

110th Congress, }
1st Session }

SENATE

{ REPORT
110-57

REPORT
OF THE
SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

COVERING THE PERIOD

JANUARY 4, 2005

TO

DECEMBER 8, 2006



APRIL 26, 2007.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 2007

59-010

SELECT COMMITTEE ON INTELLIGENCE

JOHN D. ROCKEFELLER IV, West Virginia, *Chairman*
CHRISTOPHER S. BOND, Missouri, *Vice Chairman*

DIANNE FEINSTEIN, California	JOHN WARNER, Virginia
RON WYDEN, Oregon	CHUCK HAGEL, Nebraska
EVAN BAYH, Indiana	SAXBY CHAMBLISS, Georgia
BARBARA A. MIKULSKI, Maryland	ORRIN HATCH, Utah
RUSSELL D. FEINGOLD, Wisconsin	OLYMPIA J. SNOWE, Maine
BILL NELSON, Florida	RICHARD BURR, North Carolina
SHELDON WHITEHOUSE, Rhode Island	

HARRY REID, Nevada, *Ex Officio Member*
MITCH McCONNELL, Kentucky, *Ex Officio Member*
CARL LEVIN, Michigan, *Ex Officio Member*
JOHN McCain, Arizona, *Ex Officio Member*
ANDREW W. JOHNSON, *Staff Director*
LOUIS B. TUCKER, *Minority Staff Director*
KATHLEEN P. MCGHEE, *Chief Clerk*

During the period covered by this report, the composition of the Select Committee on Intelligence was as follows:

PAT ROBERTS, Kansas, *Chairman*
JOHN D. ROCKEFELLER IV, West Virginia, *Vice Chairman*

ORRIN HATCH, Utah	CARL LEVIN, Michigan
MIKE DeWINE, Ohio	DIANNE FEINSTEIN, California
CHRISTOPHER S. BOND, Missouri	RON WYDEN, Oregon
TRENT LOTT, Mississippi	EVAN BAYH, Indiana
OLYMPIA J. SNOWE, Maine	BARBARA A. MIKULSKI, Maryland
CHUCK HAGEL, Nebraska	JON S. CORZINE, New Jersey*
SAXBY CHAMBLISS, Georgia	RUSSELL D. FEINGOLD, Wisconsin*

BILL FRIST, Tennessee, *Ex Officio Member*
HARRY REID, Nevada, *Ex Officio Member*
JOHN WARNER, Virginia, *Ex Officio Member*
James D. Hensler, Jr., *Staff Director*
Andrew W. Johnson, *Minority Staff Director*
Kathleen P. McGhee, *Chief Clerk*

* Sen. Corzine resigned from the Senate on January 17, 2006, to take office as Governor of New Jersey. Sen. Feingold was appointed to fill this vacancy on the Committee on January 18, 2006.

PREFACE

The Select Committee on Intelligence submits to the Senate this report on its activities from January 4, 2005 to December 8, 2006. In several places, the Committee will include a brief reference to actions taken early in the current Congress in order to make clear the status of a few items from the 109th Congress.

Under the provisions of Senate Resolution 400 of the 94th Congress, the Committee is charged with the responsibility of carrying out oversight of the programs and activities of the Intelligence Community of the United States. Of necessity, most of the Committee's work is conducted in secret. Nevertheless, throughout its history, the Committee has believed that its activities should be as publicly accountable as possible. It is in that spirit that we submit this report to the Senate, just as the Committee has been doing since the year after its creation in 1976.

We take this opportunity to thank all of the members of the Committee in the 109th Congress. In particular, we take special note of those of our colleagues who have completed their service on the Committee. Senator Pat Roberts was our chairman from 2003 through 2006, having begun his tenure on the Committee in 1997. Senator Mike DeWine served on the Committee from 1995 through 1999, and from 2001 through 2006 and Senator Jon Corzine served on the Committee from the beginning of the 109th Congress until January 2006 when he left the Senate to become governor of New Jersey. Also, Senator Carl Levin served as a full voting member of the Committee from 1997 through 2006. He has completed that portion of his service on the Committee and is now a nonvoting ex officio member by virtue of his chairmanship of the Committee on Armed Services. Their commitment to the work of the Committee and their contribution to a strong Intelligence Community are appreciated.

