

**CONGRESSIONAL OVERSIGHT OF INTELLIGENCE
ACTIVITIES**

HEARING
BEFORE THE
SELECT COMMITTEE ON INTELLIGENCE
OF THE
UNITED STATES SENATE
ONE HUNDRED TENTH CONGRESS
FIRST SESSION

NOVEMBER 13, 2007

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CONGRESSIONAL OVERSIGHT OF INTELLIGENCE ACTIVITIES

TUESDAY, NOVEMBER 13, 2007

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, at 2:37 p.m., in room SH-216, Hart Senate Office Building, the Honorable Jay Rockefeller, Chairman of the Committee, presiding.

Committee Members Present: Senators Rockefeller, Feinstein, Wyden, Feingold, Whitehouse, Bond, Snowe and Burr.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, CHAIRMAN, A U.S. SENATOR FROM WEST VIRGINIA

Chairman ROCKEFELLER. The meeting will come to order. The Senate Intelligence Committee meets in open session, which is actually required under the rules if we have nothing which is classified, so that's why we're here. But we have a very serious purpose, which is to examine how to optimize what you all talked about in the 9/11 Commission, and that is congressional oversight of the United States Government's intelligence activities.

To help in this undertaking we're going to hear from panels of expert witnesses. Our first panel will be two members of the 9/11 Commission—a rather distinguished gentleman by the name of Congressman Lee Hamilton, and another rather distinguished gentleman, the former Congressman Tim Roemer. Both are former Congressmen.

Our second panel witnesses will be Professor Amy Zegart from UCLA and Mr. James Saturno of the Congressional Research Service.

The Senate and House Intelligence Committees were created over 30 years ago as the congressional authorizers of the U.S. intelligence community budget and sensitive classified programs. In this role, the Senate Intelligence Committee is charged with carefully evaluating the legal foundation and operational effectiveness of a wide array of intelligence collection and analytic efforts that are linchpins to America's economic, diplomatic and security wellbeing.

The Intelligence Committee is unlike any other Senate committee. Our secure workspaces are windowless. Everything is enclosed in lead. We are guarded by the Capitol Police. Much of our oversight efforts take place in hearings, most of which are nec-

essarily held in closed session. Because the Committee deals with the nation's most sensitive secrets on a daily basis, we must conduct our work with great care to make sure that the public interest is served without compromising details that could give our adversaries an advantage.

In the aftermath of 9/11, the intelligence community's performance in the months leading up to the attacks came under considerable scrutiny. The sobering findings of this difficult but necessary retrospective investigation were published in the Joint Congressional Inquiry Report of 2002 and the 9/11 Commission Report of 2004.

Two weeks before the 9/11 Commission issued its report, the Senate Intelligence Committee released a sweeping and devastating report on the flawed collection, analysis and use of intelligence preceding the invasion of Iraq. Together these efforts provided the push that led by the year's end to the passage of landmark legislation reforming the intelligence community to a certain extent.

The focus on reform was not limited to the intelligence community, however. The effectiveness of Congress in overseeing these intelligence activities was brought into question as well and specifically by the 9/11 Commission, very pointedly and very properly.

Were there ways that the legislative branch could improve its own efforts at ensuring that our counterterrorism efforts and other critical intelligence programs were responsive and effective to the threats that are facing our Nation?

The Senate passed Senate Resolution 445 in October of 2004 which set forth a blueprint of reforms designed to strengthen the Senate Intelligence Committee and eliminate artificial hindrances to carrying out oversight, such as doing away with the 8-year limitation, which had a long and sordid history, placed on Senators serving on the Committee. We now serve at the will and pleasure of our two leaders.

Additional steps have been taken since the passage of Senate Resolution 445 to further improve the Intelligence Committee's oversight efforts. In February of this year, as the new Chairman of the Committee, I signed a memorandum of agreement, or MOA, with the Chairmen and Ranking Members of the Senate Appropriations Committee and the Appropriations Subcommittee on Defense, which is a bunch of words, except when you look at what I just said. And that improves the coordination and the transparency in how our Committees authorize and appropriate intelligence activities, which is a primary concern that was voiced by you on the 9/11 Commission.

It's not us doing authorizing but it's—and I'll explain further—it's an integration which has been working of these two Committees.

In order to improve the flow of information between the Committees under the MOU—memorandum of understanding—staff of the two Committees are notified of and allowed to attend the intelligence hearings of the other. In order to provide optimum staff support to Members, each member of the Intelligence Committee who also serves as an appropriator can bring his or her Intelligence

Committee staff members during Appropriations Committee hearings and markups.

In order to improve coordination between the two committees in their respective reviews of intelligence activities, all Senators and cleared staff of one committee are permitted under the MOA—memorandum of agreement—to review and report on any classified annex of the other committee before action is taken. So that gives us an insight into what the authorizers are doing, and it gives us a chance, the Vice Chairman and I, in order to intervene before they do markup. Before they do markup, we can go over there and talk loud.

Moreover, the Chairmen and Ranking Members, as I've indicated, of each committee have the opportunity to appear before the other to present their respective views prior to the markup, which I've indicated.

While there are other ideas for coordinating the oversight efforts of the two committees, which we will explore at today's hearing, I believe this memorandum of agreement, little known to the outside world, has made great strides toward bringing our committees together in a unity of effort that was lacking before. If not perfect, it is better.

Strengthening congressional oversight, however, is more than changing boxes and lines on an organizational diagram. It is first and foremost about marshaling the resources at the Committee's disposal to ask the hard questions and do the necessary digging and conduct the sort of objective and unflinching evaluation needed to understand where change within the intelligence community in fact is required.

In this regard, the Vice Chairman and I established study groups—we decided to go out on our own on this—within the Committee to get ahead of the curve and to examine the intelligence community's posture toward high-priority issues such as Iran, terrorist safe havens—wherever they might be—China, and many, many other subjects. It's all done on a bipartisan basis. They all work together. They're, you know, furiously working, and then they give us their reports and it's very, very helpful to us.

These efforts augment the invaluable work done by our core budget and issue staff monitors as well as the evaluations completed by our technical advisory group—something which most people don't know about but which is a group of five or six absolutely brilliant people entirely outside of Government who just have extraordinarily smart thoughts and things to say and say them very freely and openly to us.

We've also held two to three Committee oversight hearings a week since January, covering a multitude of topics, including Iraq, Iran, Afghanistan, Pakistan, North Korea, covert action, cybersecurity, terrorist ideology, human intelligence collection, technical collection systems and detention and interrogation programs.

In fact, the Committee has held over 60 oversight hearings and meetings in 2007, while at the same time reporting out a bipartisan bill on reforming FISA by a vote of 13 to 2, and the first authorization bill to pass the Senate in 3 years—and that's not necessarily big news to the outside world, but that's huge news to us,

absolutely huge. And it's not done yet. It's not agreed to yet by the entire Congress or the President, but I think it will be.

So the operation tempo of the Intelligence Committee has indeed been very high in 2007 thanks to the Vice Chairman and all of our Members, but there's always room for improvement and that is why we're holding our hearing today.

Before turning to Vice Chairman Bond for his opening remarks, I want to vent a bit to highlight what I consider to be the greatest impediment to effective congressional oversight.

For 7 years, I have witnessed firsthand how the Intelligence Committee has been continually frustrated in its efforts to understand and evaluate sensitive intelligence activities by an administration that responds to legislative oversight requests with indifference, if at all, and with usually outright disdain.

For 5 years after 9/11, the administration refused to brief the full membership of the oversight committees on the existence of NSA's warrantless surveillance program and the CIA's secret prison system and interrogation techniques, the two programs the administration publicly touts as indispensable tools in the war against terrorism. Oh, they said that the "gang of eight," so to speak, or the top leadership in the Intelligence Committees were briefed, but having attended all of those briefings, I can say that that is one of—the way you advertise movies; it's just a bit of an overstatement.

Those few congressional officials who were briefed were prevented from disclosing any details or having any conversations to any other Intelligence Committee members. I, for example, had Vice Chairman Bond and I had been receiving those, I could have not talked to him, nor could I talk to my chief of staff. I did write two letters of protest about the programs under review to the Vice President, one of which is public and one is not. But to discuss it with anybody? No—not with Dianne Feinstein, Senator Wyden, not with Senator Bond. I mean, it just didn't make any sense at all.

It was a way of controlling what we had access to—giving us insufficient briefings about huge topics in which they had been potentially breaking the law and then preventing it from going any further in discourse.

Now, these few congressional officials who were briefed, as I said, were muzzled. The end result was that the Intelligence Committees were bypassed for 5 years at a critical time when oversight into controversial legal and operational questions was needed in the most urgent fashion. It was an amazing asymmetric way of thinking.

You know, you can get endorsement, you can get support from the Intelligence Committee, but you have to tell them what you're doing, and you can't withhold information from them, and you can't lie to them, and we faced a bit of that.

In retrospect, the administration's unwillingness to deal with Congress as a full partner after 9/11 in authorizing and funding these programs was shortsighted and in turn created the compounded problems that we are dealing with this day.

In my capacity, first as Vice Chairman and now as Chairman of the Senate Intelligence Committee, I am in an ongoing, pitched battle with an administration that myopically views congressional

oversight as being at odds with protecting national security. In recent months, I have unsuccessfully urged the White House to give all members of the Intelligence Committee access to a number of so-called gang-of-eight programs—those are so-called very secret ones, like the NSA surveillance and the CIA detention programs, which I've mentioned that before.

These programs are known—and just think about this: These programs are known to hundreds if not thousands of executive branch employees but cannot be shared with the Intelligence Committees, the Senate or the House—cannot be shared, will not be shared, and that's just the way it is. Only eight members of the legislative branch are trustworthy enough to know about them. Is that a proper standing of the public interest? I think not.

For years, the White House and the intelligence community have repeatedly withheld information and documents, even unclassified documents, from the Committee that we have asked for. For instance, I have pressed the administration for years without success to turn over the Committee legal reviews concerning the lawfulness of the CIA's secret detention program interrogation techniques. We were successful in getting that done, but it was not a happy exchange.

Just last week officials uniquely knowledgeable about the CIA program were prevented from meeting with the Committee staff to answer questions—not with the Committee members, but with the staff. They were here; they were ready. The meeting was set; the staff was set and then they were told to go to the airport and leave.

It doesn't make this Chairman very happy. And it's something that I think that the 9/11 Commission understands but the American people need to understand very fully—that this is not just about how we get along with the authorizers; this is about a fundamental withholding of information which is, under the 1947 law, ours to understand. It legally is ours to understand, and they have ignored it. Maybe they ignored it in the previous administration. I don't know; I wasn't on this Committee then.

So while we discuss today ways of further improving congressional oversight, I'd like to hear the views of each of our witnesses on the harm done to this statutorily mandated oversight when the executive branch decided it would rather bypass or ignore Congress in carrying out controversial intelligence programs.

From my vantage point, the notion that congressional oversight is impeded simply because an authorizing committee may have a different view on spending priorities than an appropriation committee, I won't say it's simplistic; I just think it misses the larger point. We can work things out with the authorizers; we can work nothing out—we can work absolutely nothing out with the administration unless they choose to let it be worked out.

Intelligence does not belong, evidently, to the Intelligence Committee. It belongs to those who, for political or policy reasons, decide that it will be given to us or not. And I am profoundly frustrated by this.

And so, I mean, in closing, effective oversight is never going to be fully realized as long as the administration views the Congress as little more than a speed bump when it wants to carry out intel-

ligence activities unfettered by what Congress might have to say about some of those programs.

I now recognize the Vice Chairman.

OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, VICE CHAIRMAN, A U.S. SENATOR FROM MISSOURI

Vice Chairman BOND. Thank you very much, Mr. Chairman, for holding this hearing today. You have received requests from our members to hold this hearing, and I appreciate you scheduling it.

With respect to the points that you made, I was pleased to work with you so that we were able to have the Committee briefed on those critical programs such as the terrorist surveillance program and detention and interrogation techniques, which you discussed. And I think that goes a long way.

But you will recall that during the debate on the 9/11 bill in March, you and I supported the sense of the Senate provision calling on the Committee and the Senate Homeland Security and Government Affairs Committee to conduct hearings on intelligence reform, specifically on congressional reform of fiscal oversight of intelligence, which is why I believe we're here today. Even though the Senate has adopted some of the 9/11 Commission's recommendations on congressional reform, this most important area, in my view, has not been addressed.

The 9/11 Commission stated that, of all our recommendations, strengthening congressional oversight may be among the most difficult and important, further stating that congressional oversight of intelligence and counterterrorism is now dysfunctional. The recommendation of the Commission to deal with that dysfunction was to consolidate authorization and appropriations in a single committee.

I understand Senators Burr, Bayh, Snowe and Hagel and Feingold from this Committee, along with other Members, introduced a resolution on the Senate floor this morning to do exactly that, and I commend them for bringing greater attention to the issue. The traditional authorization and appropriations process, while not perfect, serves the Nation's needs adequately in most instances.

So what's different about the oversight of intelligence within today's national security framework? How does it differ from the past?

Well, throughout the cold war, there were two superpowers dominating the international arena. The primary function of national intelligence was to provide strategic warning of Soviet intentions or actions. The risk of miscalculation on either side could have resulted in a cataclysmic war involving nuclear weapons. Both the United States and the Soviets understood the conflicts; therefore the Soviets sought their political objectives through intimidation and coercion rather than actual war.

That threat and, with it, the former purpose of national intelligence changed with the dissolution of the Soviet Union and the rise of a new and potentially more ominous threat. The Soviets did not seek violent confrontation as primary objectives, but our new adversaries seek violent confrontation and death as a primary means to their goals.

The conversion of Islamist extremism with the spread of weapons of mass destruction technologies has dramatically shifted the burden and the need for national intelligence requirements at this point in our history. A failure of intelligence over the next decade and beyond, similar to that of 9/11, could result not in several thousand deaths but potentially several million.

Surprise attacks by large-scale military forces of hostile nations can easily be detected by national technical capabilities, but a small suicidal cohort armed with a weapon of mass destruction is extremely hard to detect. This necessitates a fundamental shift in the purpose, organization, training and operations of our national intelligence capabilities.

With that shift comes an increased demand for rigorous and consistent intelligence oversight by Congress. The question before us today is whether or not today's traditional bifurcated Senate oversight process is suitable to achieve the goals of oversight.

Some would like to say that the change has already occurred, so we should call it a day. Well, as one of three appropriators for intelligence who also sits on the Committee along with Senators Feinstein and Mikulski, I can tell you that if the change has occurred, I haven't seen it. On the contrary, in my experience I've seen more evidence of a need for a better synthesis between the two.

For example, this Committee is currently conferencing our 2008 Intelligence Authorization Act with the House and we're looking at a number of issues where our bill is disjointed from the 2008 Defense Appropriations Act. As recently as a few hours ago, my staff was receiving calls from intelligence officials worried about a number of potential "A not A"—appropriated but not authorized—issues. That's not a showstopper in most fields, but when it comes to national security and intelligence, it usually does not make a whole lot of sense.

We have almost 50 professional staff on this Committee who spend all their time doing nothing but intelligence oversight day in and day out. And, as the Chairman so adequately said, we've had over 60 hearings. We spend a lot of time going in depth into all these issues.

On the other hand, the Defense Appropriations Committee has fewer than a half dozen staff who write the intelligence appropriation portion of the defense appropriation bill, and that's less than one-tenth of the overall money in the bill.

Our Committee has held scores of intelligence oversight hearings, the Defense Appropriations Subcommittee has held notably few. I think the disparity is clear. What I'm saying is this oversight, their power, on the budget is now disjointed.

Let me be fair to my other committee, the Defense Appropriations Subcommittee. That committee does outstanding work, and I commend Chairman Inouye and Ranking Member Stevens for the attention and the time they've put into defense matters.

But that is my point. That committee is consumed with defense matters—and they are major—not intelligence matters. The committee is wrapped up in nearly half-trillion-dollar appropriations bills, with less than one-tenth of it comprising the national intelligence program that we in the SSCI oversee. As SAC/D is cur-

rently constructed, it can't give intelligence the attention it deserves.

Mr. Chairman, we discussed this issue at the beginning of this Congress and you believed, as you indicated, that the best path was to sign a memorandum of agreement with the chairmen and ranking members of the Appropriations Committee promising better coordination. I expressed to you my disagreement because I believed the MOA was weak and would not effect real change.

I had hoped we would move together, but when I returned from an overseas trip and I found that an MOA had been signed—and Senate counsel advises me it's invalid, but I don't think it would work anyhow. But since you brought it up, let's look at how difficult the issue has been by showing how ineffective the MOA has been.

The MOA has four points. The first says the staff of each committee will be notified and allowed to attend the intelligence hearings of the other. I canvassed our staff and one of them once was invited to one meeting. My staff was never even notified of them, and I'm on that committee. Strike one.

Second, it states that the members, the overlapping members, could bring one staffer with us to the SAC/D markups. Well, we've always been able to do that, yet the marks were decided well beforehand, so by the time we got there, the pie had already been sliced. Strike two.

Third, we're supposed to be able to review the SAC/D mark before markup. We were shown it right beforehand, with no opportunity to provide SSCI influence to it. Strike three.

Fourth and finally, the Chairman and Vice Chairman were supposed to appear before SAC/D to make our case for our marks and the SAC/D's Chairman and the ranking member were supposed to appear before our Committee to do the same thing. It didn't happen.

Strike four.

I have been looking at better integrating intelligence expertise in the appropriations process for some time, and regrettably I thought MOA would fail, as it has. I also don't think even if it were followed religiously it would address all of the concerns that your commission raised, and that's why I did not support it.

So has anything really changed since the 9/11 Commission recommendation over the past few years? Well, this year our Intelligence Committee included in particular four major oversight initiatives. Each of these represents a substantial departure from business as usual.

One, stop funding of cold war technology collection capability.

Two, move to cheaper technical collection capability so more sensors can be deployed and provide more data to policymakers and the military.

Three, realign the management of a collection program that has failed for more than a decade to deliver a capability integral to its mission. This represents the third consecutive year the Committee has identified severe technical and managerial difficulties in the program, some of which going back a decade.

Four, undertake an innovative technology demonstration program.

The first three of these initiatives were ideas the Chairman and I jointly supported and were recommended by staff. The fourth was an amendment offered by Senator Mikulski and me that was adopted on a bipartisan vote.

