction provided through the national chain of command—rather than each service deciding their own priorities.

Before the Goldwater Nichols reforms, the various military branches were not confident that the others would adequately meet their needs. Thus, for example, each wanted to develop their own air, sea, and ground capabilities. Similarly, in the IC, each element increasingly seeks the authorities and capabilities of the other if they cannot rely on other agencies to match their priorities and meet the needs of their mission.

For example, it has been reported that, while military and CIA units worked extremely well together at times in Afghanistan, there were times when the CIA unit at a given site would suddenly announce that they were leaving because this particular mission was no longer their priority and they were being re-directed elsewhere. The military unit, for whom that mission remained a priority, was left without adequate intelligence support.

Thus, we have seen DOD re-creating the entire intelligence community, including the full range of HUMINT capabilities, in order to ensure that it has the intelligence necessary to meet its mission. With the Homeland Defense mission, the military has even sought and received some domestic intelligence authorities, such as the use of National Security Letters, which were previously the province of FBI. (“Military Expands Intelligence Role in U.S.,” Eric Lichtblau and Mark Mazzetti, *New York Times*, January 13, 2007.)

The IC equivalent to the pre-reform service chiefs are the heads of the various IC elements. Just as Goldwater Nichols pulled from the service chiefs to the combatant commander the authority to determine which troops did what and where, the DNI must pull up from agency heads the authority to ensure that national, rather than agency, priorities govern the activities of the intelligence professionals.

The most effective way to ensure national priorities are being met is for the DNI to have timely transparency into budget execution aligned by mission. The closer the DNI can come to having real-time budget execution data arranged by mission area, the more comprehensive will be his or her knowledge of how intelligence assets are deployed, how well all of the program and activities are fulfilling their missions, and whether they are meeting national priorities. This will also allow far more agile, efficient, and effective management of those resources, including reallocation of funds during the year of execution rather than primarily at the annual budget build. Technology should enable automatic transparency in budget execution across all agencies in the IC without burdening those obligating the funds with additional reporting requirements.

The IRTPA was intentionally vague on many of the provisions describing the authority of the DNI. This reflects the political compromises necessary to win enough votes from a skeptical Congress trying to enact an idea that was forced on the Executive Branch by a political alliance of long-time observers, a few key Members of Congress, and the 9/11 families. A few members of Congress understood the need to bring greater unity of effort to the intelligence community and believed that creating a DNI was a necessary first step. What emerged from the tough negotiating process was far from perfect, but it provides adequate direction and authority if backed by the necessary political will.

Without strong backing from the President in interagency disputes, the DNI can only fully manage that which he or she owns. This has contributed to the growth of ODNI. This growth has also been prompted by the constant layering on of new DNI responsibilities, some by Congress and some by agencies anxious to shed undesirable tasks. To the extent that the DNI then uses that bureaucracy to task the rest of the community to serve the needs of the DNI, as opposed to tasking them to work toward national priorities, its primary impact will be to add to the workload of already over-stretched professionals.

Instead, the pyramid should be inverted, with the DNI serving the needs of IC professionals to enable them do their jobs and meet the needs of their true consumers, the decision makers in government. Done properly, this should not undermine the authority of the

DNI as the leader of the community to ensure that each element is working effectively toward national priorities. Serving the needs of the intelligence professionals does not mean allowing them to continue to go in their own direction. It means recognizing that it is these professionals who do the actual work of intelligence and making sure they have the tools and the guidance to meet the nation's needs.

Start by reducing the burden of information required to be sent up to the DNI. To some degree, data calls from the DNI have been necessary to gain an initial "situational awareness." And gathering information on how resources are deployed across the community, as noted earlier in the budget context, can provide a solid basis for evaluating how that deployment matches up against the priorities identified by the NSC and how much overlap and duplication may be occurring. However, the DNI should make it a priority to simplify the flow of that information, automating as much as possible and minimizing the need for intelligence professionals to take extra steps to compile or analyze that information.

Community management can also be strengthened if the DNI is relieved of the burden of being the President's daily intelligence briefer. It takes a significant portion of the DNI's time each day to become expert on all of the intelligence issues of interest to the President (a task that could be delegated to senior analysts) and significantly impairs his ability to manage the community (a role only he can adequately fulfill). Moreover, the DNI becomes more personally invested in the analysis he presents to the President, making it harder to alter the analysis as new information warrants. The DNI can continue to be the President's senior intelligence advisor without being his or her daily briefer.

Maintaining Realistic Expectations

Intelligence is a vital enabler for national security decision-making. However, it is not a panacea; intelligence consumers need to develop more realistic expectations for what intelligence can provide.

Particularly since 9/11, there has been an almost single-minded focus on developing tactical intelligence about pending attacks. This is rarely achievable. In the meantime, there has been inadequate attention paid to the value of and need for better strategic intelligence and analysis to help us understand the nature of the threats we face.

Good HUMINT is far harder to acquire than most intelligence customers might imagine. Identifying, assessing and recruiting a foreign national with the right access to provide key information that meets priority intelligence requirements requires good fortune in addition to excellent tradecraft. When policymakers expect HUMINT “on demand” the result is often reporting from assets who are either of questionable credibility or marginal value.

In addition, the intelligence community is not, and cannot be, omnipresent. Too high a percentage of intelligence resources have been locked up in Iraq, leaving CIA unable to adequately cover other areas of concern. Even if fewer resources were committed to Iraq, however, the CIA should not be expected to maintain a presence, with a stable of assets and other capabilities, in every country of the world. The DNI should ensure effective deployment of other elements of the intelligence community, particularly NSA and DIA, to ensure the broadest coverage possible in today’s dynamic threat environment. Too often, the IC elements are like tourists engaged in whale watching—all clustered on one side of the boat where a whale has surfaced, with no one watching for whales to surface on the other side. The DNI must bring greater discipline to the allocation of assets to avoid dangerous gaps.