We also express our deep gratitude for the work of all members of the Committee's staff during the 109th Congress. Their professionalism and dedication were indispensable to the Committee's efforts to meet its responsibilities.

JOHN D. ROCKEFELLER IV,
Chairman.
CHRISTOPHER S. BOND,
Vice Chairman.

CONTENTS

	Page
Preface	iii
I. Introduction	1
II. Legislation	2
A. Intelligence Authorization Bills for Fiscal Years 2006 and 2007	2
B. USA PATRIOT Act Reauthorization and Improvement	6
III. Oversight Activities	9
A. Hearings and Briefings	9
1. Annual Worldwide Threat Overview	9
2. China	11
3. Counterterrorism	11
4. Cover Issue	11
5. India-U.S. Nuclear Cooperation Agreement	12
6. Iraq	12
7. Overhead Reconnaissance Architecture	13
8. Department of Treasury Intelligence Program	13
B. Committee Inquiries and Reviews	13
1. Phase II of the Inquiry into Prewar Intelligence Assessments on Iraq	13
2. Able Danger	14
C. Financial Accounting, Inspectors General, and Audits	15
1. Intelligence Community Compliance with Federal Financial Ac- counting Standards	15
2. Oversight of Intelligence Community Inspectors General	17
3. Audits	17
a. In-Q-Tel	17
b. Foreign Intelligence Surveillance Act	18
c. Intelligence Community Personnel Growth	19
d. Document Exploitation	20
e. Compartmented Program	20
D. Restricted Access Programs	20
1. Detention and Interrogation	21
2. NSA Surveillance	21
E. Review of Intelligence Related to Iran	22
F. Covert Action	22
G. Independent Cost Estimates	23
H. Declassification	24
1. CIA Accountability Report	24
2. Reports on Prewar Intelligence Regarding Iraq	26
3. Iraq WMD Retrospective Series	27
4. National Archives Audit	27
I. Office of the Director of National Intelligence	27
IV. Nominations	28
A. John D. Negroponte, Director of National Intelligence	29
B. Michael V. Hayden, Principal Deputy Director of National Intelligence	29
C. Janice Bradley Gardner, Assistant Secretary of the Treasury for Intel- ligence and Analysis	30
D. Benjamin A. Powell, General Counsel, Office of the Director of Na- tional Intelligence	31
E. John S. Redd, Director, National Counterterrorism Center	31
F. Dale W. Meyerrose, Chief Information Officer, Office of the Director of National Intelligence	32
G. John Rizzo, General Counsel, Central Intelligence Agency	32
H. Kenneth Wainstein, Assistant Attorney General, National Security Division	33

	Page
Preface —Continued	
I. Michael V. Hayden, Director, Central Intelligence Agency	33
J. Randall Fort, Assistant Secretary of State for Intelligence and Research	34
V. Support to the Senate	34
VI. Appendix	34

I. INTRODUCTION

Immediately prior to the period covered by this report, Congress enacted the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458. The Act replaced the position of Director of Central Intelligence (DCI) with two positions: the Director of National Intelligence (DNI) and the Director of the Central Intelligence Agency (CIA). It assigned to the DNI two of the DCI's functions, namely, serving as head of the Intelligence Community and acting as principal adviser to the President for intelligence matters relating to national security. The CIA Director was given the DCI's other function, that of serving as head of the Central Intelligence Agency.

With respect to the DNI's responsibility as head of the Intelligence Community, the Act delineated a range of budget, personnel, tasking, and other authorities. To assist in carrying out the duties of the DNI, the Act created an Office of the Director of National Intelligence (ODNI), to be composed of various deputies, the National Intelligence Council, and other offices and officials.