Each of these issues was fully briefed to the SSCI members and approved by a vote of Committee members; on the Appropriations Committee, however, that did not happen. Senators Mikulski, Feinstein and I are members of the Defense Appropriations Committee, yet none of these four issues was brought before the SAC/D so that members could be briefed on them, debate and vote on them. In fact, the SAC/D marked up the nearly half a trillion dollar Department of Defense bill in about 20 minutes in an open session. That's far less time than we spent just debating one of the issues I discussed.

If anyone thinks it's a new problem, it's not. In 2000, the previous administration proposed a new collection program. Our Intelligence Committee analysis indicated the program would cost substantially more than estimated and the utility of data collected did not justify the cost. Chairman Shelby and Vice Chairman Bryan at the time opposed the program. Subsequently Chairman Roberts and Vice Chairman Graham opposed the program. Chairman Rockefeller and I have supported program termination as well.

We've been recommending termination of the program on a bipartisan basis for years. If you think the fight was just an inter-committee squabble, nothing could be further from the truth. Every outside technical review conducted on the merits of the program by the administration's outside experts recommended killing the program.

In 2001, the Scowcroft panel recommended termination in NSPD-5. In 2004, an independent panel of technical collection experts appointed by the Bush administration recommended terminating the program. The outside technical advisory board of the agency in charge of the program recommended terminating it consistently. The first Director of National Intelligence, John Negroponte, recommended killing it.

Chairman Rockefeller, when you were Vice Chairman and now as Chairman, you've been a consistent, vocal and articulate advocate for the program's termination. It took until recent time to end a program that at least should have been terminated a number of years ago, and unfortunately, all told, the loss to the taxpayers is astronomical—in the billions of dollars.

I could go on, but suffice it to say that the same institutional and structural problems that have existed for years still impede our effective oversight.

I'd like to hear what our witnesses say that Congress should do about it. I'm not backing any particular option yet. I've seen the 9/11 recommendations and the panel that Speaker Pelosi put together on the House side to address this issue and I've heard a number of others, a few of which I'm looking at closely, but I think there are good options from which to choose. They need to be discussed.

Well, I think we can do better for the American people and for our job, Mr. Chairman. That's why I'm pleased you called this hearing so we can hear from our really distinguished expert wit-

nesses and then at our business meeting next week we can discuss their ideas among others. I thank you, Mr. Chairman. I look forward to hearing from our witnesses.

Chairman ROCKEFELLER. Thank you very much, Chairman Bond.

Vice Chairman BOND. Oh, let me ask unanimous consent. There's a short statement from the families of 9/11 that I ask be included in the record of today's hearing.

Chairman ROCKEFELLER. Without objection.

[The information referred to follows:]

STATEMENT OF FAMILIES OF SEPTEMBER 11

To be submitted for the record for the November 13, 2007 public hearing of the Senate Select Committee on Intelligence

More than 6 years after 9/11, the U.S. Congress can be applauded for the many changes it has enacted to ensure terrorists cannot attack our homeland again. Congress passed the Intelligence Reform and Terrorism Prevention Act of 2004, reforming the intelligence community and creating the Office of the Director of National Intelligence, while implementing dozens of other 9/11 Commission recommendations. This past summer, Congress passed the Implementing Recommendations of the 9/11 Commission Act of 2007, providing for improved aviation security, creating a commission to study the prevention of Weapons of Mass Destruction terrorism and increasing information sharing among Federal, state and local law enforcement. These were much needed measures that are making an impact in the prevention of future attacks.

Families of September 11, an organization of more than 2,500 victims' family members, survivors and concern citizens, dedicated to making sure what happened on 9/11 never happens again, is proud to have worked with Congress over the past 6 years to lend our support to their efforts. However, as big an impact as Congress' work has had, more needs to be done, and done now.

The 9/11 Commission Report states "[o]f all our recommendations, strengthening congressional oversight may be among the most difficult and important." The report outlines the pressing need for the overhaul of the current congressional intelligence oversight structure. "Under the terms of existing rules and resolutions, the House and Senate intelligence committees lack the power, influence, and sustained capability" to adequately oversee our nation's intelligence community.

Families of September 11 understands what is at stake, and fully supports the 9/11 Commission's call for either a "joint committee for intelligence" or the creation of "House and Senate committees with combined authorizing and appropriations powers".

This type of congressional overhaul is not easy. Some members stand to lose power. Change is uncomfortable, inertia takes over.

But the consequences are too important to allow inertia to stave off needed structural reforms in Congress. Since 9/11, the intelligence community has been restructured to meet the new threat, but Congress has not.

Now is the time for Congress to heed to the warnings and advice of the 9/11 Commission, to shine a spotlight on its own structure and evaluate its strengths and weaknesses in its ability to oversee our intelligence community.

Families of September 11 is glad the Senate Select Committee on Intelligence is holding today's hearing, and welcomes an opportunity to share our unique perspective on the importance of reforming congressional oversight. Unfortunately, our membership knows all too well the possible consequences of inaction—in human terms—when bureaucratic self interest stymies oversight of the essential government function of intelligence collection and analysis. Due to the secretive nature of intelligence, American citizens can do little more than trust that our government is doing its job in both the executive and legislative branches. To do its job, properly and effectively, Congress must have all the tools necessary to do its job. The 9/11 Commission made clear that was—and is not now—the case.

This year, Congress passed legislation that enacted virtually all of what were the report's as yet unimplemented recommendations. Is it really possible that the 9/11 Commission was right on everything except the changes needed within Congress itself? Please take the difficult step of re-organizing to meet the current threat, so that Americans can begin to trust Congress again.

Thank you for the opportunity to submit this statement for the record. Signed,
Board members and founders of Families of September 11
Donald Goodrich, Chairman of the Board

Nancy Aronson, Treasurer Elinor Stout, Secretary Tim Barr, Board member Paul Bea, Board member Paul Chicos, Board member David Edwards, Board member Carle Lemack, Founder

Chairman ROCKEFELLER. And also without objection, we're going to keep the record open so that any Senator who wishes to include a statement in the hearing record can do that. Also without objection, the written opening statements of all witnesses will be included in the hearing record in full.

It's now my honor to call on a most distinguished American, Lee Hamilton.

**STATEMENT OF HON. LEE H. HAMILTON, FORMER VICE
CHAIRMAN OF THE 9/11 COMMISSION AND FORMER MEMBER
OF THE U.S. HOUSE OF REPRESENTATIVES**

Mr. HAMILTON. Thank you very much, Mr. Chairman, Mr. Vice Chairman, distinguished members of the Select Committee on Intelligence. Thank you for the honor to appear before you today. I testify on behalf of Governor Thomas Kean. He's not able to be with us today, but he joins me in the statement that I'm about to present.

He and I both commend the Chairman and the Vice Chairman, of course, for holding this hearing. The importance of congressional oversight simply cannot be overstated. Senator Bond just has entered into the record the statement of the families of September 11. I was very pleased to see that statement. We've worked closely with them over a period of years and they are supporting, I think, the basic thrust of our testimony and we're very happy to have their support.

Public Law 110-53 expresses the sense of the Senate that the Select Committee on Intelligence should report by December 21 of this year on its recommendations for improving intelligence oversight. Therefore, this hearing is timely and we welcome the opportunity to present the perspective of the Chairman and the Vice Chairman of the commission. Tim Roemer is here as well. He was an absolutely outstanding member of the 9/11 Commission, and I'm pleased, of course, to testify with him.

Senator Bond mentioned that we wrote several years ago that, of all of our recommendations, strengthening congressional oversight may be among the most difficult and the most important. Carrying out effective oversight of intelligence is very, very hard to do. If you're the Chairman of a committee that works in the unclassified world, you get a lot of help—a lot of reporters who bring issues to your attention, trade associations write reports, citizens speak up, watchdog groups do studies; you get the Congressional Research Service, you have the General Accounting Office—on and on and on, all kinds of help.

Not so in the classified world. The world of intelligence is vast. It is closed and it is complicated. It is comprised of 16 agencies with well over 100,000 employees, as then-Director Negroponte indicated. The budget is \$43.5 billion a year announced last week, even bigger if the spending for military intelligence is included. If you're on the outside world of intelligence, you know nothing about it other than what the executive branch decides to tell you.

The Intelligence Committees are completely on their own. They serve as the proxy for the American people on intelligence. They

provide the sole check and balance on a huge and important Government activity. If they don't provide the independent oversight, it simply doesn't get done. It's an awesome responsibility. In short, this is why we believe the Intelligence Committees need to be powerful and active. They need to carry out the robust oversight our system of Government requires. They need to look into every nook and cranny of the intelligence community's business. They need to ensure that laws are obeyed. They need to ensure that the American people are safe and that their freedoms are protected.

The Founders understood the importance, of course, of checks and balances on Executive power. That's why they gave you the power of the purse. The single most important step to strengthen the power of the Intelligence Committees is to give them the power of the purse. Without it, you will be marginalized. The intelligence community will not ignore you, but they will work around you, and in a crunch they will go to the Appropriations Committee.

Within the Congress, the two bodies with the jurisdiction, time, expertise to carry out a careful review of the budget and activities of the intelligence community are the Senate and House Committees. Senator Bond mentioned a moment ago the 50 or so staff members you have here and the handful of staff members you have on Appropriations in the Senate.

When we were preparing the recommendations for the 9/11 Commission, Governor Kean and I came up here and asked Members of the Senate caucuses, Republican and Democrat, House and Senate, how good a job you were doing on oversight. The word "dysfunctional" was used by you over and over again, and we put it in the report. Two Senators said to me, looking back on the preceding fiscal year, that they had spent about five or 10 minutes overlooking the intelligence budget in the Appropriations Committee for the entire year. Now I believe it's gotten better than that, but that's why we use the word dysfunctional.

All of us have to live by the golden rule, and the golden rule is that he who controls the gold makes the rules. Leaders of the intelligence community also understand the golden rule. They work hard to get the answer they want from the people who control their dollars. They take advantage of the fact that the defense appropriators are mightily distracted from intelligence oversight because of their other responsibilities. You've also referred to that in your opening statement.

I want to be very clear here. The Appropriations Committee performs the best oversight work it can. The difficulty is that that subcommittee is simply overburdened. It has responsibility for a \$500 billion-plus defense budget, it's fighting three wars—terrorism, Iraq, Afghanistan—it has hundreds and hundreds of complex issues before it. It also has a responsibility for an intelligence budget about one-tenth the size of the defense budget.

I can appreciate that the Appropriations Committee has brought on additional expert staff on intelligence issues. I was pleased to hear the Chairman talk about the integration of the Appropriations and the Senate Intelligence Committees and the work that has been done to improve the system.

I like to hear about the focus on the key issues. You're going to be judged on a handful of issues, the big ones that confront Amer-

ican national security. Whether or not it's seen whether you do your job or the Senate does its job or the House does its job is really going to depend on a handful of issues, the big, big intelligence issues that this country confronts—we all know what they are—with regard to our national security.

So I appreciate the efforts that are being made in both houses in the Intelligence and the Appropriations Committees to improve coordination and transparency. They're useful steps, but they are not a substitute for fundamental reform.

As the 9/11 Commission recommended 3 years ago, the Congress should either create a joint committee for intelligence—with budget power, of course—or create House and Senate committees with combined authorization and appropriation powers.

It was a disappointment to us, but it came as no surprise, that the Congress did not act on the commission's recommendations. It's much easier for the Congress to reform the executive branch than it is to reform its own institutions. Committee powers in the Congress are carefully balanced. They are jealously protected. Changing jurisdiction means redistributing power. Few things are more difficult to change in Washington than committee jurisdictions.

I served in the Congress. I was involved in several efforts at congressional reform. Some failed; none of them achieved more than partial success. And so I have a lot of sympathy with those who take up the challenge of reform.

The approach that Governor Kean and I have taken since the commission issued its report is pragmatic. Our preference is for a single committee with authorization and appropriation powers. We believe that's the best approach. We can also count votes and, so far as I know, we don't see them.

We believe that there are other constructive approaches. The same law that calls on this Committee to make recommendations on congressional oversight also requires the declassification of the overall intelligence budget. Last October 30, the Director of National Intelligence publicly released information on the overall intelligence budget. That was a recommendation of the commission and we applaud the Director's statement. A public number for the intelligence budget means it no longer has to be hidden inside the defense budget. A public number opens the way for the creation of a separate Appropriations subcommittee on intelligence.

I understand full well that a separate Appropriations subcommittee on intelligence may not be the preference of this Committee. It was not the recommendation of the commission. But ways have to be found to bring greater focus and additional resources to the oversight of intelligence appropriations. Governor Kean and I will support reforms and structures that increase the opportunity and likelihood of robust congressional oversight of the intelligence community.

Let me give you some practical examples as to why oversight of the intelligence community is more important than ever and why congressional oversight must be reformed and strengthened.

First, the United States will without a doubt intervene again somewhere with military force. It may be the most important foreign policy question of the coming decades. Decisions whether to intervene and how to intervene will ride largely on what the intel-

ligence tells us. It is vitally important that the intelligence community get it right. Oversight is vitally important to help the community get it right.

Second, the Congress since 9/11 has provided broad authorities to the executive branch to conduct investigations and collect data. Enhanced collection capabilities and data mining pose high risks to civil liberties and to privacy. To safeguard our liberties, the Congress must conduct robust oversight over the exercise of the authorities it has granted.

Third, the success of reform also needs congressional oversight. Reform in the intelligence community, the most far reaching since 1947, is not easy to implement. Reform is a long and hard road. Crises distract, attention wavers, senior officials are pulled in 100 different directions. The executive cannot carry out reform on its own. Support and guidance from the Congress are necessary to sustain reform. Sustained oversight is necessary.

Chairman Rockefeller requested comment from us with regard to this very difficult question of access to information. That's not a new problem in the Congress. That goes back 30, maybe 40 years, when the committees have been fighting for more information from the intelligence community. When I was Chairman of the Intelligence Committee in the House, we fought that battle every single week. It has not been resolved.

I don't know the answer to that except the only way to get the attention of the executive is to withhold the money. You'll get their attention quick when that money is withheld.

The checks and balances in the Constitution are there for the Senators and the Members to exercise, if they will do it. If you want access to information and the executive branch won't give it to you—don't give them the money. You'll get the information.

To conclude, let me just say that, under our Constitution, Congress cannot play its proper role unless its oversight committees are powerful and active. I was immensely pleased to hear a moment ago that you have had over 60, I think it was, oversight hearings during this year thus far. That shows a vitality and activity that I think is just extraordinary on the part of this Committee and you are to be commended for it.

Strong oversight provides the checks and balances our Constitution requires. Strong oversight by the Congress protects our liberties.

It makes our policies better. Strong oversight, I believe, keeps our country safe and secure.

Thank you very much. After Congressman Roemer testifies, I'll be glad to help answer questions.

[The prepared statement of Governor Kean and Mr. Hamilton follows:]

OPENING STATEMENT OF THE HON. LEE H. HAMILTON, FORMER VICE CHAIR OF THE 9/11 COMMISSION, ON BEHALF OF HIMSELF AND THE HON. THOMAS H. KEAN, FORMER CHAIR OF THE 9/11 COMMISSION, BEFORE THE SELECT COMMITTEE ON INTELLIGENCE, U.S. SENATE

November 13, 2007

Mr. Chairman, Mr. Vice Chairman, distinguished members of the Select Committee on Intelligence: Thank you for the honor to appear before you today on the topic of congressional oversight of intelligence.

My testimony today is also on behalf of Governor Thomas H. Kean, the former Chair of the 9/11 Commission. He is not able to be present today. He joins me in this statement.

Gov. Kean and I commend the Chairman and Vice Chairman for holding this hearing. The importance of congressional oversight of intelligence cannot be overstated.

Public Law 110-53 expresses the sense of the Senate that the Select Committee on Intelligence should report by December 21, 2007 on its recommendations for improving intelligence oversight. Therefore, today's hearing is especially timely. I welcome the opportunity to present the perspective of the 9/11 Commission's Chair and Vice Chair.

STRENGTHENING OVERSIGHT

As the Commission wrote in its final report 3 years ago, "Of all our recommendations, strengthening congressional oversight may be among the most difficult and important."

Carrying out effective oversight of intelligence is very hard to do.

If you are the Chairman of a Committee that works in the unclassified world, you get a lot of help. There are lots of reporters who bring issues to your attention. Trade associations write reports. Citizens speak up. Watchdog groups do studies. You can get the Congressional Research Service to analyze an issue. You can get the Government Accountability Office to investigate.

Not so in the classified world. The world of intelligence is vast, and it is closed. It is comprised of 16 agencies with well over 100,000 employees. Its budget is \$43.5 billion a year, and even bigger if spending by the military services is included. If you are outside the world of intelligence, you know nothing about it other than what the Executive branch decides to tell you.

The intelligence committees are completely on their own. They serve as the proxy for the American people on intelligence. They provide the sole check and balance on a huge and important government activity. If they don't provide the oversight, it doesn't get done. It is an awesome responsibility.

In short, this is why we believe the intelligence committees need to be powerful and active. They need to carry out the robust oversight our system of government requires:

- They need to look into every nook and cranny of the intelligence community's business.
- They need to ensure that laws are obeyed.
- They need to ensure that the American people are safe and that our freedoms are protected.

WHAT NEEDS TO BE DONE?

The Founders understood the importance of checks and balances on Executive power. That is why they gave the power of the purse to the Congress.

The single most important step to strengthen the power of the intelligence committees is to give them the power of the purse. Without it, they will be marginalized.

The intelligence community will not ignore you, but they will work around you. In a crunch, they will go to the Appropriations Committee.

Within the Congress, the two bodies with the jurisdiction, time and expertise to carry out a careful review of the budget and activities of the Intelligence Community are the Senate and House intelligence committees.

Yet all of us have to live by the Golden Rule: That is, he who controls the Gold makes the Rules.

The leaders of the Intelligence Community also understand the Golden Rule. They work hard to get the answer they want from the people who control their dollars. They take advantage of the fact that the Defense Appropriators are mightily distracted from intelligence oversight because of their other responsibilities.

WHY SHOULD THE INTELLIGENCE COMMITTEE CONTROL APPROPRIATIONS?

I want to be very clear here: The Appropriations Committee performs the best oversight work it can. The difficulty here is that the Committee is overburdened. The Defense Subcommittee of Appropriations has responsibility for a \$500 billion-plus Defense budget. It has responsibility for three wars: terrorism, Afghanistan and Iraq, as well as hundreds of other complex issues. It also has responsibility for an intelligence budget about 1/10th the size of the defense budget.