With regard to terrorism, at least, this will require far broader and deeper interaction with outside experts in order to understand the full context of this struggle. This means not just terrorism experts, but everything from sociologists and anthropologists to bloggers and train-spotters. (See, for example, *Force Multiplier for Intelligence: Collaborative Open Source*

Networks, by Arnaud de Borchgrave, Thomas Sanderson, Jacqueline Harned, Center for Strategic & International Studies, July 2007.)

Measuring Progress

The 500-Day Plan recognizes the imperative for measuring results but, again, is short on specifics. Terms like “continual improvement”, “more accessible”, “increased interaction”, “sufficient” plans, “clear intent and commitment” assume that any improvement constitutes success. Given the frustrations to date, perhaps that is all that can be expected. However, if there are not more detailed benchmarks against which the IC intends to measure progress, the committee should press the DNI to develop them. And these metrics, to the greatest extent possible, should be based on output rather than input or process. Moreover, the metrics should be routinely re-evaluated to see if they actually correspond to the ultimate desired outcome: better intelligence.

Again, the 500-Day Plan may not reflect all that is being done. For example, there are indications that metrics have been developed to allowing senior managers to assess progress against key hard targets. If so, this could provide an empirical basis for resolving debates over future investments in collection systems. A more accurate and precise assessment of gaps against hard targets can inform decisions about whether the Community should continue to invest as much in national technical means as it once did, or should increase investment in human and signals intelligence.

A Comprehensive Review of Domestic Intelligence Threat and Authorities

I have already touched upon the adequacy of the DNI’s management authorities, but the 500-Day Plan also makes reference to possible changes in Executive Order 12333 and other policies, particularly regarding US persons. This kind of review may be appropriate but should not be undertaken without significant informed public discussion and debate. Moreover, it should be done only after a comprehensive review of all laws, policies, and procedures affecting US persons and others inside the US, as well as a comprehensive assessment of the nature and scope of the threat inside this country from international adversaries.

FISA is the primary statute governing domestic intelligence collection. Congress is in the midst of considering changes to FISA to address the surveillance from inside the US of foreign targets overseas. There is broad agreement that communications between foreign targets should not trigger the safeguards provided in FISA. The thorny issue with which Congress has been wrestling for months, however, is how to handle communications in which one end is with someone inside the United States. The 4th Amendment to the Constitution protects the communications of persons inside the United States. Traditionally, this has not prevented the intelligence community from accessing US-end communications that are acquired incidentally overseas while going after a foreign target. However, with so many more Americans today engaging in so many more international communications, it is more important than ever to ensure that the government is not accessing Americans' communications without appropriate and verifiable safeguards.

The Administration also has indicated its interest in a broader overhaul of FISA to reflect changes in technology and in the nature of the national security threats. Rather than attempt to guess at what might really be needed to meet today's challenges and how these and other changes will affect our ability to protect national security and preserve Americans' privacy, Congress should take the time to ensure they understand the full context in which these changes are being sought. This includes the problems that have prompted them, particularly as these relate to current and past intelligence activities and the changing nature of the threat, as well as how these new authorities, definitions, and procedures would relate to all of the other national security and law enforcement tools available to the government.

The attacks of 9/11 revealed a vulnerability at home that led to a dramatic increase in domestic intelligence activity. The Federal Bureau of Investigation's priorities shifted, as it was pressed to place domestic intelligence collection at the forefront rather than criminal law enforcement. But the FBI is not the only entity engaged in domestic intelligence. The Central Intelligence Agency, National Security Agency, Department of Defense, Department of Homeland Security, and state and local law enforcement are among the many entities gathering intelligence inside the US. Congress and the American public should understand what these

various agencies are doing inside the US and make informed decisions about what activities should be taking place, by whom, and with what safeguards to protect against abuse and unwarranted or unconstitutional invasions of privacy.

The threat to the homeland presents unique challenges, both to effective intelligence and to appropriate protections against unwarranted government intrusion. Unfortunately, the legal framework governing this intelligence activity has come to resemble a Rube Goldberg contraption rather than the coherent foundation we expect and need from our laws. The rules that govern domestic intelligence collection are scattered throughout the US Code and a multitude of internal agency policies, guidelines, and directives, developed piecemeal over time, often adopted quickly in response to scandal or crisis and sometimes in secret.

Rather than continuing this pattern, Congress should consider establishing a Joint Inquiry or Task Force with representation from the most relevant committees (Intelligence, Judiciary, Armed Services, Foreign Affairs, and Homeland Security), to carefully examine the nature of the threat inside the US and the most effective strategies for countering it. Then this task force, the entire Congress, and the American public, can consider whether we have the appropriate institutional and legal framework for ensuring that we have the intelligence necessary to implement those strategies, with adequate safeguards and oversight.

The various authorities for gathering information inside the United States, including the authorities in FISA, need to be considered and understood in relation to each other, not in isolation. For example, Congress needs to understand how broader FISA authority relates to the various current authorities for obtaining or reviewing records, such as national security letters, section 215 of FISA, and the physical search pen register/trap and trace authorities in FISA, and the counterparts to these in the criminal context, as well as other law enforcement tools such as grand juries and material witness statutes.

Congress should undertake this comprehensive consideration of domestic intelligence with an eye toward the future but informed by the past and present. Until Congress fully understands precisely what has and is being done in terms of the collection and exploitation of intelligence related to activities inside the US, by all national security agencies, it cannot wisely anticipate the needs and potential problems going forward.