In general, the Act provided that its provisions on restructuring the Intelligence Community would become effective no than later six months after enactment, a date that occurred in mid-June 2005. At the end of March 2005, the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, often referred to by the names of its Co-Chairmen as the Robb-Silberman Commission, issued its report, adding to the recommendations to be considered in implementing the Intelligence Reform Act. Within the six-month period provided by the Act, it fell to the President to determine the timetable for transition from old to new, the lynchpin being appointment of the first DNI. Thus, the period covered by this 2005–2006 report coincided with the initial implementation of this major reform of the Intelligence Community, including the Committee's role in the confirmation of the DNI and other officers whose appointments under the Act are subject to the advice and consent of the Senate.

The Committee's work during the period of this report was also shaped by other enactments or decisions preceding the period as well as events occurring within it. The USA PATRIOT Act, enacted in October 2001, included a provision on the expiration of a number of intelligence investigation authorities contained in that Act. The sunset meant that legislative action by December 31, 2005 was required in order to extend, with changes if warranted, those authorities. The Committee's own action in February 2004, in establishing, formalizing, and expanding the Committee's inquiry into intelligence and the use of it relating to the war in Iraq, also shaped a significant aspect of its work during 2005–2006.

Additionally, events that followed press reports in November 2005 about clandestine CIA prisons and in December 2005 about

what was called the President's Terrorist Surveillance Program, as well as the decision of the Supreme Court in June 2006 on the lawfulness of the military commission system that had been established by Executive action, each contributed to the work of the Committee and the Senate during 2005–2006.

These matters, when added to unfolding events concerning Iraq, Afghanistan and Pakistan, Iran, and North Korea plus the normal range of legislative and oversight responsibilities, presented the Committee with a broad range of tasks for the 109th Congress.

II. LEGISLATION

A. INTELLIGENCE AUTHORIZATION BILLS FOR FISCAL YEARS 2006 AND 2007

In the first part of 2005 and then again in 2006, the Committee conducted its annual review of the President's budget recommendations for the civilian and military agencies and departments composing the Intelligence Community. During the 109th Congress, these budget requests were for fiscal year 2006 and fiscal year 2007. They encompassed the National Intelligence Program, the Joint Military Intelligence Program, and the Tactical Intelligence and Related Activities programs of the Department of Defense. The latter two programs were merged and became the Military Intelligence Program in September 2005.

The intelligence entities covered by those annual reviews included the ODNI, the CIA, the Defense Intelligence Agency (DIA), the National Security Agency (NSA), the National Geospatial-Intelligence Agency (NGA), the National Reconnaissance Office (NRO), the intelligence capabilities of the military services (concerning which the Committee makes recommendations to the Senate Armed Service Committee), as well as the intelligence-related components of the Federal Bureau of Investigation (FBI), the Departments of State, Treasury, Energy, and Homeland Security, and the Drug Enforcement Administration.

As part of its review in 2005 and then again in 2006, the Committee held closed budget hearings at which senior Intelligence Community officials presented testimony. Members of the Committee's staff, designated as budget monitors for particular Intelligence Community elements, also evaluated the detailed budget justification documents submitted by the Executive branch both at briefings at the Committee offices and on site at Intelligence Community agencies. On the basis of this review, the Committee prepared an annex to its annual bill and report, one each for fiscal year 2006 and fiscal year 2007. Each annex contained a classified schedule of authorizations and classified directions to Intelligence Community elements that addressed a wide range of issues discerned in the course of the budget review and other oversight responsibilities of the Committee.

While this budget review was in progress, the Committee also reviewed the Administration's proposals for the public part of the Committee's annual bill, consisting of new or amended legislative authority requested by the Intelligence Community, as well as legislative proposals originating in the Committee and elsewhere in the Senate. From this part of its work, the Committee produced an

original bill and also a public report for each of fiscal years 2006 and 2007 that both explained the provisions of the bill and also provided comments, including directions to the Intelligence Community, that could be stated in a public, non-classified form.

As a result of this extensive process in 2005 and again in 2006, the Committee reported two Intelligence Authorizations Acts with accompanying reports and classified annexes-one for fiscal year 2006 and the second for fiscal year 2007.