Now I appreciate that the Appropriations Committee has brought on additional expert staff on intelligence issues. I appreciate that the Intelligence and Appropriations committees are making efforts to improve coordination and transparency. These are useful steps, but they are no substitute for fundamental reform.

As the 9/11 Commission recommended 3 years ago, the Congress should either create a joint committee for intelligence, or create House and Senate Committees with combined authorization and appropriations powers.

WHY IS REFORM DIFFICULT?

It was a disappointment, but came as no surprise to us that the Congress did not act on the Commission's recommendations. It is much easier for the Congress to reform the Executive branch than it is to reform its own institutions.

Committee powers in the Congress are carefully balanced. They are jealously protected. Changing jurisdiction means redistributing power. Few things are more difficult to change in Washington than committee jurisdiction.

During the time I served in the Congress, I was involved in several efforts at Congressional reform. Some failed. None achieved more than partial success. Therefore, I have great sympathy with those who take up the challenge of reform.

WHAT IS THE NEXT STEP?

The approach that Governor Kean and I have taken since the Commission issued its report is a pragmatic one.

Our preference, as the report stated, is for a single Committee with authorization and appropriation powers. We believe that is the best approach. We can also count votes. So far, we don't see them.

We believe there are other constructive approaches. The same law (PL 110-53) that calls on this Committee to make recommendations on congressional oversight also requires the declassification of the overall intelligence budget.

On October 30, 2007 the Director of National Intelligence publicly released information on the overall intelligence budget. That was the recommendation of the Commission, and we applaud the Director's statement.

A public number for the intelligence budget means it no longer has to be hidden inside the defense budget. A public number opens the way for the creation a separate appropriations subcommittee on intelligence.

I understand full well that a separate appropriations subcommittee on intelligence may not be the preference of this Committee. It was not the recommendation of the Commission.

Yet ways must be found to bring greater focus and additional resources to the oversight of intelligence appropriations. Governor Kean and I will support reforms and structures that increase the opportunity and likelihood of robust congressional oversight of the intelligence community.

WHY OVERSIGHT IS MORE IMPORTANT THAN EVER

Let me give some practical examples as to why oversight of the intelligence community is more important than ever, and why congressional oversight must be reformed and strengthened.

First, the United States will, without a doubt, intervene again somewhere with military force. Decisions whether to intervene and how to intervene will ride largely on what our intelligence tells us. It is vitally important that the intelligence community get it right. Oversight is vitally important to help the community get it right.

Second, the Congress since 9/11 has provided broad authorities to the Executive branch to conduct investigations and collect data. Enhanced collection capabilities and data mining pose high risks to civil liberties and to privacy. To safeguard our liberties, the Congress must conduct robust oversight over the exercise of the authorities it has granted.

Third, the success of reform also needs congressional oversight. Reform in the intelligence community, the most far-reaching since 1947, is not easy to implement. Reform is a long and hard road: Crises distract. Attention wavers. Senior officials are pulled in a hundred different directions. The Executive cannot carry out reform on its own. Support and guidance from the Congress are necessary to sustain reform. Sustained oversight is essential.

CONCLUSION

Under our Constitution, Congress cannot play its proper role unless its oversight committees are powerful and active.

Strong oversight provides the checks and balances our Constitution requires.

Strong oversight by the Congress protects our liberties and makes our policies better.

Strong oversight keeps our country safe and free.

I appreciate your time and attention, and look forward to your questions.

Chairman ROCKEFELLER. Thank you very much, Congressman Hamilton.

Congressman Roemer, we welcome you.

STATEMENT OF HON. TIMOTHY ROEMER, FORMER MEMBER, 9/11 COMMISSION, AND FORMER MEMBER OF THE U.S. HOUSE OF REPRESENTATIVES

Mr. ROEMER. Thank you, Mr. Chairman.

I'm going to ask unanimous consent that my entire statement be entered into the record, and I want to speak from the heart as a former Senate staffer, where I had my first job in the U.S. Senate, as a former Member of Congress, where I often fought with the executive branch for information, as a former member of the Intelligence Committee, where I will talk a little bit about some of the experiences and the frustrations we had on that committee getting information and answers as, Mr. Chairman, you have eloquently stated in your opening comments.

Mr. Vice Chairman, nice to be with you. I applaud your efforts to recognize Senator Burr and Senator Bayh's bipartisan bill, because at the end of the day, that's the only way that we can successfully approach and solve this problem of gaining, rebuilding, reforming congressional oversight to counter the Executive power and will on that side.

When I told my 7-year-old daughter, Grace, that I was coming up here to testify before Members of the Senate, she said, "Daddy, are you in trouble?" I think I knew the answer to that. Yes, I was walking into trouble. I'm a former staff member who did appropriations work for a United States Senator from the State of Arizona, Senator DeConcini, and I knew very well the battle that takes place between authorizers and appropriators.

I remember when I decided to run for Congress and go back home to Indiana and they gave me a going away party. Running against an incumbent, we won. And I remember being greeted coming back, and they had a coming back to Washington party and they said: "Mr. Roemer, you just went from being an appropriator to being a lowly House authorizer. We welcome back the intellectually challenged to Washington, D.C."

There is no doubt that this is a battle going on here in the Senate and over in the House.

I want to talk about 9/11. I want to talk about the three most compelling reasons why we need these reforms, and I want to talk about some of the options that we have before the U.S. Senate and the U.S. House.

The 9/11 attacks exposed a great many flaws in our defenses on that horrific day where we lost 3,000 people. Turf wars, cultures preventing information sharing and a lack of unity led to some of the problems on 9/11.

Terrorism thrives on this division. They take advantage of it with dynamic action and entrepreneurial activity. And they can strike with airplanes as weapons and kill hundreds and thousands of Americans. Imagine if they get a dirty bomb or a nuclear weapon.

Recognizing these flaws, the U.S. Senate and the U.S. House took action. They recognized that we needed to unify the executive branch in order to confront some of these difficulties and problems. You created a strong DNI; you created a strong National Counterterrorism Center. You created a Department of Homeland Security; I'm not so sure how strong that one is, but the effort was to centralize power.

Now it's time to focus on a unified and robust congressional oversight structure. You've done that for the executive, now we need the countervailing balance, that power, on the legislative side, as Madison talked about, the first branch of Government. Let's make it a first-class and first-rate power to compete with the executive branch.

So I applaud this Committee's willingness to look at this difficult problem, to take on turf and money and internecine warfare.

What are the three most compelling cases for reform? First, as Senator Bond I think very eloquently stated, there is a growing budget and growing fiscal responsibility to do this right. George Tenet released and declassified the budget in 1997 for intelligence spending and back 10 years ago it was roughly \$27 billion for the taxpayer. Mike McConnell just released this figure the other day; he said it was \$43.5 billion. Now you have 50 staffers on the Intelligence Committee to peruse, to look into that budget, to try to ask the tough questions about renditions, covert operations, special access programs.

The Defense Subcommittee doesn't have 20 and they don't have 10; I think they have roughly a half a dozen people. And they have responsibility not for the \$40 billion, but for about a \$500 billion defense budget—including supplementals that come through that committee—so those staffers and those Members, as good a job as they can possibly do, are overtaxed and overburdened. And I think Congress needs to recognize that and address that.

Furthermore, in intelligence we have some of the most sensitive collection technologies, the most sophisticated spy architectures, the most extensive covert programs and renditions and special access programs. Those need vibrant oversight.

Two, the world has changed dramatically since 9/11. The cold war structure that was meant to deal primarily with armies and nation states around the world is not necessarily the primary

threat to America today. It's rogue states; it's remote villages. It's the Internet, where al-Qa'ida recruits day in and day out. Al-Qa'ida, as I said before, can use airplanes to strike this Nation in a moment, in an instant, and try to kill hundreds of people.

We still may have legacy budgets and legacy architectures from that cold war. We need to spend less time on the tactical side and more time on the long-term strategic planning to try to make sure our intelligence budgets are right and they're not just right for tomorrow, we get them right for the next five to 10 years.

Thirdly, very compelling reason for this reform is the critical nature today of intelligence. Intelligence has always concerned matters of life and death. Now we know that they also concern matters of going to war, of winning wars and of staying out of wars. And we also know that intelligence is compelling in that it will give us information on Iran and what we might do next and what options are out there to make the critically right and important decisions.

We have assaults from a bloodthirsty enemy that creates a climate of fear in and out of our Government today, so it's very important that we get these intelligence budgets right. It's very important that we get the right kind of people before these committees. And my experience on the Intelligence Committee tells me that oftentimes when you serve on the authorizing committee that the intelligence community understands that and can game the system. They can circumvent that authorizing committee that has spent months doing budget oversight, that has spent years doing language capabilities and requirements and how needed that is for our rebuilding of our human resources and our human capacities, and they go to two or three people on the Appropriations Committee and get around months or years or work on the authorizing committee.

Those 60 and 70 hearings, Mr. Chairman, that you pour your heart and soul into to find out what we need to do to get that intelligence community going in the right direction after mistakes, are sometimes absolutely ignored and circumvented and the intelligence community knows the game and they know how to play it. There is an old saying that if that play keeps working three yards up the middle in a cloud of dust, they're going to keep running the same play.

What options do we have, Mr. Chairman and members of the Committee, going forward? I think, Senator Rockefeller, you outlined some ideas that are positive steps, progress: the memorandum of agreement, the creation of the Technical Advisory Group, the subcommittee that has empowered audit and investigative capability. I hope that is empowered even more with more staff and more capabilities.

And the Speaker of the House led the way in creating a House oversight panel on appropriations that I think is working very well. I talked to several of those Members over the course of the last several weeks and they say it's working better with more staff doing oversight, with more Members doing oversight, with increased cross-pollination between the authorization and the appropriations committees and much progress is being made. I hope that that continues and that the Senate and the House will go further in how to address the problems before them.

As the distinguished former Member of Congress, Congressman Hamilton stated, the 9/11 Commission has recommended two different options. And I have to say what an honor it is to be here in this room where the 9/11 families gathered so often with their pictures of their family members, where the committee held its hearings, where our distinguished Vice Chair who's led Indiana and is looked up to by so many Americans for his role in Congress and his post-roles since Congress, that I'm very honored to be before all you Members of the U.S. Senate.

We recommended either combining the authorization and appropriations committees, no term limits, try to empower those members with increased knowledge and experience, as we don't put term limits on other committees, or create a joint committee on intelligence, similar to the Joint Atomic Energy Committee that worked in secret, that worked in a bipartisan fashion and worked effectively with the executive branch.

In conclusion, let me just say going back to my days in graduate school, we were forced to read over and over and over again Woodrow Wilson's book, the classic that he wrote in 1885 called "Congressional Government." And he made two important observations. One, he stated, "Quite as important as lawmaking is vigilant oversight of administration"—vigilant, vigorous work from our staff and our Members prying into what the executive branch is doing when they're doing more and more sensitive things that could possibly violate Americans' rights and liberties.

And second he made the observation that, "The informing function of Congress is to be preferred even to its legislative function, even to legislating and creating new laws, that Congress be empowered to do its job of overseeing the President, whatever party he or she may be, whatever views they represent." That is the fundamental responsibility of what you do every day when you come to work, I think, to make sure that we feel that the exceptional nature of intelligence warrants this exceptional approach from Congress to create this powerful type of committee.

With that, Mr. Chairman, Mr. Vice Chairman, distinguished members, Mr. Hamilton and 9/11 families, I thank you.

[The prepared statement of Mr. Roemer follows:]

STATEMENT OF HON. TIMOTHY ROEMER

Reforming Congressional Oversight of Intelligence
Testimony Before the Senate Select Committee on Intelligence
13 November 2007

Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need.

—The 9/11 Commission Report

Mr. Chairman, Senator Bond, Members of the Committee, I am honored to be here today. The honor is particularly great given the presence of my former colleague and fellow Hoosier, Lee Hamilton.

The 9/11 attacks revealed a great many flaws in the conduct of America's defense, many of which stemmed from a lack of unity across the institutions designed to protect us. Terrorism, we learned, thrives on division: turf wars between foreign and domestic intelligence agencies hampered information sharing; the Central Intelligence Agency and Department of Defense sparred over control of the intelligence

budget; at the state and local level, first responders lacked compatible equipment and a sufficiently unified incident command system.

Recognizing these flaws, Congress responded by attempting to enforce unity of effort throughout the government. It created the Directorate of National Intelligence and the National Counterterrorism Center to centralize control of the intelligence community and the nation's counterterrorism efforts. Domestically, it created the Department of Homeland Security to coordinate infrastructure protection and ensure a seamless transition between Federal and local security programs.

I commend Congress for taking these important steps, as outlined by the 9/11 Commission, toward unity in the executive branch. Now it is time for Congress to focus on itself and on what the Commission labeled as one of its most important recommendations: a unified intelligence oversight structure in the Congress.

The 9/11 Commission recommended a more coordinated—and therefore more robust—Congressional oversight structure because we recognized the critical role that the legislative branch plays in the conduct of America's national security. We acknowledged that countering the threat of terrorism necessitated a shift of authority to the government. The intelligence capabilities behind such enhanced authorities are more powerful and penetrating than at any time in American history. And yet, for the government to sustain the powers necessary to win the war on terrorism, it must maintain the public's trust that it will wield them appropriately.

To do that, Americans must be reasonably assured that the Congress is fulfilling its constitutionally mandated role as a check on the executive. Reforming the structure and nature of Congressional oversight remains the best way to ensure Congress does so in the most effective manner possible.

I applaud this committee for its willingness to examine such a difficult and complex issue.

THE CASE FOR MORE AND BETTER OVERSIGHT

I would contend that the Commission's suggestions on oversight reform stand on their own merits apart from current events. But a growing intelligence budget, a more dangerous world and a growing reliance on intelligence for important policy choices have made reform all the more imperative.

A Growing Budget

Last month, the Director of National Intelligence revealed that the budget for the United States National Intelligence Program stood at \$43.5 billion dollars. Hidden within those billions of dollars are the paychecks for a growing number of talented personnel and the price tags for some of the most sophisticated collection technologies and most sensitive programs in American history. With wars in Iraq and Afghanistan, a global fight against al-Qaeda and the need to maintain and improve our traditional collection activities, the prospect of either declining or stalled growth in the intelligence budget seems remote in the near term.

The sharp growth in the intelligence budget also strains the existing and already taxed oversight structures in Congress. In addition to overseeing a growing intelligence budget, the Defense Appropriations Subcommittees in both the House and Senate—the bodies responsible for appropriating the intelligence budget—have to contend with the responsibility to oversee an even faster growing defense budget. Put simply, we need more oversight of intelligence because there is so much more intelligence to oversee.

The World Has Changed

Congress cannot remedy all of the problems of oversight by simply doing more of the same in part because the intelligence community of today little resembles the one which Congress first designed its oversight structures to monitor. In years past, no single official enjoyed central command of the many intelligence agencies. The intelligence budget represented the priorities of agencies more than the community as a whole.

Much work still remains to be done to ensure the intelligence community moves in unison. Today it is nonetheless more of a unified entity than before. The 2004 Intelligence Reform and Terrorism Prevention Act, as well as subsequent legislation, have placed broad authority over the community's budget and personnel into the hands of a single official. Faced with an intelligence community more unified in asserting its own priorities, the voice of Congress remains splintered across four committees in two chambers.

The world that the intelligence community is charged with providing information on has changed drastically, as well. The end of the cold war brought with it rogue states and non state actors willing to challenge the world's remaining superpower. The most critical information no longer resides exclusively in military bases or in

European embassies, but also in remote villages, on the internet and in the world's forgotten corners. It is of the utmost importance that the intelligence committees seek to do more long term planning to better match resources with changes in the global security environment. Unfortunately, the twin pressures of authorizing each year's multibillion dollar intelligence budget and attending to the numerous foreign policy "hotspots" consume most of Congressional overseers' time. This leaves precious little time to devote to the development of a strategic outlook.

The Critical Nature of Intelligence

Intelligence, as a supplement to American foreign and national security policy, has always concerned matters of life and death. It can win wars, lose wars or prevent them altogether. In today's increasingly uncertain world—particularly one in which preemption features prominently in America's defense policy—it is especially crucial. We are not simply collecting more intelligence, but asking more of it, as well. In 2003, our decision to use military force in Iraq hinged on it. Both today and tomorrow, intelligence will play a crucial if not deciding role in the important decisions we must make about our policy toward Iran. Given the great numbers of lives at stake, in a scenario of either military action or inaction against Iran, Congressional oversight to ensure the accuracy of Iranian WMD intelligence—or intelligence on any other nation's WMD capability for that matter—will in no small way influence the course of American history.

It is also undeniable, regardless of one's views on the many controversial intelligence programs undertaken since 9/11, that the intelligence community is using more aggressive tools to collect information than ever before. The assault on America and its allies from a swift and ruthless enemy has understandably created a climate of fear both inside and outside of government. The mixture of threats, fear and enhanced executive power can prompt the intelligence community to push right up to the line of legal and ethical acceptability. This climate can just as easily push it far across. Congress' increased attention is required to ensure that the latter does not happen.

OPTIONS

In the face of such challenges, Congress has undertaken some reforms to address past difficulties and to address the fluid national and international environment.

- The House has taken a constructive step forward in the creation of the House Appropriations Select Intelligence Oversight Panel.
- The Senate reduced the number of spaces on the Intelligence authorization committee from 17 to 15.
- The Senate Select Committee on Intelligence has signed a memorandum of understanding with the Senate's Defense Appropriations Subcommittee pledging to share information more freely and coordinate better on budget priorities.

These changes are praiseworthy. But the revolutionary changes in the world and in government demand a solution from Congress that is more than the sum of a few individual reforms. The 9/11 Commission recommended two options that would reform oversight in proportion to the different world in which it must now operate.

Combine Authorization and Appropriations Powers in Each Chamber

First, Congress could grant joint authorization and appropriation authority to a single committee in each chamber.

The necessarily secret nature of intelligence denies intelligence committees the ability to oversee the community in ways that are routine for other committees. Classification means only a small number of outside experts, nongovernmental organizations or members of the private sector are able to help Congress independently evaluate the intelligence community's management and activities. Similarly, it prevents Congress from leveraging public pressure against executive branch actions of which it disapproves.

In the realm of intelligence, Congress is forced to check and balance the executive with one hand tied behind its back. Devoid of the full range of tools available to other authorizers, the intelligence committees must rely heavily on the power of the purse to assert their will. By combining authorization and appropriation powers into a single committee in each chamber, Congress could speak to the executive branch on intelligence matters in a more unified voice using the language that most commands its attention.

A Joint Committee on Intelligence

A second option would be to combine the authorizing bodies from each chamber into a single committee modeled on the Joint Committee on Atomic Energy. The Joint Atomic Energy Committee serves as a particularly apt framework because its consolidated jurisdiction over authorization in the House and Senate allowed Con-

gress to oversee a powerful new capability, with speed, secrecy and the confidence of the executive branch.

Either new structure would require a range of other powers and changes, codified by resolution, in order to function as intended. It should reduce the number of seats available, both to encourage greater accountability in the legislative branch and greater trust from the executive branch. Membership should be drawn from the Defense Appropriations Subcommittee, as well as the Judiciary, Foreign Affairs and Armed Services Committees, in order to reflect the views of intelligence's many constituencies. Membership should also not be constrained by term limits to allow Members to develop the expertise necessary to oversee a dense and complex collection of agencies.

Critics note that both of the Commission's proposed reforms represent an exception to the general practice of Congressional oversight. We feel that the exceptional nature of intelligence warrants an exceptional approach from Congress.

CONCLUSION

Woodrow Wilson, as many of you may recall from your government classes, wrote a classic book in 1885 called Congressional Government. He made two particularly perceptive insights regarding oversight. First, he stated that "quite as important as lawmaking is vigilant oversight of administration." His second observation was that the "informing function of Congress is to be preferred even to its legislative function." Absent vigilant oversight, the informing function is weakened and, as Wilson concluded, both Congress and "the country remain in embarrassing, crippling ignorance of the very affairs which it should understand and direct."

If Congress is to be the "First Branch" of government, then focusing on greater efficiency and accountability in the intelligence community is worth doing the right way.

I thank you for the opportunity to speak on this important matter and look forward to your questions.

Chairman ROCKEFELLER. Thank you very much, Congressman Roemer. You spoke from the heart with a lot of erudition.

Mr. ROEMER. Thank you, sir.

Chairman ROCKEFELLER. You just memorized that Woodrow Wilson book.

Mr. ROEMER. It's a terrific book; I think I had to for graduate school.

Chairman ROCKEFELLER. OK. Let's just cut to the nub of this. Actually it was very interesting to me.

The Vice Chairman and I never look at each other's statements before we open meetings. And we have a very good record, I think, I believe, on working in a bipartisan fashion. And I think it's been noticed in the intelligence community.

But let's get down to some of the practical considerations, and I'm really seeking your guidance on this. I gave a statement in which I talked about the appropriations matter, which to be honest was sort of fulminated over a particular not-to-be-talked-about matter. Having said that, the concept of having the Intelligence Committee doing both the authorizing and the appropriations is deeply attractive to me, is deeply attractive to me. Where I run into trouble is not on the philosophy of it or on the righteousness of it, because we have so much more expertise than they have, as the Vice Chairman so eloquently put—I mean so much more; it is our obsession.

The question comes, when this was put to the Senate, this idea, it got 23 votes, and Congressman Hamilton referred to that, you know, when he said, "I can count." And so that brings me to a conundrum. In other words, one part of me says, OK, so you get 23 votes. So you persist. That's what life is about. That's the way both the Vice Chairman and I were able—incidentally, they don't just

game us, Congressman Roemer; we can also game them, and I've gotten pretty good at that. And it's an interesting process and not all that difficult.

But if we push this concept and we get 23 votes—but that was before. Now, we come back at them again. There is no particular weakening of the Appropriations Committee that I've noticed, but I may be entirely wrong; I mean, I'm not on it and I wouldn't be on it. I wouldn't be on it; that's not interesting to me. This is interesting to me. But if you push the vote again and you again get 23 votes, you get 25 votes, you get 27 votes, you get 20 votes, can it be said that, in fact, your position has weakened, and that other efforts to cooperate with them, if that is possible, are also weakened because the vote failed by a large margin?

Now, the Appropriations Committee is a very mysterious and amazing presence among all of us. And everything always comes down to that because they have the money and it's hard to get around. But if you get 23 votes for something, you can either come back and try it again and try it and try it again, or you can also look at some of the things that I suggested, what I think Vice Chairman Bond pointed out very well that hadn't necessarily worked, although I think in many cases that's simply because the effort was not made because maybe we were doing too many hearings and also the appropriators are very skillful in the way they time what they do.

But speak to me in plain terms about the strategy of getting the Congress or getting the American people to understand that unless we do both of these processes—we do the authorizing and we do the appropriating—I am all for that, and you can put me right on the Burr bill. Don't do it quite yet, please.

[Laughter.]

Chairman ROCKEFELLER. But I need to know the answer to that question, because if you fail, then you fail again, you're weaker. If you're weaker, then other things that you're trying to do to try and supplement or to move in further directions, to go around a corner or to come up from underneath behind them or something of that sort, are also weakened.

And I am perplexed by such and would seek your wisdom.

Mr. HAMILTON. The new factor is the publication of the intelligence budget.

Now, in the past, the defense appropriators have always said no, no, we can't disclose that figure and therefore we can't have a subcommittee to deal with just the intelligence budget. That is by the boards now. Everybody now knows what the intelligence budget is and you can bypass, if you would, the traditional opposition of the defense appropriators, at least on that point. So that's an important point.

Secondly, the mere fact that you negotiate a memorandum of agreement and that the House, as Tim was testifying a moment ago, has changed their way of handling the budget and all of the discussion indicates that the Senate recognizes you're not doing the job or you wouldn't be thinking about all these reforms. There must be then a feeling in the Senate that we're not doing as good a job as we ought to be doing on intelligence oversight. If there isn't that

feeling, you wouldn't be making reforms. But you are making reforms.

The third point would be look at what tactical moves should you make as the Chairman of the Committee in order to garner more votes above the 23 for this authorizing and appropriating. I don't know that I can be very helpful. You have to make those judgments yourself after talking with your colleagues about it.

To me, the strong point simply is that the Senate of the United States and the House of the United States is not doing its job. And because you're not doing the job, the country is not as safe as it ought to be, because one of my premises is that robust oversight is necessary for a stronger intelligence community. I don't think the intelligence community agrees with that.

They may rhetorically agree with it, but deep down I don't think they really agree to it. But you and I, I think, would agree to it. And you just have to keep pushing to go as far as you can to get necessary changes.

Now, this is not a trivial matter. You're not dealing with the jurisdiction of the Education Committee, where it doesn't make very much difference, frankly, who has the control of it. You're dealing here with the national security of the United States, and the Senate and the House ought to have the deep down feeling that we've got to get this thing right.

So that's about all I can say. I applaud, Mr. Chairman, your efforts within the world you have to operate in, but I think we're on the right side of this issue in terms of the effectiveness of the Senate or the House in conducting its responsibilities and you just have to keep pressing that issue.

And the appropriators, look, have to be persuaded here that they haven't been doing their job on intelligence, not because they don't want to. I'm sure they do want to. They're just simply overloaded.

You cannot take a \$500 billion budget—that doesn't include the supplementals, I don't think it does—and do an effective job of oversight on that kind of a budget, even with the staff they have. They just have so many questions. With all of that responsibility, they cannot do an effective oversight of intelligence.

And if I'm right about the importance of intelligence in American foreign policy in the future—intervention being the key question—your responsibility is to get the very best intelligence you can possibly get. I think that's what you have to work toward.

Chairman ROCKEFELLER. I apologize to my colleagues, but the declassifying of the top line I don't think was a huge matter to the Appropriations Committee. It was not a huge matter. It was not a big deal because it doesn't—

Mr. HAMILTON. Well, it's a big deal in terms of jurisdiction because—

Chairman ROCKEFELLER. Yeah, but it doesn't tell you anything.

Mr. HAMILTON. What's that?

Chairman ROCKEFELLER. It doesn't tell you anything.

Mr. HAMILTON. No, I don't think it tells any secrets.

Chairman ROCKEFELLER. Right. And then the second matter is—I mean, I can't escape it. I mean, we can pass a law if we could ever get the votes. I'd vote for it. But I don't think you answered my question.

Mr. ROEMER. Mr. Chairman?

Chairman ROCKEFELLER. I don't think you answered my question because you said we have responsibility for the national security. You better believe that we understand that. You better believe that when I was one of four being briefed on certain programs and they were appearing on television all the time saying: Oh, the Congress has been briefed, and I'd love to discuss some of those briefings to you and I won't do it, but they were superficial, they were inconsequential.

And so it's a question of us reforming ourselves and then me, as Chairman, working with our Committee members and Vice Chairman Bond trying to get that 23 up and educating the Appropriations Committee.

But it's also a little bit the responsibility of the executive branch of Government, and I just don't think you can pass that over. I just don't think you can say well, they're all the same. There's never been anything like this—never in the way of shut-out of information—willful, gleeful—stemming from the Vice President's office and David Addington and other things of that sort.

And I've gone on too long. I'm very angry about it. I'm very angry about it, and I think it's a very, very big factor.

Mr. HAMILTON. You have a right to be angry about not getting access to information. You can't do the job unless there is trust between the executive and the legislative branch.

Chairman ROCKEFELLER. And there is not.

Mr. HAMILTON. Trust is the coin of the realm, and no matter what kind of institutional structure you put into place, no matter what kind of organization you make, if you don't have that underlying trust, the system's not going to work very well. And part of underlying trust is whether or not they're willing to share information with you. I'm 100 percent with you on that.

OK, they don't share information. What do you about it? You've only got one tool: "If you don't give us this information, you're not going to get the money." That's it.

Mr. ROEMER. Mr. Chairman?

Chairman ROCKEFELLER. Please. And I apologize to my colleagues in genuine, genuine terms.

Mr. ROEMER. Mr. Chairman, I want to just underscore and associate myself with Mr. Hamilton's remarks.

Answering what you said might be a strategy to go at this in the next round after you get 23 or 24 or 25 votes on something like this, first of all, I think that I completely share your frustration about the example that you used about the gang of eight.

I was never one of the gang of eight, but part of the rules on the Intelligence Committee is when you get briefed into a special access program oftentimes you're in there with no staff, no other Members, you cannot take notes, you cannot go out of the room and go to Senator Feinstein or Senator Snowe or Senator Whitehouse or anybody else and say, "I've got an idea for an amendment; there's a cost overrun that I'm concerned about." You can't do any of that.

These are extraordinary restrictions so there is extraordinary action and robust congressional oversight that needs to be considered for that. You can use the press in other hearings. When you find

that oversight and that abuse on budgets on the Education Committee, we can expose that with sunlight. You cannot do that on the Intelligence Committee.

Secondly, what Congressman Hamilton I think emphasized was—what was that saying in the Tom Cruise movie—show me the money. That's absolutely the way to get their attention.

And the way for you to argue this with the appropriators is for each and every staffer that has oversight on the defense appropriations committee, they're responsible for about \$100 billion. Who can do that real well? Who has the time and the energy and the resources to oversee both the defense and the intelligence budgets combined with supplementals to do that effectively for our taxpayers? And we just saw in the New York Times the cost of architectures when they go over budget to the American taxpayer.

And third, you know, just saluting Senator Burr, who has left, I think when you have the time to begin to focus on a particular bill and amendment and you can talk to your colleagues on the floor rather than just a surprise amendment—here's a 9/11 recommendation; you know, by the way, it's to consolidate committees and so forth and you're taking on power—that's very difficult.

But when you have a bill, a bipartisan bill with respected, respectable, good, thoughtful people on it and this one does—and if you joined, Mr. Chairman, it really gives it added impetus and momentum with Mr. Bond—then you begin to work your colleagues and you have a few weeks or months to try to show that you can get that vote up into the 30s or 40s or maybe prevail.

So I think given the time and the resources, I think you've got a vehicle now to go forward and a more effective way to do this.

Chairman ROCKEFELLER. I thank you, sir, and I apologize to my colleagues and the Vice Chairman.

Vice Chairman BOND. Thank you, Mr. Chairman and Congressman Hamilton and Congressman Roemer. We really appreciate your very thoughtful and very important testimony, and I was going to ask you a couple of questions. If I have any time left, I will do that. I certainly want to follow the 5-minute rule.

But I want to point out that there's some things that have changed. Number one, we've had experience under the new structure of the Director of National Intelligence. I didn't vote for that, the initial bill, because I didn't think it gave the DNI enough power. And we're going to hold hearings and we're going to work with him because we're finding they don't.

Also I think we have seen that there is still a real gap between authorization and appropriations that is costing money and inhibiting our effective oversight. I outlined in my opening statement where we blew a lot of money, and I think we were not nearly as effective as we could have been.

Now, I should say by way of aside, what I mentioned earlier—and that is that I've worked very closely with the Chairman, with the director of national security and we have greatly expanded in this year the access to all members of the committee and most of the staff to these most sensitive programs, and I am strongly committed to expanding that.

But I think you made the point that if you don't show me the money, you're not going to get the bill. You're not going to get the

resources you need. And this is—I think your testimony, the experiences that we’ve had, the fact that we’ve had time to look at it, I think this is a game-changing mode. And I like Congressman Hamilton’s idea.

We don’t necessarily have to go so far as to take away from the Appropriations Committee the appropriating authority. But what we do need to have is a statutory responsibility that our recommendations of this Committee, implemented through our staff experts on budget—and we’ve got excellent budget people on this authorizing committee—should be in a position to take the initial allocation for the national intelligence program, working with our Committee, lay it out, and have overlapping members of this Committee and the SAC/D with additional committee members and Chairman and Ranking Member, if appropriate, serve on a subcommittee and bring that up to the full committee.

I have no doubt that, within the committee structure of the Appropriations Committee, if you brought a well-thought-out, well-staffed national intelligence program, it would be very rare when the full committee—unless there was an overwhelmingly good reason—would overrule it.

But our good ideas haven’t even had a chance. I’ll take the opportunity in the limited sunlight of a closed appropriation hearing. If we have our staff working with the full members of the SAC/D along with authorizers, I think we can make the case. If they beat us on one or two, they’re going to have to have a good reason.

So I thank you, and I think you’ve given us a game-changing scenario.

I just thought I’d ask the two of you if, in your experiences when you served on the House Permanent Select Committee on Intelligence, you were shut out from recommendations from the Appropriations Committee or were not permitted—you did not have opportunities to make changes in the appropriations measures that your committee, authorizing committee, thought were very important.

Did you have any such experiences?

Mr. HAMILTON. Well, of course we did, Senator Bond. And you have to work in the environment and in the context and under the rules that you have.

And when I was Chair of the Intelligence Committee, we were frequently, continually bypassed. How did I deal with that? Well, I dealt with it by very, very close contact, consultation, with the Chairman of the Appropriations Committee and the Chairman of the Defense Subcommittee. And I tried to persuade them of the value of the Committee recommendations. In other words, I tried to use what influence I had as an authorizer with the appropriators.

The intelligence community wasn’t going to pay any particular attention to me, even though I was Chairman of the Committee, because they knew they didn’t have to. And they didn’t.

How did I deal with it? Well, I went to the Chairman and the ranking members of the appropriating committees and dealt through them.

I want to comment on one thing that I think you alluded to, this question of who do you inform on the Intelligence Committee. It used to bother me a great deal.

Bill Casey was the Director of the CIA when I was the Intelligence Chairman, and we had a very good working relationship. He was a very able director. But he would continually come to me, almost on a daily—not daily, but weekly basis and say, “Lee, I’ve got some information here that I’m perfectly willing to share with you, but I don’t want you to share it with anybody else on the Committee.”

And I told Bill Casey, I said, “Bill, that just puts me in an awful spot as Chairman, and I’m not comfortable with it.” And so I said my general rule is going to be that unless you can share it with members of the Committee don’t bring it to me. And that’s basically the rule we adopted.

Now, I’m not sure I was right about that. That’s kind of an agonizing situation to be in, but that’s the choice I made at the time.

Bill Casey would come back and say, “Well, you’re denying yourself information that you ought to have as Chairman.” But what good is the information if I can’t do anything with it? And you’re often in that spot if you’re in the gang of eight today or in some other roles and you’re given information that is terribly important. What good does it do to have the information if you can’t do anything with it?

That’s a dilemma that I think you must confront. It’s a difficult one. That’s the way I resolved it. I’m not sure that’s the right way.

Mr. ROEMER. Senator, I thought, first of all, you made a very good point about the DNI authorities. And the Senate bill is different from the House bill. I think the Senate bill is strengthening and defining those authorities more clearly and giving the DNI more power. The House bill doesn’t go quite as far as the Senate bill does.

One of the things we said on the 9/11 Commission is when you create this very powerful and strong executive branch entity, the Director of National Intelligence, you best create a very strong entity to oversee it and create robust and vigorous congressional oversight. You’re going to be looking to strengthen this body over here. You better make sure that, you know, our body—the congressional body here can continue to oversee those authorities.

To your point about staffing and authority and the House panel, I thought the Speaker and the Members on the House side took some very good steps about increasing staff on the House side on this appropriations panel. I think it went from one and a half to five or six, and they’re trying to get to seven, eight or nine people.

They’re also spending much more time doing oversight on that appropriations panel. The members that I talked to are very pleasantly surprised. They think they are making a significant difference.

They’re also pleased with their relationship with the Defense Subcommittee and their work between the intelligence panel, the subcommittee panel and the full defense appropriations. Their recommendations are generally being accepted by the defense appropriations full committee.

So the working relationship is good. The staff in increased. The amount of oversight is increasing, and then there are three members of that panel that are on the authorizing committee on the House side, and they're increasing the power of the authorizing committee.

So those are positive steps going forward. I think Congressman Hamilton and I would still say that the single committee, the approach that you're taking and Senator Bayh and Senator Burr, is the preferred approach.

Vice Chairman BOND. Thank you very much, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Mr. Vice Chairman.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

One question for each of you that deals with concrete examples of what I think needs to be done for effective oversight.

I noted that in your 9/11 Commission report, Chairman Hamilton, you said that the FBI had little appreciation for the role of intelligence analysis, and the FBI's information systems were woefully inadequate.

So, recently we had FBI senior officials up here and I said part of effective oversight means you go back and see what's been done to correct what your commission found. And so I had to go round and round with them, but finally we managed to pry out of these senior FBI officials that only two of the 24 senior intelligence analyst positions created by the Congress had been filled and that a very substantial portion of these analysts and agents at this point do not have access to the Internet at their desk.

So we've got a problem you found. We, doing our job in the oversight area, ask about it again. I'm planning to bulldog this until it gets corrected.

What's your sense about the next move?