On September 29, 2005, the Committee reported S. 1803, the Intelligence Authorization Act for Fiscal Year 2006. The 2006 bill was sequentially referred, first to the Committee on Armed Services and then to the Committee on Homeland Security and Governmental Affairs. It was returned to the Senate Calendar on November 16, 2005 to await floor action. To facilitate floor action, the Chairman and Vice Chairman of this Committee prepared a managers' amendment that accepted the recommendations of the Armed Services Committee and those of the leadership of the Homeland Security and Governmental Affairs Committee, as well as recommendations of individual members. No Senate floor action occurred, however, on either the Committee bill or on H.R. 2475, the House-passed Intelligence Authorization Act for Fiscal Year 2006.

On May 25, 2006, the Committee reported S. 3237, the Intelligence Authorization Act for Fiscal Year 2007. S. 3237 included many of the legislative provisions that had been in the proposed 2006 authorization bill, as modified to reflect the recommendations of the Armed Services and Homeland Security and Governmental Affairs Committees and individual Senators that had been incorporated in the proposed managers' amendment to the 2006 bill. The 2007 bill was sequentially referred to the Committee on Armed Services, which reported it without amendment on June 21, 2006. No Senate floor action occurred on the 2007 bill, which expired on the Senate Calendar at the end of the 109th Congress together with H.R. 5020, the Intelligence Authorization Act for Fiscal Year 2007 that had passed the House on April 26, 2006.

The 109th Congress thus became the first since the 94th Congress that did not pass an Intelligence Authorization Act. Fiscal year 2006 became the first since 1978 to not only begin but also to end without an intelligence authorization. On the budget side, this meant that all authorizations for Intelligence Community appropriations were accomplished by stop gap provisions in the Defense Department Appropriations Acts (and similar provisions elsewhere) which provided that funds appropriated by them are deemed to be authorized during the fiscal year until enactment of the Intelligence Authorization Act for that year (e.g., Defense Appropriations Act, 2006, Pub. L. No. 109-148, (8092; Defense Appropriations Act, 2007, Pub. L. No. 109-289, (8083).

The effect of the failure to act on an intelligence authorization is not limited to the authorization of appropriations. Apart from the rare major restructuring of the Intelligence Community in the Intelligence Reform and Terrorism Prevention Act of 2004, for the past nearly 30 years, the annual intelligence authorization has been the regular means for adjusting, year-to-year as needs are recognized, the legislative authorities governing the Intelligence

Community. The last time that occurred was more than two years ago in the enactment in December 2004 of the Intelligence Authorization Act for Fiscal Year 2005.

The amendments to the National Security Act of 1947, the Central Intelligence Agency Act of 1949, the National Security Agency Act of 1959, and other laws—many of which were requested by the Intelligence Community—that were contained in the proposed fiscal year 2006 and 2007 bills are explained in the two reports that the Committee filed in the 109th Congress on those authorizations, S. Rep. Nos. 109–142 and 109–259.

The 2006 and 2007 bills included:

- Measures to improve information sharing, by authorizing interagency funding for the benefit of the Intelligence Community and establishing rules for sharing of information governed by the Privacy Act.
- Establishment of a strong and independent Inspector General (IG) for the Intelligence Community, appointed by the President with the advice and consent of the Senate, to review programs of the Community and the relationships among the elements of it, and to report to the DNI and to the Congress.
- Creation of a National Space Intelligence Center to coordinate all collection, analysis, and dissemination of intelligence related to space, as well as participate in Intelligence Community analyses of requirements for space systems.
- In recognition of the critical responsibilities of the Director of the NSA, as well as those of the Directors of the NRO and the NGA, a requirement that their appointments by the President be confirmed by the Senate.
- Provision for a presidentially-appointed, Senate-confirmed Deputy Director of the CIA to ensure that, in the event of a vacancy in the position of the Director, a Deputy, who has the confidence of the President and the Congress, is available immediately to assume the leadership of that critical agency.
- Enhanced responsibilities on the protection of sources and methods of intelligence.
- Changes to the procedures requiring the provision of timely information to the congressional intelligence committees by the Intelligence Community.
- Public accountability through the disclosure of the overall annual budget request, authorization, and appropriation for the entire Intelligence Community.
- An increase in the penalties for the disclosure of the identity of undercover intelligence officers and agents.