Mr. HAMILTON. The first observation would be if the principal role of the FBI is shifted from law enforcement to counterterrorism or domestic intelligence, the role of the analyst becomes critical, to the point where what the analyst does should drive the whole FBI.

Now, as you'll recognize, what I just said goes against the whole culture of the FBI because, in the FBI, the special agent in charge is the king. He's the king of the hill. So you have to improve the quality, the expertise of the analyst if they're going to carry out this function of counterterrorism.

I'm not persuaded that that's happening in the FBI today. In other words, the law enforcement culture is so deeply ingrained it's hard to change, and I recognize Director Mueller's making a heroic effort here.

Now part of that is the systems that you have identified. They do not yet have the tools to get the information they need to be an effective analyst. And my sense of that, Senator Wyden, is that the FBI has just had huge management problems and they've not dealt with them effectively. I think they're dealing with them better than they did. You know the systems—the problems they've had with their IT system.

So you're going to "bird dog" it. That's terrific. That's exactly what needs to be done. Somebody has to focus on the role of the

analyst in the FBI and to make sure that the analyst has the information he or she needs in order to fight the war on terror.

And my belief is that's more of a management problem today than anything else for the FBI.

Senator WYDEN. Let me see if I can get one other question in.

I want to ask my longtime friend, Tim Roemer.

I think, Mr. Roemer, you're probably aware of the news reports indicating that the Director of the CIA has now ordered an internal investigation of the CIA inspector general. And I found this very troubling and going right to the heart, again, of the ability to do effective oversight.

The inspectors general, of course, are a key source of information for the Congress, number one. Number two, when the administration fights—as Chairman Rockefeller has just noted—to keep Congress in the dark, the inspector general, in effect, is the only independent oversight force out there. In other words, there isn't anybody else.

So I have asked Director McConnell to order General Hayden to suspend this internal investigation. I think it is a chilling development. I've been very pleased by the comments I've seen of the Vice Chairman on this. I know the Chairman has been concerned about this.

What is your assessment of something like this, which I believe is without precedent and in my view probably the inspector general of the CIA is just about as important as any inspector general that's out there? I'd be interested in your reaction to this.

Mr. ROEMER. Well, Senator, great to see you, and I applaud your good work on the Intelligence Committee.

Going back to your question on the FBI, the IG at the FBI—a man by the name of Glenn Fine—has done some exceptionally important work in overseeing some of the cultural problems, some of the management difficulties, some of the budget issues. And he has firmly focused the spotlight on those problems and exposed those problems, oftentimes to the chagrin of the FBI.

Back to your bird-dogging question, you know, how do we get more IGs to be in positions at the CIA, at the DIA, at NSA, at the various 15 other intelligence agencies in addition to the CIA? How do we make sure they're empowered with that same kind of line-item authority and authority to go after issues and expose those issues?

I think the Senate bill, if I'm not mistaken, in the authorization process is looking at possibly confirming some of those people, having some more oversight over who goes into those positions. That might be a good role to begin with.

And it all comes back, I think, Senator—and you perform this role exceedingly well—it comes back to bird-dogging these issues and not letting up on them. Lee will be one of the first to tell you on the 9/11 Commission we had very, very long, heated debates about what to do with the FBI. Do we let them go along the reform path that they've gone on with Mr. Mueller, who's a very, very capable and decent guy? Do we carve out a new national security role, or do we stand up a brand new MI5 agency? And many of us decided that standing up yet another new agency in addition to

DNI and Department of Homeland Security was probably not the right way to go at this time.

So we said it was up to Congress to oversee this carve-out within FBI, that they and the President had to make sure that these reforms took place, and if they didn't oversee them with strong oversight, these information management systems, this e-mail system difficulty, the problems with the analysts will probably continue.

So I would continue to have exposure to these problems. I would build support like the Burr-Bond-Feingold-Bayh bill. And I would continue to try to get the changes and use money to do it at the end of the day—shift money from one account to the other on the appropriations subcommittee if you can't find any other way to do it.

Mr. HAMILTON. Senator Wyden, every department head in government is nervous about the inspector general. And if a department head could investigate the inspector general, you will dramatically weaken the inspector general.

Senator WYDEN. Lee Hamilton knocks it out of the park once more. That's why I'm asking Director McConnell—and I see the Vice Chairman has come into the room as well. I was very appreciative of the Vice Chairman's comments when we learned that General Hayden was investigating the inspector general, Mr. Helgeson.

And the Vice Chairman's comments on this very much echo mine and yours, so there's bipartisan interest in it.

I thank you both for your public service.

Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you very much, Senator Wyden.

Senator Feinstein, to be followed by Senator Whitehouse, to be followed by Senator Snowe, unless Senator Burr comes back.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

And thank you, gentlemen, for coming back and back and back and giving us the benefit of your expertise.

I want to just share with you what my experience and views are—that we are engaged in a system that by its very nature resists oversight. The administration feels they own the intelligence. We are the interlopers there. They would like to tell us as little as they possibly can. We are hamstrung, limited in staff, can't take notes home, can't take classified material home, can't really do much homework at all in the traditional sense.

We spend two afternoons a week—the 60 hearings you've held about—hot spot briefings, not oversight.

How do we do oversight? Well, let me suggest a way. One of them is, I believe we ought to have subcommittees. We ought to have a subcommittee on human intelligence which involves the CIA, the DIA, whatever it may be; on satellite intelligence; on the budget, and on special issues, whether those special issues are the culture of the FBI, whether it's rendition, whether it's covert action. And those subcommittees can hold their own meetings, be staffed separately, go out and take a look.

We've got sixteen intelligence agencies, tens of billions of dollars. It is very difficult to do the kind of oversight on the premises—noticing, asking, investigating, writing—when you spend 2 days a week on hot spot briefings or various reports the Committee may

be doing, or specific legislation the Committee might be considering.

So I think more than anything else, if there were subcommittees that were literally empowered—now, I sit on all the crossover committees and have for a long time—Judiciary, Defense and this Committee. The defense intelligence budget, the black budget, is a very short budget. It's very difficult to zero in there.

That, in my view, supplements the need to have the Budget Committee, which isn't just during the time the budget is being put together but is year around, that is talking with the DNI. The DNI is supposed to be able to do more than move the deck chairs on the Titanic. He can't do that under his present authority. Does he need the authority expanded? How should it be expanded? How should this budget best be controlled and contained?

You know, the FIA program left many of us with a lot of scar tissue after many, many years of trying to do what had to be done. And this Committee took a position; the Defense Subcommittee had a different position. And I think it was Senator Bond that just went into this, and he's right: It's very hard.

Now, if you had a group that was just on FIA as part of the satellite program day in, day out, year in, year out, that was intimately familiar with it, had all the notes, all the staff work, all the investigation done, knew where the points of failure were, we could have gotten to it a long time ago.

So my view is the tension between the administration and the Congress—one owns; the other controls the purse strings.

Lee, as you've said, theoretically we control the purse strings. When push comes to shove, that budget's going to get passed.

So the work has to be done a long time before it gets passed. We have to have the time to share with all of our colleagues what we have found out that's between the budget lines. And we're not set up now to do that.

So I have come to the conclusion, rightly or wrongly, that if I ever were in a position to make those changes, those are the changes I would make. And I would see that those committees reported regularly to the whole, that there be hard questions asked, that people be limited—this is another thing that happens. When people come and testify before you, they go on and on and on. And we're all under a time burden so, you know, if it's quick and if you can have that discussion around a table and go back and forth, you get something out of it. Otherwise, they are very practiced on how to move down a very wordy path, and it's difficult to break through that.

That's all I wanted to say.

If you have any comment, I'd love to hear it.

Mr. HAMILTON. I think it's probably not our role to try to tell you how best to organize the Committee to do your work. What you say about subcommittees and their ability to specialize certainly makes a lot of sense.

I think the toughest job that you have in exercising oversight is to establish what your priorities are. I said in my testimony that the intelligence field is vast. And the intelligence community will brief you to death. They will come up with more reasons to brief

you than you can imagine. They will brief you and brief you and brief you.

And there may be appropriate briefings, but if you spend your whole time listening to briefings, you're probably not doing any thinking about what the priorities should be.

I think you have to sit down and say OK, we can't cover the whole universe. But we've got to identify five, six, 10 problems that we think are most important, and then you set the agenda. Don't let the intelligence community set your agenda. You set the agenda, and you tell them you come up here and tell us about this and not about that.

Now, when you do that there are some risks involved because you may not select the right priorities. But I don't know any other way you can do it. You have to drive the agenda and not let the intelligence community drive your agenda.

Mr. ROEMER. Senator?

Senator FEINSTEIN. Yes.

Mr. ROEMER. I agree with what Congressman Hamilton has outlined and associate myself with your frustrations as a member of the committee.

Oftentimes I think I felt sometimes on the Committee that you're drowning in budget hearings and then you're mesmerized by hot spot briefings. And it's one or the other. The Director will come up and tell you about what the latest threat is in North Africa or what the latest threat might be in the Middle East or some of the challenges going on in Southeast Asia.

I think one of the areas to really focus on is to try to look—as Lee has said, establish priorities. I think one of those priorities should be to try to look more strategically at where the intelligence budget and agencies need to be rather than tactically going day to day. I think we get consumed on the tactics and not looking at the long-term strategy.

We tried to do this oftentimes in bipartisan ways on the Committee. We tried to establish a language reserve corps to build the membership of Arabic and Urdu and foreign speakers in the intelligence community, and oftentimes we put money into that budget on the authorizing side, and lo and behold, it would never make it into the appropriations process.

So I think, you know, looking strategically, establishing a priority to make a difference on rebuilding human intelligence and working in a bipartisan, bicameral way to see it through.

Senator FEINSTEIN. Thank you.

Thank you, Mr. Chairman.

Mr. HAMILTON. Senator Feinstein, I'm sorry to take a little additional time, but I think at the end of the day you have to ask yourself how are we going to really be judged on this Committee? And how you're going to be judged in my view is how you perform with regard to Iran, Iraq, terrorism, nuclear proliferation, North Korea. That's what's important. That's where the national security interest lies at the moment.

What kind of a job is the intelligence community—I don't know that I've listed them all, there may be some others—doing with regard to those big national security questions? That's what's really important to the American people.

Senator FEINSTEIN. That's a good point.

Chairman ROCKEFELLER. Before going to Senator Whitehouse, I just want to point out to the distinguished Chairman of the 9/11 Commission that the intelligence community never comes up here to brief us on what they want to brief us about. They come up and they brief us only on what we want to be briefed about, and there is no exception to that.

Mr. HAMILTON. I applaud that.

Chairman ROCKEFELLER. The Senator from Rhode Island, Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

Thank you, gentlemen, for coming yet again before us. I appreciate it.

I'd like to talk with you for a minute about classification. We deal with classified information all the time. You are very familiar with dealing with classified information. It puts us at a very considerable institutional disadvantage.

The executive branch classifies and to a large extent declassifies at will. In fact, many executive officials who we deal with just say something publicly and that's not a leak, that's not a security breach, that's a declassification. If we were to do it, there'd be FBI agents crawling around and looking at us and seeing if we'd committed treason. That's a very considerable disadvantage to be at.

The classification function—or the classification system—I think impedes oversight.

Congressman Roemer, you mentioned a quote from Woodrow Wilson. I don't have the words in mind exactly, but I think you said the informing function is to be preferred over even the lawmaking function? Well, if something's classified, I may know it but I can't inform, so that function is totally disabled to the extent that that piece remains classified.

And it also takes away a piece that exists in our regular oversight function which is that one Senator can usually make a difference by just going public with something, by just raising hell with something, by just being a thorn in somebody's side. Because you can't go public, it takes a majority of this Committee to get any action going, and I don't think that the intelligence community is unaware of that fact.

I recognize that there is a significant security value to classifying national security information. On the other hand, there's a balance between that and the accountability value that oversight creates. And the judge in that balance is exclusively at this stage, it seems to me to be, the executive branch, which makes it, again, very, very one-sided.

And my experience is that things are wildly over-classified. I have read things on the front page of the New York Times, come into this Committee and read them in deeply classified documents. You know, thanks a bunch. That's really not very helpful. I already knew that.

We have just been shown various legal opinions, and there are elements of them that I would like to talk about and I've asked the administration to allow me to talk about them. They are legal theories. You could take that legal theory and you could put it in any law journal in the country and it would have absolutely no mean-

ing to anybody. It's totally without classification merit, and yet it is classified to the full depth of the underlying document out of which it comes.

So once again, we are disabled. And I do not think that the administration is unaware of this imbalance and is unaware of the authority that this imbalance gives us with respect to this whole issue of classification.

What structural recommendations might you have to enable us to fight back through this? Because the day-to-day tide of just, you know, they classify, they classify, now you start—it's weeks trying to fight your way back to get three little phrases unclassified. It's a real uphill struggle, and I think it impedes—I feel it as a huge imposition on my ability to be an effective Senator and effective member of this Committee.

Mr. HAMILTON. Well, you've learned a lot more about the classification system early on than I did. It took me a long time to figure out how you get jacked around because of the classification system.

He who controls information has the power in government. And the executive branch knows they control the classification process, that the Congress can't do very much about it, and it is an enormous tool in their hands.

I think we classify way too much information, and we declassify way too little. It's a serious problem. We are stacking up warehouses full of classified information day after day, and it's hugely expensive to classify all that information.

Now, one of the problems is the incentives. Certain officers in the U.S. Government are given the authority to declassify—Secretary of State. Well, the Secretary of State doesn't sit around and say this document is secret and this document is not secret. She delegates that responsibility. She delegates it way down the line, and the incentives work so that it is safe to classify when in doubt. And so they sit there and they stamp everything classified. And we just keep piling it up.

Senator WHITEHOUSE. If I might add, Congressman Hamilton, unless and until it becomes useful—

Mr. HAMILTON. To them.

Senator WHITEHOUSE.—to the administration's rhetoric—

Mr. HAMILTON. That's correct.

Senator WHITEHOUSE.—to declassify their side of the argument, while leaving your side of the argument classified.

Mr. HAMILTON. That's right. And you're put at a huge disadvantage because of that.

I don't know—there is a way. I think I remember that there is a way for the Congress to declassify information, but as I recall, it has never been used. It takes a—

Senator WHITEHOUSE. Act of Congress?

Mr. HAMILTON.—very complex process. It takes a vote, I think, in both houses and it just has never been used.

I think the whole area of classification needs examination and a new framework has to be developed to deal with it or you are going to be continually at this disadvantage. I don't have any doubt in my mind the executive branch—not just this administration, but any administration—uses it to their advantage time and time

again, puts you at a disadvantage, and there's not very much you can do about it.

Mr. ROEMER. Senator, I just want to say that on the 9/11 Commission, we made two very, very strong recommendations to your point.

One was that there is a gross over-classification of information and second, there's an underutilization of open sources, and we recommended addressing both, that working with Congress and working with other entities in the executive branch and IGs that there be a way of declassifying this information and doing it in an orderly fashion, in a regular fashion, viewing that information and getting it out.

And then the second part was that there's a lot of open-source information that we get access to that we don't utilize appropriately enough and quickly enough in the intelligence community.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Senator Whitehouse.

Senator SNOWE?

Senator SNOWE. Thank you, Mr. Chairman.

I want to welcome both of you here today and appreciate your commitment and dedication and perseverance and persistence in advocating your views and following up as you have so consistently before this Committee and others since your service—yeoman service—on the 9/11 Commission. So we really appreciate that.

I know you identify with all of our frustrations in trying to change the institutions. You know, it faces many challenges and impediments, without question. And frankly, it was disappointing that we only received 23 votes on the question of consolidating the intelligence in both the authorizing and Appropriations Committee. I mean, it's just—I was one of the 23 because I believe that both the House and Senate are underestimating the challenges that we face.

And also our ability to effect change within the intelligence community is through, as you have indicated time and again, through the appropriations process. I mean, we saw that underscored in the hearing that was held here recently regarding FBI reform which is, you know, proceeding at a snail's pace. They're resisting efforts to elevate intelligence analysts to the level of special agents, as we've learned and what Senator Wyden referred to as well in the number of agents.

So we still have some critical challenges and we see, based on the NIE that was released in July, that we have a persistent evolving terrorist threat facing the homeland. Al-Qa'ida has regenerated key elements of attacking our homeland and their capabilities. So we're facing some enormous challenges.

I know, Congressman Hamilton, you mentioned in your op-ed piece with co-chair Tom Kean in the Washington Post several months ago that we still lack a sense of urgency in the face of grave danger, and you also indicated that we still lack focus. Could you describe what you mean by a lack of sense of urgency?

Mr. HAMILTON. I think a lot of things have been done in the government with regard to protecting the homeland that are helpful and good.

I believe and I know Tom Kean believes that we're safer today than we were at 9/11. The amount of money that we've spent, the procedures we've put in place, there may be a question of cost effectiveness in some of those, but overall a lot of good things have been done.

All of us are aware of agencies and departments that are expending very large efforts and resources to protect the American people.

Having said all of that, I think both Tom Kean and I felt that there is a lack of urgency, and by that I think we meant largely, as you visit these various offices and agencies and you hear what they're doing and how much they're doing, you kind of get a sense of business as usual. And we believed, as we stated, that the threat of terrorism is genuine, is real, that they're plotting out there to get us and there's been no diminishment in that intent. We have questions, of course, about their capabilities.

You and I would understand, I mean, Government is dealing with so many problems that kind of press upon you and distract you, the inbox is always full for everybody. Tom and I are trying to say look, this threat is genuine, it's real, and it is urgent and it is not a matter for business as usual. I think that's what our attitude was.

Mr. ROEMER. Senator, I'd just add on to that by saying that, as you noted in your comments, al-Qa'ida is changing every day. They're recruiting on the Internet; they're going into the remotest places on the Earth to gain a bigger and quicker following. They can strike with airplanes or other weapons and cause horrific damage to our country, either here or abroad. They're entrepreneurial. They are adapting the forces of globalization to their cause.

And that sense of urgency does not seem to be reflected in some of the activities that we're engaged in to take on that very rapidly changing threat.

Senator SNOWE. No, I agree.

I think it's like we've sort of resorted and reverted back to the times where you just sort of protect your jurisdiction and you consolidate all the bureaucratic resistance. And we're facing it time and again.

You know, one of my recommendations was to create a Department of Homeland Security inspector general, you know, department-wide. And of course that's met with great resistance by the department and the administration. Again, we're just facing the same bureaucratic hurdles and inertia that overtakes our ability to effect change. And it's what you've indicated.

And what's even more disturbing is that your commission made this one of the top recommendations. It was one of the most significant recommendations among all the recommendations, and we can only manage to get 23 votes for it in the U.S. Senate. It really is disturbing because I think the more disparate these functions become—as you say, dysfunctional and diffused—the less likely that we have the capacity to oversee those areas in which it's so important, because we can't leverage that change because of the appropriations process.

And that is the bottom line. That is the reality. And unfortunately we're going to have to find ways in which to overcome that because I think that still has to be the driving force and the ambi-

tion, is to change the process so that we can fuse these two responsibilities.

In 2005 you gave, on this recommendation you gave a grade of D on congressional oversight. Would you still agree that it's a D?

Mr. HAMILTON. What's that?

Senator SNOWE. In 2005, Congress was given a D.

Mr. ROEMER. We gave them a D in 2005.

Mr. HAMILTON. To whom?

Mr. ROEMER. To the Congress.

Senator SNOWE. On intelligence oversight.

Mr. ROEMER. You know, as we noted, Senator, I think that a D at that time reflected very little progress and no positive steps forward.

I think, not speaking for Congressman Hamilton but as I acknowledged in my opening statement, there have been some steps forward. The House has created this intelligence panel. There have been steps forward on the Senate side with an investigative and audit subcommittee.

But I still think that it's—in my opinion, it would still be a D-plus. It's something that is not going hard enough. And when Congress is pointing its finger everywhere to the executive branch—the FBI's not doing enough, the CIA needs to rebuild human intelligence, the Department of Homeland Security is not working well enough—and they fail to do the one requirement in their book, that's not a good reflection on Congress.

Mr. HAMILTON. I agree.

Senator SNOWE. Says it all. Thank you.

Thank you both for your service. Thank you.

Mr. HAMILTON. Thank you.

Chairman ROCKEFELLER. Thank you, Senator Snowe.

Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman, for holding the hearing.

It really is a pleasure to hear from these two very distinguished witnesses on really the most important issue of our time, so I appreciate everything you've done.

As the 9/11 Commission concluded and as our witnesses have reiterated today, intelligence reform, which is so critical to protecting our country, depends on effective congressional oversight. I supported the commission's recommendation to give appropriations authority over the intelligence budget to the Intelligence Committees when it was first proposed in 2004, and I continue to support it today.

In recent years, however, it has become overwhelmingly clear that the greatest impediment to effective congressional oversight of intelligence is this administration's consistent and really almost unbending contempt for Congress's constitutional role in this area.

A full account of the administration's actions begins, of course, with its secret violations of the laws passed by Congress, specifically the Foreign Intelligence Surveillance Act, and despite the outcry prompted by its illegal, warrantless wiretapping program, the administration still won't commit to abide by the laws of this country, issuing so-called signing statements as statutes become law

and refusing to rule out future assertions of the President's supposed authority to disregard FISA.

Recently the administration has even stated in writing that it intends to simply ignore Congress's budgetary oversight of a classified intelligence program. The administration has also repeatedly refused to brief this Committee on important intelligence matters as is required by law. The country is by now familiar with the administration's failure to inform the Committee about the warrantless wiretapping program for 5 years before the program was revealed and acknowledged and then for months thereafter.

But this problem continues. We know that the administration continues to abuse the so-called gag of eight provision by hiding important intelligence matters from the full Committee. What we don't know is the full extent of this abuse.

The list of reports and other information sought by the Committee and denied by the administration is extensive and much of it classified. The administration's efforts to deny Congress information even extends to the third branch of government, the FISA court, whose interpretations of the law Congress needs to conduct oversight and to consider new legislation. Imagine if the administration sought to keep from Congress Supreme Court decisions related to the legality and constitutionality of the laws passed by Congress and of the Government's actions. In the area of intelligence surveillance, it is the FISA court that makes these decisions, and the administration's attempts to hide them from Congress, even as it demands that new FISA legislation be passed, is unacceptable.

The public record of the administration's contempt for congressional oversight of intelligence is lengthy. The administration's threat to veto the current intelligence authorization bill is based almost completely on Congress's efforts to improve oversight. The administration opposes efforts to obtain intelligence-related documents generally and with regard to detention and interrogation. It opposes congressional efforts to learn about how the administration is interpreting the Detainee Treatment Act and it opposes a Senate confirmation of important leadership positions in the intelligence community.

And this list is only a partial indication of this administration's contempt for Congress's constitutional responsibility to conduct oversight of intelligence. The administration's actions not only violate our constitutional principles and our system of checks and balances, they have undermined our national security.

As our distinguished witnesses have stated clearly and consistently, congressional oversight is critical if we're to have an effective intelligence community that defends our national interests as well as our laws, our Constitution, and our principles as a Nation.

Now you both said, I understand, that Congress should use the power of the purse to compel information from the administration. What would you advise Congress to do if the administration still refuses to provide the information and simply ignores Congress's efforts to exert its power of the purse?

Mr. HAMILTON. I'd withhold the money.

Senator FEINGOLD. Mr. Roemer?

Mr. ROEMER. I agree with Mr. Hamilton, Senator.

I think, as you stated, the executive branch is the greatest impediment to Congress's role in oversight. I would say that the battle is not so much with waterboarding per se or wiretapping per se or Abu Ghurayb per se or secret prisons per se or American rights per se. It is for Congress to strengthen its ability to discover these things and debate these things where appropriate because of their difficulty overseeing them and getting access to these programs with the executive branch.

It's incumbent upon Congress to exert its power and authority here. There are actions you can take like creating this Committee with dual appropriations and authorizing capabilities that will then have the power to say to the executive branch, the money's not coming with your request. We're not having you run around the authorizes. We have the information. We know what we need, and we have the power of the purse to withhold the money. And it's done within one committee.

Senator FEINGOLD. Mr. Chairman, I think that's an excellent note to conclude on. Thank you.

Chairman ROCKEFELLER. Thank you very much, Senator Feingold.

And I want to thank both of you very much. It's been a long afternoon for you, but I think a very instructive one for us because, as you did in your reports, you've thrown us a challenge. The challenges aren't easy to solve, and yet you're very firm, and that in and of itself is a part of helping us to do a better job because we respect you and your commission so much.

Mr. ROEMER. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Now we've also totally alienated the two gentlemen who are going to follow you in the second panel, but we're going to get right to them.

So we thank you.

Mr. ROEMER. Thank you.

Vice Chairman BOND. Thank you very much, gentlemen. It's been very informative and very helpful.

Chairman ROCKEFELLER. The Chairman of the Intelligence Committee apologizes for referring to the next panel as two men. In fact, Professor Amy Zegart from UCLA and Mr. James Saturno from the Congressional Research Service, I personally apologize to you for not—I don't ultimately apologize for taking so long on the first panel because it was very basic stuff and you understood that. But I hate putting you at a situation where not only do you not have the full committee before you, but you have the best part of it before you, and we want very much to hear what you say, so you proceed.

Dr. Zegart, why don't we start with you?

**STATEMENT OF AMY B. ZEGART, ASSOCIATE PROFESSOR,
DEPARTMENT OF PUBLIC POLICY, SCHOOL OF PUBLIC
AFFAIRS, UNIVERSITY OF CALIFORNIA, LOS ANGELES**

Dr. ZEGART. Thank you, Mr. Chairman, Mr. Vice Chairman.

Chairman ROCKEFELLER. And pull that right up real close.

Dr. ZEGART. There we go. I'm a Z, so I'm used to waiting for a while to go, so not a problem for me.

Mr. Chairman, Mr. Vice Chairman, distinguished Committee, it's an honor to be here today to talk about this very important issue of congressional oversight of U.S. intelligence. Let me just thank you two in particular and the rest of the Committee not only for holding this hearing but for holding it in open session. I fully appreciate that security considerations often require closed sessions, but there is no more powerful force for change than an engaged American public.

As you know, I'm an associate professor at UCLA. For more than a decade, I've been researching organizational deficiencies in U.S. intelligence agencies. I've also been a consumer of intelligence on the National Security Council staff and I worked in the private sector, which has its own adaptation challenges, as a strategic consultant at McKinsey & Company.

Mr. Chairman, when I last appeared before this Committee it was August of 2004. The 9/11 Commission had just finished its report and intelligence reform was in the air. It's now 3 years later, 6 years after the worst terrorist attacks in our Nation's history, and intelligence reform is progressing in a halting and disappointing fashion.

Congressional oversight, as we've heard this afternoon, is vital to American national security, but it is broken and it has been broken for years. Unless substantial changes are made to the current system, intelligence reforms will fail.

My remarks this afternoon will cover briefly—which is hard for a professor but I will try to be brief—three points: why oversight matters, enduring problems and what we can do about them.

The bottom line is that these organizational weaknesses in oversight and possible remedies to address them have been well known for quite a long time, and so the challenge we face now lies not so much in inventing new ideas but in implementing the ones that we already know.

Mr. Chairman, as this Committee has discussed this afternoon, U.S. intelligence agencies have never been more important. The spread of weapons of mass destruction, the information revolution, the rise of transnational terrorist groups have created an unprecedented asymmetric threat environment. For the first time in history, great power does not bring security. It is the weak who threaten the strong, and it is intelligence, not sheer military might, which provides our first and last line of defense in a way that it has never been before.

Oversight is crucial to our intelligence system because it guards against two dangers. The first is that our intelligence agencies will become too powerful, violating the laws and liberties and values that we Americans hold dear. The second danger is that intelligence agencies will become too weak, too weak to protect American lives and American vital interests.

Good oversight ensures that our agencies get the resources they need, provides strategic guidance to deploy those resources more effectively, and proactively evaluates what's working and what isn't before disaster strikes so that our intelligence agencies can adjust and improve. And I want to applaud this Committee for the FBI oversight hearings that occurred just a couple weeks ago. That is

a prime example, an extraordinary example, of exactly that kind of proactive oversight function.

Today, U.S. intelligence agencies are confronting substantial challenges in both areas, but the executive branch cannot and must not and should not go it alone. Ensuring that our agencies are powerful enough but not too powerful requires vigorous and bipartisan oversight by Congress.

Let me turn briefly to enduring problems.

Congressional oversight of intelligence has always been problematic. For the first 30 years of the CIA's existence, oversight consisted of a few senior legislators not wanting to ask questions because they didn't want to hear the answers. Between 1947 and 1974, there were more than 150 legislative proposals to reform this system and all of them failed, most of them by overwhelming votes. It took revelations that intelligence agencies were assassinating foreign leaders and spying on Americans before Congress established the select committees. These Committees, as you know, have been a substantial improvement, but deficiencies have persisted.

My research found that between 1991 and 2001, there were 12 major unclassified studies that examined U.S. intelligence and counterterrorism capabilities. They issued more than 500 recommendations for reform. Most of these reports found congressional oversight to be a big part of the problem. Recommendations—and this is before 9/11 in the decade preceding 9/11—recommendations included: streamlining the splintered and overlapping committee jurisdictions in intelligence and homeland security; combining authorizing and appropriations powers in a range of national security committees, including intelligence; and eliminating term limits on the Intelligence Committees to enhance member expertise.

None of these recommendations was adopted before 9/11. In fact, the only organization in our intelligence system that failed to implement a single reform from all these reports wasn't the CIA, wasn't the National Security Agency or the FBI; it was the U.S. Congress.

Despite the 9/11 Commission's warning that congressional oversight was dysfunctional and vital, two key problems remain—too much fragmentation and not enough expertise. As you know well, oversight is fragmented and uncoordinated against a number of committees. I know Congressman Hamilton and Governor Kean wrote in the Washington Post that the Department of Homeland Security still reports to 86 different subcommittees and committees. A system that is splintered is naturally prone to error and inefficiency. Individual programs, even crucial ones, can and do fall between the cracks because oversight can always be seen as somebody else's job.

This is exactly what I found in the late 1990s when no congressional committee undertook a serious examination of the FBI's struggling counterterrorism reform efforts. Why did this happen? In large part, because the Intelligence Committee thought it was a Judiciary Committee issue, and the Judiciary Committee thought it belonged in Intelligence. Fragmented jurisdictions also make it unlikely that any one panel will have an integrated view of an agency's activities or the trade-offs involved. Multiple committees

are also more likely to give contradictory guidance and overload managers with too many uncoordinated hearings and reporting requirements. And of course, as we've heard this afternoon, savvy executive branch officials can and do play the committees off one another.

This split between the intelligence authorization and appropriations committees has allowed executive branch agency officials to game the system. The press has public reported about how this Committee in recent years has repeatedly tried to kill expensive and, in the view of the Committee, unnecessary and ineffective satellite programs only to have other committees reverse those decisions after pressure from the Pentagon and other allies. One intelligence official called this kind of bureaucratic maneuvering the two-parent approach: If mom says no, go to dad. Separating authorizations from appropriations is a long-standing and revered congressional practice, but this division in intelligence has become increasingly unworkable.

Let me talk briefly about expertise.

As you know, intelligence activities are highly complex and technical and shrouded in secrecy more than any other activity of our Government. This is unique among policy issues. In intelligence, there is no natural public constituency, no set of interest groups, no public interest groups that have a capability of gathering independent information, of alerting the public or holding officials' feet to the fire. These factors make the intelligence oversight learning curve especially high, members' oversight experience especially valuable, and staff capabilities essential. Unless overseers know what to ask, they will not get the information they need to make intelligence agencies effective.

The Senate took the very important step in the 108th Congress of ending term limits for this Committee, but experience gaps between this Committee and other committees remain striking in terms of continuous service to the Committee.

And notably, the House Intelligence Committee still has term limits for its members, even though the 9/11 Commission and a number of other blue ribbon studies during the 1990s recommended abolishing them.

Staff capabilities are also critical and in need of augmentation. The Government Accountability Office currently lacks full authority to investigate all components of the intelligence community, particularly the CIA. Some have suggested bolstering oversight committee staff capabilities by creating a new congressional support agency with nonpartisan cleared staff that could provide additional classified and unclassified analyses to Congress. And the inspector general system offers an underutilized mechanism to provide information. The Senate's 2008 authorization bill includes important improvements to the inspector general system along these lines, and it is essential that these improvements be enacted.

What can we do? All reforms, as we've discussed today, necessarily involve tradeoffs, but the history of intelligence reform I believe suggests two guiding principles for reform. The first, as I mentioned at the beginning, is to focus on implementation rather than developing new ideas. For 60 years, turf and politics have stacked the deck against robust intelligence oversight. The 9/11

Commission noted that few things are more difficult than rearranging congressional committee jurisdictions. And, as this Committee knows well, overseeing intelligence is a hard and largely thankless task because it takes precious time away from issues that constituents back home care about more. Very few voters care about the nitty gritty aspects of the FBI's analyst program, as this Committee examined a couple weeks ago. No intelligence reform ever won a landslide election. But turf and politics must be overcome.

Mr. Chairman, I was struck that the Implementing the 9/11 Commission Recommendations Act, passed last summer, tackled just about every aspect of the 9/11 Commission report except congressional oversight reform. Congress can do better. American lives depend on it. This hearing is a crucial step forward, but continued success requires continued leadership and a relentless focus on implementation.

The second guiding principle is to be careful to pick the low-hanging fruit. Dramatic improvements I believe do require dramatic changes. Nevertheless, some important improvements can be accomplished without new legislation, without turf wars, without dramatic rule modifications. This low-hanging fruit involves some of the steps that this Committee has already taken to make the most of the existing oversight activities that are already being conducted, and they include: holding regular staff meetings across the relevant committees, both within the Senate and across the Senate and the House to coordinate hearings and other oversight activities; instituting periodic leadership meetings along the same lines; and integrating technology systems so that various intelligence oversight staff with the appropriate clearances can share information more easily.

Mr. Chairman, I thank you for this great honor to be here today and look forward to answering your questions.

[The prepared statement of Dr. Zegart follows:]

STATEMENT OF DR. AMY B. ZEGART, ASSOCIATE PROFESSOR,
DEPARTMENT OF PUBLIC POLICY, SCHOOL OF PUBLIC AFFAIRS,
UNIVERSITY OF CALIFORNIA, LOS ANGELES

Mr. Chairman, Mr. Vice Chairman, distinguished Members of the Select Committee on Intelligence, it is an honor to appear before you today to discuss congressional oversight of U.S. intelligence agencies.

My name is Amy Zegart. I am an Associate Professor in the School of Public Affairs at the University of California, Los Angeles (UCLA).

For more than a decade, I have been researching and writing about organizational problems in U.S. intelligence agencies. My newest book, *Spying Blind* (Princeton University Press, 2007), examines why the CIA and FBI failed to adapt to the rise of terrorism after the cold war. Before my academic career, I served on the National Security Council staff and advised Fortune 500 companies about organizational effectiveness as a McKinsey & Company management consultant.

When I last appeared before this committee in August of 2004, the 9/11 Commission had just released its report and intelligence reform was in the air. Three years later, and 6 years after the worst terrorist attacks in American history, progress has been halting and disappointing.

Congressional oversight of intelligence is vital to American national security. And it has been broken for years. Without substantial changes to the current system, intelligence reforms will fail.

Mr. Chairman, my remarks cover three main points:

- Why oversight matters
- Enduring problems

- What can be done

The bottom line: Oversight weaknesses and possible remedies have been known for a long time. The critical challenge now is not so much inventing new ideas, but implementing the ones we already have.

WHY OVERSIGHT MATTERS

U.S. Intelligence agencies have never been more important. The spread of weapons of mass destruction, the information revolution, and the rise of transnational terrorist networks have created an unprecedented asymmetric threat environment. For the first time in history, great power does not bring security; it is the weak that threaten the strong.

As CIA Director Michael Hayden recently noted, during the cold war the Soviet Union was easy to find but its most deadly forces—tanks, ICBMs, and troops—were hard to kill. Today the situation is reversed: our principal terrorist enemies are easy to kill but hard to find.

Successful defense requires penetrating and stopping the adversary before he ever gets to his target battlefield, not defeating him with overwhelming force once the battle begins. More than ever before, intelligence has become our nation's first and last line of defense.

Robust congressional oversight is crucial to an effective intelligence system because it guards against two dangers. The first is that intelligence agencies will become too powerful, violating the liberties, laws, and values that Americans hold dear. The second danger is that intelligence agencies will become too weak to keep Americans safe. Good congressional oversight ensures that intelligence agencies get the resources they need, provides strategic guidance to deploy those resources effectively, and proactively evaluates what works and what doesn't so that agencies can improve and adjust their collection and analysis before disaster strikes.

Today, U.S. intelligence agencies are confronting substantial challenges in both areas. Many both inside and outside the Intelligence Community are gravely concerned that intelligence agencies are overreaching—engaging in warrant-less surveillance programs and interrogation methods that are legally questionable and morally troubling. Many also worry that intelligence agencies are under-performing, that they are not adapting fast enough to the demands of a post-9/11 world.

The executive branch cannot, should not, and must not go it alone.

Ensuring that U.S. intelligence agencies are powerful enough but not too powerful requires nonpartisan and vigorous oversight by Congress.

ENDURING PROBLEMS

Congressional oversight of intelligence has always been problematic.

For the first thirty years of the CIA's existence, oversight consisted of a few senior legislators not asking questions and not wanting answers. As Senator Leverett Saltonstall (R-Mass.) noted in 1956, "It is not a question of reluctance on the part of the CIA officials to speak to us. . . . Instead, it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a Member of Congress and as a citizen, would rather not have." Between 1947 and 1974, more than 150 legislative proposals to reform this oversight system were defeated, nearly all of them by overwhelming majorities. It took revelations that intelligence agencies were assassinating foreign leaders and spying on Americans before Congress finally established the Select Intelligence Committees.

Although the committees were a substantial improvement, deficiencies persisted. Perhaps nowhere was the system's weakness more apparent than in the failed efforts to overhaul executive branch intelligence agencies before 9/11.

In 1992 and again in 1996, this committee and its House counterpart pressed for sweeping intelligence reforms. Both times, bills were torpedoed by the Defense Department and members of the armed services committees, who stood to lose their own turf and power.

My research found that between 1991 and 2001, twelve major unclassified studies examined U.S intelligence and counter-terrorism capabilities, issuing more than 500 recommendations for reform. Most of the reports found congressional oversight to be a big part of the problem. Recommendations included streamlining the splintered and overlapping committee jurisdictions in intelligence and homeland security, combining intelligence authorizing and appropriating powers, and ending intelligence committee term limits to enhance the expertise of members. None of these recommendations were adopted before 9/11. In fact, the only organization in the U.S. intelligence system that failed to implement a single reform from all these reports wasn't the CIA, NSA, or FBI. It was Congress.

Despite the 9/11 Commission's dire warning that congressional oversight was "dysfunctional" and vital to intelligence reform, two key problems remain: too much fragmentation and not enough expertise.

Fragmented Jurisdictions: Creating a System Prone to Error and Inefficiency As you know well, intelligence oversight is fragmented and uncoordinated across too many committees. Governor Kean and Congressman Hamilton have noted that even now, the Department of Homeland Security reports to 86 different congressional committees and subcommittees. While this may be the extreme case, other intelligence agencies also face multiple oversight committees—chief among them, judiciary, armed services, and appropriations.

A system that splinters is naturally prone to error and inefficiency.

Individual programs—even crucial ones—an and do fall between the cracks because oversight can always be seen as somebody else's job.

In the late 1990's, for example, no congressional committee undertook a serious examination of the FBI's struggling counterterrorism reform efforts. Why? In large part, because intelligence committees thought it was a judiciary issue and the judiciary committees thought it belonged in intelligence.

What's more, fragmented jurisdictions make it unlikely that any one panel will have an integrated view of an agency's activities and the appropriate cross-programmatic tradeoffs involved. Multiple committees are also more likely to give contradictory guidance and overload managers with too many uncoordinated hearings and reporting requirements. And savvy executive branch officials can play committees off one another.

In particular, the split between the intelligence authorization and appropriations committees has allowed executive branch agencies to game the system. As the press has publicly reported, this committee in recent years has repeatedly tried to kill expensive satellite programs only to have other committees reverse decisions after pressure from the Pentagon and other allies. One intelligence official called this kind of bureaucratic maneuvering the "Two-parent approach: If mom says no, go to dad."

Separating authorizations from appropriations is a longstanding and revered congressional practice. But in the realm of intelligence, this division has become increasingly unworkable.

NOT ENOUGH EXPERTISE

Intelligence activities are complex, highly technical, and shrouded in secrecy. Unlike all other policy issues, intelligence has no natural interest group constituencies capable of gathering independent information, alerting the public, or holding elected officials' feet to the fire.

These factors make the intelligence oversight learning curve especially high, Members' oversight service extraordinarily valuable, and staff capabilities essential. Unless overseers know what to ask, they won't get the information they need to make intelligence agencies effective.

Although the Senate took the very important step in the 108th Congress of ending term limits for this committee, the experience differential between the SSCI and other Senate committees remains striking. For example, Senator Warner has served on the armed services committee for 9 years. Chairman Levin has served for 28 years. If my calculations are correct, that's four times longer than the longest-serving member of this committee. Notably, the House intelligence committee still has term limits for its members, even though the 9/11 Commission and a number of other studies during the 1990's recommended abolishing them.

Staff capabilities are also critical and in need of augmentation. The Government Accountability Office (GAO) currently lacks full authority to investigate all components of the Intelligence Community, particularly the CIA. Others have suggested bolstering oversight committee staff by creating a new congressional support agency with nonpartisan, cleared staff that could provide both classified and unclassified analyses of important oversight issues to Congress. The Inspector General system also offers an under-utilized mechanism to provide nonpartisan, independent information to Congress about waste, fraud, and abuse within and, importantly, across intelligence agencies.

WHAT CAN BE DONE

All reforms necessarily involve tradeoffs; there is no one ideal solution. The history of intelligence reform, however, suggests two guiding principles for improving congressional oversight.

Principle #1: Focus less on developing new ideas and more on implementing the ones we already have.

For sixty years, turf and politics have stacked the deck against robust intelligence oversight. As the 9/11 Commission noted, few things are more difficult than rearranging committee jurisdictions.

And as this committee knows well, overseeing U.S. intelligence agencies has always been a hard and largely thankless task that takes precious time away from all the other issues that concern and benefit constituents more. Few voters care about the nitty-gritty aspects of the FBI's analyst program or the number of Pashto speakers at the CIA.

The issues are often complicated and the effects on the daily lives of Americans are usually indirect and unseen. No intelligence reform ever won a landslide election.

But turf and politics must be overcome. The "Implementing the 9/11 Commission Recommendations Act" passed last summer tackled just about everything except congressional oversight. Congress can do better. American lives depend on it.

This hearing is an important step forward. But success will require continued leadership, commitment, bipartisanship, and a relentless focus on implementation.

Principle #2: Pick the low-hanging fruit.

Dramatic improvements require dramatic changes. Nevertheless, some important improvements can be accomplished without new legislation, turf wars, or rule modifications. This "low-hanging fruit" involves improving informal coordination and technical capabilities to make the most of existing oversight activities. These include:

- Holding regular staff meetings across relevant Senate committees and between House and Senate intelligence committees to better coordinate hearing schedules and activities.
- Instituting periodic leadership meetings of the House and Senate intelligence committees to share information, improve coordination, and enhance strategic planning.
- Integrating technology systems so that various intelligence oversight staff with appropriate clearances can share information more easily.

Mr. Chairman, I'd like to conclude by thanking this committee not only for holding this hearing to address the critical issue of intelligence oversight, but for doing so in open session.

While I fully realize that security considerations often require closed sessions, there is no more powerful force for change than an engaged public.

Thank you.

Chairman ROCKEFELLER. Thank you, Dr. Zegart.

Mr. Saturno.

**STATEMENT OF JAMES V. SATURNO, SPECIALIST, CONGRESS
AND THE LEGISLATIVE PROCESS, CONGRESSIONAL
RESEARCH SERVICE, LIBRARY OF CONGRESS**

Mr. SATURNO. Thank you. First of all, I want to thank the Chairman and the Vice Chairman and the other members of this Committee for the invitation to appear today and to talk about one aspect of the 9/11 Commission's recommendations, namely the recommendation concerning the separation of authorization and appropriations, particularly the historical record regarding their relationship. It's a history lesson but one that I hope that the Committee will find useful.

The U.S. Constitution does not establish a specific budget process. The power of the purse is assigned to Congress in Article I, section 9, which states simply that, "No money shall be drawn from the Treasury but in consequence of appropriations made by law." How this authority is put into practice, however, has naturally been the subject of periodic congressional debate.

Historically, Congress has implemented this power through a two-step process—first, establishing agencies and programs, and then funding them in separate legislation. This separation is a con-

struct of congressional rules and practices and is neither mandated nor suggested in the Constitution. Instead, it has been developed and formalized over time pursuant to the constitutional authority in Article I, section 5, for each chamber to determine the rules of its proceedings. This power permits Congress to enforce, modify, waive, repeal or ignore its rules as it sees fit. The result has been an evolving relationship and one that is malleable enough to meet the changing needs of Congress.

Legislation that establishes, continues or modifies a Government agency activity or program is today termed an authorization. While authorizations form an essential part of the Federal budgeting process, by themselves they don't permit funds to be obligated, although they are typically enacted with the idea that subsequent legislation will provide funds. Instead, they simply give direction, both to congressional appropriators and to the agency.

Agencies or programs are typically affected by more than one authorizing statute. One law may set up an agency and establish its underlying mission, while another may establish specific programs to be administered by the agency, another may provide specific guidelines for agency organization and yet another may provide explicit authorization for appropriations or limits on what activities may or should be funded through the appropriations process.

Jurisdiction over all of these various aspects of authorizations is frequently shared by more than one committee. As substantive law, furthermore, authorizations are generally permanent unless otherwise specified, but there are no underlying requirements concerning their duration. This is further complicated when authority for an agency's activities is permanent but the authorization for appropriations action is limited to specific fiscal years. All of these variations can have an impact that is felt in the appropriations process and, more importantly, in the oversight of funding of various agencies and their activities.

Appropriations, in contrast, specifically refers only to legislation which provides budget authority, that is, authority for Government agencies or programs to obligate funds. Appropriations are typically provided for a single fiscal year, although appropriated funds can be specified as being available for a multiyear period or even until they're spent. While there is no constitutional requirement that an appropriation follow an authorization, historically that has been the case.

Authorizations have been separated from appropriations by congressional rules and practices reaching back to the colonial era. The distinction between what we today term authorizations and appropriations appears to have been understood in practice long before it was formally recognized in the rules.

This distinction is reflected in the practice of early Congresses to refer appropriations legislation as supply bills whose purpose was simply to supply funds for Government operations already defined in law. Combining funding with policy-oriented legislation, it was feared, would delay the provision of funds or lead to the enactment of matters that might not otherwise become law. Indeed, it was the failure of the fortifications appropriations bill to be enacted in 1835 due to controversy over a legislative provision in the bill that apparently was the trigger that inspired the next Congress to take ac-

tion, and the House adopted a rule in 1837 which emphasized the two-step nature of the process through explicit language for the very first time. The Senate adopted a similar rule in 1850.

In the 19th century, Congress occasionally recast the procedural divisions between legislation and funding questions but never changed the fundamental distinctions between the two. Throughout the 19th century, the concept of what would today be called authorizations continued to mean primarily permanent legislation involving general questions of the authority and activities of agencies while the appropriations legislation of the era was typically quite precise, including provisions detailing such things as the number and positions of Federal employees and their specific salaries or even how much to be spent for office supplies.

One salient change in the late 19th century, one of particular interest with respect to the recommendations by the 9/11 Commission, was the idea of jurisdiction over appropriations being dispersed among various committees. Beginning in 1880, the House Commerce Committee and the House Agriculture Committee were given jurisdiction over bills providing funding for rivers and harbors and for agriculture respectively.

This was expanded to include additional House committees in 1885, and the Senate effected a similar dispersal of jurisdiction in 1899.

House and Senate rules, however, continued to preserve the formal distinction between legislation and appropriations. Despite having jurisdiction over both types of measures, legislative committees do not seem to have made any major changes in the form of measures they reported. It's important to note that even after they gained appropriations jurisdiction, they did not attempt to merge it with their legislative jurisdiction and continued to address broad policy and organizational questions separate from the details of funding agency activities. This system lasted until the 1920s, when appropriations jurisdiction was reconsolidated and reorganized in the way that we are familiar with today.

In modern practice, legislative committees have attempted to play a more direct role in the oversight of Federal agencies and in the process revamp the concept of how authorizing legislation should be constructed. Committees have frequently taken an approach with authorizing legislation that now means both a periodic and a more detailed review of agency organization and activities. The refocusing of authorizing legislation on programmatic details, enumerating how funds ought to be spent, sometimes leads to the criticism that they seem to be duplicative of appropriations and leads to conflict and tension between authorizers and appropriators.

Unlike appropriations, however, authorizations are not always made in the form of a single annual measure. Although the more detailed modern approach is widespread, authorizing committees as a whole have not adopted a uniform approach to their legislation. Various authorizing committees can frame their legislation in terms of administrative divisions, whether that means a single department or individual agencies, in terms of reauthorizing single specific pieces of legislation or in terms of broad topical issues. The result is that authorizations relating to any one department and

the programs it administers can be a complex web of varying specificity and duration, often falling within the jurisdiction of multiple committees.

At the same time, the appropriations committees have also changed the focus of their legislation and have generally moved away from the level of detail that was once common. In modern practice, appropriations legislation often provides funding for specific agencies or programs in only one or a handful in lump sum paragraphs. The few details in the legislative language are typically supplemented by other nonstatutory guidelines such as report language.

Although the evolution of authorizations and appropriations has sometimes brought them into conflict, nevertheless they remain conceptually distinct. Authorizing committees and their legislation remains the primary venue for assessing whether a program constitutes a good idea, while appropriations remains the primary venue for deciding among competing demands for Federal resources and for assessing questions of how well Federal funds are spent.

The historical record does not give us an answer as to whether joining authorization and appropriations would improve oversight, but it shows no barrier to change. It tells us that Congress has experimented in the past with their relationship and in the past found various ways to meet their changing needs.

I want to thank you for your attention, and I welcome your questions.

[The prepared statement of Mr. Saturno follows:]

STATEMENT OF JAMES V. SATURNO, CONGRESSIONAL RESEARCH SERVICE, BEFORE THE SENATE COMMITTEE ON INTELLIGENCE, NOVEMBER 13, 2007

The Separation of Authorizations and Appropriations: A Review of the Historical Record

Mr. Chairman and members of the Committee, thank you for your invitation to appear today to offer testimony regarding committee jurisdiction and responsibilities related to the separation of authorizations and appropriations. I am James V. Saturno, a Specialist on the Congress and Legislative Process with the Congressional Research Service of the Library of Congress.

AUTHORIZATIONS AND APPROPRIATIONS DEFINED. The U.S. Constitution does not establish a specific budget process. The power of the purse is assigned to Congress in Article I, Section 9 which states that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” How this authority is put into practice, however, has naturally been the subject of periodic congressional debate. Historically, Congress has implemented this power through a two-step process: first establishing agencies and programs, and then funding them in separate legislation. This separation is a construct of congressional rules and practices, and is neither mandated nor suggested in the Constitution. Instead, it has been developed and formalized over time pursuant to the constitutional authority in Article I Section 5, for each chamber to “determine the Rules of its Proceedings.” This power permits Congress to enforce, modify, waive, repeal, or ignore its rules as it sees fit. The result has been an evolving relationship.

Legislation that establishes, continues, or modifies a government entity (such as a department or agency), activity, or program is termed an authorization. While authorizations form an essential part of the Federal budgeting process, by themselves they do not permit funds to be obligated, although they are typically enacted with the idea that subsequent legislation will provide funds.

Instead, they give direction, both to congressional appropriators and to the agency. Some agencies or programs may be affected by more than one authorizing statute. One law may set up an agency and establish its underlying mission, while another may establish a specific program to be administered by the agency, another may provide specific guidelines for agency organization, and yet another may pro-

vide explicit authorization for appropriations or limits on what activities may be funded through the appropriations process.

The web of authorizing statutes can be complicated because there are no underlying requirements concerning their duration or specificity. As substantive law, authorizations are generally permanent unless otherwise specified, but they can have any duration. This can be further complicated when authority for an agency's activities are permanent, and the authorization for appropriations actions is limited to specific fiscal years. For example, authorization of appropriations for defense and intelligence activities have typically been on an annual cycle, while those for other agencies or programs are often on two- to 5-year cycles. Authorizations also may be differentiated as definite or indefinite. That is, they may authorize specific amounts for specific activities, or they may provide that "such sums as are necessary" are authorized. Both the duration and specificity of limitations can have an impact on the appropriations process.

Appropriations, in contrast, specifically refers to legislation which provides budget authority, that is, authority for government agencies or programs to obligate funds. Appropriations are typically provided for a single fiscal year, although the availability of appropriated funds can be specified as multiyear or "no year" (i.e., to remain available until spent without regard to year). Although there is no constitutional requirement that an appropriation follow an authorization, historically that has been the case.

LONGSTANDING TRADITION. Authorizations have been separated from appropriations by congressional rules and practices reaching back to the colonial era. The distinction between what are today termed authorization and appropriations appears to have been understood and practiced long before it was formally recognized in the rules, being derived from earlier British and colonial practices.

The distinction between authorization and appropriations was reflected in the practice of early Congresses to designate appropriations legislation as "supply bills," whose purpose was simply to supply funds for government operations already defined in law. The inclusion of new legislation, it was feared, might delay the provision of funds, or lead to the enactment of matters that might not otherwise become law. The idea of authorizing appropriations was understood to be implicit in legislation defining or prescribing duties or activities of an agency, rather than explicit as it is in modern practice.

By the 1820's and 1830's, the inclusion of legislative "riders" in appropriations bills had become frequent enough that some Members began to fear that they could no longer rely on unwritten understandings to keep appropriations separate from general legislation, and thus prevent spending legislation from being subject to prolonged consideration as a result. The failure of the fortifications appropriations bill to be enacted in the 24's Congress, due to a legislative provision, apparently inspired the next Congress to take action. Language was added to the Rules of the House in the 25th Congress (September 14, 1837) which emphasized the two-step nature of the process by providing:

No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law.¹

Although the rule did not explicitly prohibit language changing existing law until 1876, as early as 1838, the House established by precedent that legislative language was not in order in appropriations bills.² The Senate adopted a similar rule in 1850, when it prohibited amendments proposing additional appropriations unless they were for the purpose of carrying out the provisions of an existing law.³

THE LATE 19TH CENTURY. The history of Congress in the 19th century shows that it has sometimes recast the procedural division between legislation and funding questions, without revisiting the fundamental issue of their distinctiveness. Throughout the 19th century, the concept of what would today be called authorizations continued to mean primarily permanent legislation, involving general questions of the authority and activities of agencies, while the appropriations legislation of the era was generally precise, even including provisions detailing such things as the number and positions of post office clerks at each specific rate of pay.

¹As adopted in the 25th Congress. Congressional Globe, 25th Cong., 2nd sess., Mar. 13, 1838, p. 235.

²As described in Asher C. Hinds, *Precedents of the House of Representatives of the United States, including references to the Constitution, the laws and decisions of the U.S. Senate*, vol. IV, 83578 (Washington: GPO, 1907).

³Congressional Globe, 31st Cong., 2nd sess., Dec. 19, 1850, p. 94.

In 1876, the House's rule separating legislation and appropriations was amended by what is known as the Holman Rule after one of its chief advocates, Representative William Holman of Indiana. This new provision allowed for appropriations bills to include changes in existing law if it were germane to the subject matter of the bill and retrenched expenditures. At least one scholar has suggested that initial enthusiasm for the new rule stemmed from its use as a device to allow the House to gain leverage against the Senate and President for repeal of several Reconstruction-era laws, including changes in jury qualifications and Federal election supervisors for the South, as well as a reorganization of the Army.⁴

A second major change in the relationship between authorizations and appropriations in the late 19th century was the dispersal of appropriations jurisdiction among several legislative committees.

The expansion of the workload of the Committee on Ways and Means during and after the Civil War (especially due to banking, currency, and debt questions) led to the 1865 creation of two new committees in the House (Banking and Currency, and Appropriations) and a division of the workload. The jurisdiction of the new Appropriations Committee was defined as the "appropriation of the revenue for the support of the Government." This jurisdiction, however, was extensive, but not all-inclusive, and the Committee had to deal with its erosion at an early stage. Sometime after the creation of the Appropriations Committee, the Commerce Committee was able to establish a unique joint jurisdiction over the rivers and harbors bill, reporting the bill which would then be referred to the Appropriations Committee before it could be considered on the House floor. Beginning in 1878, however, the Commerce Committee began to use suspension of the rules as a method of circumventing the jurisdiction of the Appropriations Committee. This challenge to Appropriations jurisdiction became accepted practice, and was codified in the House rule revision of 1880, which gave the Commerce Committee ". . . the same privileges in reporting bills making appropriations for the improvement of rivers and harbors as is accorded to the Committee on Appropriations in reporting general appropriations bills."

The rule revision of 1880 also extended the power to report appropriations to the Agriculture Committee (for the Department of Agriculture). The jurisdiction of the House Appropriations Committee was further eroded when the rule revision of 1885 took away its control over the Military Academy, Army, Navy, Post Office, consular and diplomatic, and Indian appropriation bills, and distributed these bills to various authorizing committees. The Senate likewise created a separate Appropriations Committee in 1867, and, in January of 1899, effected a similar dispersal of jurisdiction.

The distinction between legislation and appropriations was preserved in House and Senate rules, however, and the exercise of jurisdiction over both aspects of the funding process by these authorizing committees does not seem to have caused any major changes in the form of measures enacted. It is important to note that, even after they gained appropriations jurisdiction, legislative committees did not attempt to merge it with their legislative jurisdiction, and continued to address broad policy and organizational questions separate from the details of funding agency activities.

RECONSOLIDATED APPROPRIATIONS. By the end of World War I, the idea of a more centralized budgetary process, including reconsolidated appropriations jurisdiction, gained prominence. The Bureau of the Budget, newly established under the Budget and Accounting Act of 1921, also recommended that appropriations bills be reorganized along administrative lines, with appropriations for salaries and expenses of the various departments being carried in the same bill as funding for the programs and activities they administered (this grouping had previously existed only in the Department of Agriculture appropriations bill). The House Appropriations Committee, with its newly reconsolidated jurisdiction, adopted the Bureau's concept and reorganized the structure of appropriations bills and its subcommittees so extensively that only the Agriculture bill remained essentially unchanged.

Prior to this reorganization, appropriations bills tended to be organized along topical lines. For example, the military activities of the War Department were considered in appropriations bills reported by the Military Affairs Committee, the activities of the Corps of Engineers were considered in the Rivers and Harbors appropriations bill reported by the Commerce Committee, and the salaries and contingent expenses of the civilian administration of the Department was carried in the Executive, Legislative, and Judicial bill, which was in the jurisdiction of the Appropriations Committee. A similar division existed for most departments, and was true

⁴ Stewart, Charles H., *Budget Reform Politics: The Design of the Appropriations Process in the House of Representatives, 1865-1921*, (New York: Cambridge Univ. Press, 1989), p. 89.

even for those agencies whose appropriations were wholly within the jurisdiction of the Appropriations Committee. Funding for the activities of agencies as disparate as the Interstate Commerce Commission, the Coast Guard, and the Bureau of Mines were carried in the Sundry Civil bill, while their salaries and expenses were generally funded in the Executive, Legislative, and Judicial bill.

The House's reorganization created jurisdictional difficulties for the Senate, which attempted to retain a structure based on the topical organization of appropriations bills, as well as multiple committees sharing jurisdiction over appropriations bills. Confronted with the difficulty of considering the House's reorganized appropriations bills, the Senate reorganized its own appropriations jurisdiction and subcommittee structure in 1922.⁵

THE MODERN CONGRESS. In modern practice, legislative committees have attempted to play a more direct role in the oversight of Federal agencies, and in the process, revamped the concept of how authorizations should be constructed. Committees have frequently taken an approach with authorizing legislation that now means both a periodic, and a more detailed, review of agency organization and activities. The refocusing of authorizations on programmatic details, enumerating how funds ought to be spent, sometimes leads to the criticism that they seem to be duplicative of appropriations. Unlike appropriations, however, authorizations are not always in the form of a single, annual measure. Despite their more detailed, modern approach, authorizing committees have not uniformly adopted a single approach to their legislation. Authorizing legislation can be framed in terms of administrative divisions, whether that means a whole department or individual agencies; they can be framed in terms of reauthorizing a single, specific piece of legislation; or they can be framed in terms of an issue or topic. The result is that the authorizations relating to any one department, and the programs it administers, can be a complex web of varying specificity and duration. One law might set up an agency and establish its underlying mission, while a second might establish a program to be administered by the agency, and a third might provide specific guidelines for agency activities, including limits on what activities may be funded through the appropriations process. These laws might also be subject to differing sunset provisions.

At the same time, the appropriations committees have also changed the focus of their legislation, and have generally moved away from the level of detail that was once common. In modern practice, appropriations legislation often provides funding for specific agencies or programs in only one or a handful of lump-sum paragraphs. The few details in the legislative language are typically supplemented by other, non-statutory guidelines, such as report language.

Although the evolution of the form of authorizations and appropriations has sometimes brought them into conflict, nevertheless, they remain conceptually distinct. Authorizing committees and their legislation remain the primary venue for assessing whether a program constitutes a "good idea," while appropriations remain the primary venue deciding amongst competing demands for Federal resources, and for assessing questions of how well Federal funds are spent.

Thank you for your attention. I welcome your questions.

Chairman ROCKEFELLER. Thank you. Thank you very much. That was a good history lesson which has a lot to say to us.

The experience in the last part of the 19th and early part of the 20th centuries, what was the experience of having authorization and appropriation power combined, number one? What were the practical consequences of that? Was there an overall effect on the Federal budgeting process? And why did the pendulum swing back to a single appropriations committee to the extent that it has?

Why did that appropriations committee, in your judgment, other than the usual, you know, we don't do any more earmarks so life is getting a lot tougher—why did they become what they have become, which, if you're on the Commerce Committee or the Finance Committee or the Intelligence Committee or the Veterans' Committee, like I am, the Appropriations Committee is a real problem, is a real problem.

⁵S.Res. 213, 67th Congress. For its consideration see "Consideration of Appropriations Bills," Congressional Record, vol. 62, Mar. 1–Mar 4, Mar. 6, 1922, pp. 3199–3207, 3279–3291, 3331–3344, 3375–3392, 3400, 3418–3432.

Now, there are two very powerful people that lead that committee and so one could posit that its role has changed over time depending upon what the leadership is or whether the leadership is willing to work with the White House unbeknownst to the authorizing committees that are very much a part of the congressional pursuit. So I'm interested in your thoughts on that.

Mr. SATURNO. Well, the general problem as perceived by legislative committees in the 1800s was what they would term an excessive economy of the appropriators. And quite simply, they were looking to control the appropriations process because they felt that the appropriators were not providing a sufficient amount of funds for the programs and for the agencies that they had the greatest interest in. That's partly why it began, beginning in 1880, with the river and harbors bill and with the agriculture bill. Those were the things that most directly involved widespread funding that was dispersed throughout the country that—

Chairman ROCKEFELLER. I'm not clear as to your answer. Are you saying that the authorizing committees rose up in rage and changed the appropriators?

Mr. SATURNO. Yes. Literally, the House Commerce Committee in particular, on a number of occasions attempted to share or take jurisdiction over the bill to provide funding for river and harbor projects away from the appropriators. And it was eventually written into House rules beginning in 1880 that they had exclusive jurisdiction over that particular piece of spending legislation. Other committees saw similar opportunities, and the House was eventually willing to disperse almost half of the jurisdiction of the Appropriations Committee to these other legislative committees at various times in the 1880s.

Chairman ROCKEFELLER. OK. Well, now, it's a little bit later, and the Appropriations Committee has—and I might say that my Vice Chairman is a very distinguished member of that committee and I'm very glad that he is, very glad that my colleague from West Virginia is. On the other hand, it's become weighted and they have developed their own kind of psyche that you can't cross the Appropriations Committee because they'll never forget. And there are people I could point to on the Appropriations Committee about which that would be absolutely true.

So why is it that the Appropriations Committee is where it is when what it's doing, at least with respect to this hearing, may not be in the national interest or the national security interest? Why is it they were able to assemble all that power? You said that the committees all rose up and demanded more of the action, but that was then, this is now. It's not the case now.

Mr. SATURNO. The reverse swing of the pendulum began early in the 20th century based on the idea that dispersed appropriations was a pretty inefficient way to do budgeting, that it led to a lot of venue shopping by agencies that would sometimes come to the Appropriations Committee, sometimes go to other committees looking for money to fund various projects and activities, and that this led to an increase in spending. Especially after the First World War, the idea of inefficiency in Government institutions, particularly in legislative institutions, helped the idea of reform take strong hold. And that was the reason for the reconsolidation, so that there

would be less of an opportunity for agencies to try and find the most malleable congressional committee to provide funds for them and would only be able to go through a single committee.

And that's essentially the system that we still have today. The rationale for it is that it prevents agencies from coming to multiple committees to seek funding, and whether or not that continues to be useful, whether that's particularly useful in the case of intelligence funding, well, that's certainly for Members such as yourself to decide.

Chairman ROCKEFELLER. Thank you.

Senator BOND.

Vice Chairman BOND. Thank you very much, Mr. Chairman.

And thanks to you, Mr. Saturno and Professor Zegart, for giving us some very good background.

I was fascinated to hear that the reform was to bring all the power back into the Appropriations Committee. What's the status in other democracies around the world? How many of them split the authorizations and appropriations? What's the practice elsewhere? Can we learn anything from looking at other legislative bodies to guide us?

Mr. SATURNO. I don't know the extent to which most other legislative bodies formalize it within their rules, but almost all of them keep separate the question of budgetary legislation and, on the other hand, general legislation to affect the organization and activities of Government departments.

Vice Chairman BOND. But you don't see anything in the Founding Fathers' system of checks and balances that would say that they felt it necessary to provide checks and balances within Congress to keep authorizing committees from having a say in appropriations. Is that a fair statement?

Mr. SATURNO. Yes. Their conception of authorizations at the time was generally that they would pass permanent legislation detailing the authority of different agencies. In fact, the law passed in 1789 creating the Department of the Treasury still in large part defines the basic functions and the activities of the Department of the Treasury. That's partly why they don't have, or aren't perceived to need, an annual authorization Act. So the conception of what's considered necessary or useful in terms of authorizing legislation is in large part what's changed over the past 200 years.

Vice Chairman BOND. Professor Zegart, I was fascinated by your analysis. Obviously, you have followed what's going on in Congress and in intelligence very closely. You said that of 12 major unclassified studies, none were adopted before 9/11. What do you think the major impediment to that was? Is it an analysis of the mood or problems of organizing this body? What do you see as the major impediments to reform?

Dr. ZEGART. Well, Senator, I think the major impediments are the same ones that have been problematic for all kinds of intelligence reform, not just congressional reform, and there are three. And I think Congress has an even harder time than executive branch agencies. The three are, first, inertia. No organization changes easily on its own, whether it's IBM or GM or the Congress.

The second is turf. And here, it's helpful, I think, to think of the decentralization of Congress, which was accelerated in the 1970s

with congressional reforms serving individual interests of individual Members. So the more disparate power centers there are in the Congress, the better it is for any individual Member because the pie is divided. It makes perfect sense from the standpoint of the reelection interest of individual Members, not so helpful for national interest overall. And so that turf division which was accelerated in the 1970s has proven particularly problematic from the standpoint of congressional reform.

And then the third factor is politics, and I think this Committee hearing today has talked a lot about how intelligence is different. Historical precedents are helpful, particularly in enlightening us that there really is no stringent requirement for either separating or combining authorizations and appropriations. But in intelligence, what strikes me as particularly different, as Congressman Hamilton noted, is that this is the only committee that really stands watch over the executive branch, that there aren't non-partisan think tanks that have access to that information, there aren't academics like me who have easy access.

Vice Chairman BOND. You're about as close as we've got to that.

Dr. ZEGART. You're a lot closer than I am.

And so there's a particularly important role that Intelligence Committees play, and at the same time members of the American public are not engaged in intelligence precisely because it's secret. So when I teach my students in California and I ask them what they know about the intelligence community, most of them learn a lot more from what they see in Hollywood where I live than being able to figure out from information coming out of Washington. The tremendous secrecy involved in intelligence makes it hard from a political standpoint to get the American public energized about intelligence reform, as we've seen over the past decade.

Vice Chairman BOND. When I was first elected Governor, my biggest challenge was to reorganize the executive branch of Missouri State government. And the turf, every senior member of the General Assembly had a particular agency that was his agency, and he didn't want anybody in the executive branch running that agency. And the water patrol knew they reported to one Senator, and that Senator would take care of them and the water patrol chauffeured him around every lake in the State and was his own private navy. And you talk about a cat fight, I was in it.

But let me ask for your advice. You heard our discussion earlier, and we went into the issue with Congressman Roemer and Congressman Hamilton—very good testimony—saying we've got to change the process because without having any input in appropriations, the Intelligence Committee has been divorced from the appropriations process. From your experience, how do you see us bringing this movement to fruition so we can have some impact, we can have an effective oversight impact in the \$40-plus billion of intelligence community appropriations?

Dr. ZEGART. Well, I think that's the \$64,000 question.

Vice Chairman BOND. That's why we waited to the end to ask you.

[Laughter.]

Dr. ZEGART. Well, I appreciate what the Chairman, Senator Rockefeller has said about the 23 votes and just how difficult this

task is. If you look at the history of intelligence reform, we've seen the dangers; we've known the imperative for organizational changes in Congress and the executive branch. It's very hard to get from here to there.

I think history does suggest that there are game-changing junctures, and this could well be one of them. And in those game-changing junctures, what makes the difference is leadership of individual either Members of Congress or the President and engaging with a public to force change on a change-resistant system. And I'm thinking in particular of two moments in time. The first is 1947 when President Truman undertook a tremendous battle with the Department of War and the Department of Navy to create our current national security system. The New York Times back at the time reported it as a brass knuckle fight to the finish. It took 4 years and bitter wrangling, public wrangling, lots of press about it, lots of open hearings about it, and ultimately Truman prevailed. It wasn't perfect, but it was a tremendous example of a game-changing moment and making the most of that moment.

The second example that comes to mind is Goldwater-Nichols, 1986, where we had a convergence of forces. Military experts had known for years that the services needed better coordination, very similar to intelligence, and yet there wasn't the impetus, so there wasn't the opportunity for reform. Well, suddenly there was a convergence of circumstances. There was the failed rescue effort in Iran in 1980. There was Grenada. There was the Marine barracks bombing in 1983. And there was momentum for reform in Congress, and so two Members of Congress pushed through that momentum to get this incredibly important legislation.

So I think windows of opportunity arise every once in awhile, and this I think could very well be one of them, so you may get more than your 23 votes if we push hard enough.

Vice Chairman BOND. Well, I thank you and I believe your testimony helps us move down the line. I just wish we had 60 of our colleagues sitting here listening to you instead of—if you want to play Goldwater, I'll be Truman, or you play Truman and I'll be Goldwater.

And I thank you both very much because we need to change things and come together with our colleagues to work out a responsible means of assuring that our efforts with the 50 staffers and all on this Committee are not for naught. I thank you.

Chairman ROCKEFELLER. You've got to end better than that, not for naught.

Vice Chairman BOND. That they mean something.

Chairman ROCKEFELLER. There you go.

Thank you both very much. Incidentally, the number you need to focus on is not 50 but 60 votes because all important matters are filibustered.

Vice Chairman BOND. Oh, well, we can get—

Chairman ROCKEFELLER. It's 23 to 60 here.

It's interesting—I mean, it really is—to listen to the four of you this afternoon. And you were talking about the way history has worked, and it's brought those revolutions. And working within what we do now almost makes you—you could on the one hand ask if we had both the authorizing and the appropriating power for the

Intelligence Committee, would that be wise? Would that be a wise thing? Should there be some kind of a check or balance on our decisionmaking? Because we tend to get pretty worked up about situations around the world.

And then the other side would be is there an interim way, which was also discussed this afternoon, of gradually persuading people or being more aggressive with our staff with respect to the appropriators? And they're a very tough bunch. They always have been, at least in the 23 years I've been here. And they don't yield, and they take great pride in that.

So I mean, very important questions have been raised in this hearing this afternoon, and I'm very grateful to you. I only apologize that the Vice Chairman had such a long opening statement.

[Laughter.]

Vice Chairman BOND. Mr. Chairman, sometimes we appropriators think that the authorizing committees are really causing a great deal of trouble, so I put on my other hat and I say and all of the equities are not on the side of authorizers. Thank you.

Dr. ZEGART. Thank you.

Chairman ROCKEFELLER. The hearing is adjourned.

[Whereupon, at 5:20 p.m., the Committee adjourned.]