Both annual authorization bills addressed a recurring question on the applicability of the Freedom of Information Act (FOIA) to Intelligence Community records: should the “operational files” of certain Intelligence Community elements be exempted from FOIA publication, disclosure, search, and review requirements? Existing legislation exempts the CIA, NSA, NRO, and NGA from those obligations. The rationale is to relieve an administrative burden of searching and reviewing sensitive classes of records that in the end, most certainly, would not be subject to disclosure under the FOIA.

In the fiscal year 2006 authorization bill, the Committee included a provision exempting operational files of the DIA from the FOIA's publication, disclosure, search, and review requirements. The exemption became law through the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163. That Act provided that the provision would sunset at the end of 2007.

In its authorization bills for fiscal years 2006 and 2007, the Committee included a provision that would grant a limited operational files exemption to the ODNI, which had sought a broader exemption. The bills limited the exemption to information provided to the ODNI from the operational files of an intelligence community element that had been exempted from publication, disclosure, search, or review requirements. They provided that operational files would continue to be subject to search and review for information about a U.S. citizen or permanent resident and for information that is the subject of an investigation by intelligence oversight bodies including the House and Senate Intelligence Committees.

The Committee's reports accompanying both bills did not exclude the possibility of a broader exemption but stated that before acting on that, the DNI, through the Chief Information Officer, should systematically study and report on the application of the FOIA to the ODNI. The report should include the responsibilities assigned by Congress concerning the operational files exemptions now applicable to Intelligence Community elements. In both reports, the Committee reminded the DNI and the intelligence elements that now have exemptions that the decennial reviews that are required for each must include consideration of the historical value or other public interest in categories of files and the potential for declassifying a significant amount of material in them.

In addition to the issue of FOIA exemptions, the Committee's intelligence authorization bills and accompanying reports during the 109th Congress addressed a variety of other classification issues. In comments in the report on the 2006 bill, the Committee recommended that the DNI review classification rules and guidelines, and propose standards to simplify and modernize the classification system. The Committee also encouraged the President to reduce disincentives to information sharing, including over-classification.

The Committee's authorization bill for fiscal year 2006 also recommended the authorization of funds for the Public Interest Declassification Board, and the accompanying report expressed the Committee's view that funds for the Board should be included in future budget requests.

One item contained in the 2006 authorization bill that did not need to be carried over to the 2007 bill was a provision on establishing a National Security Division in the Department of Justice to be headed by an Assistant Attorney General for National Security. By the time that the Committee reported its 2007 bill, the Congress had established the new Division through a provision of the USA PATRIOT Improvement and Reauthorization Act of 2005.

As with other legislative and oversight reports filed by the Committee during the 109th Congress, the reports (including additional views) on the two Intelligence Authorizations should be read in full to understand the Committee's proposals. Notwithstanding reservations on some matters that are evident in votes in Committee on

amendments or were expressed in additional views, the vote in Committee to favorably report each of the authorization bills was unanimous.

At the beginning of the 110th Congress, the Committee again reported, with only minor changes, its authorization bill for fiscal year 2007: S. 372, the Intelligence Authorization Act for Fiscal Year 2007; S. Rep. No. 110-2 (2007).

B. USA PATRIOT ACT REAUTHORIZATION AND IMPROVEMENT

Title II of the USA PATRIOT Act of 2001 (Pub. L. No. 107-56) enacted a range of enhanced surveillance and other procedures for law enforcement and intelligence investigations. Section 224 of the Act established an expiration or sunset date, December 31, 2005, for sixteen of those provisions. Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 provided for another enhanced surveillance authority—the “lone wolf” amendment to the Foreign Intelligence Surveillance Act (FISA)—that would also sunset at the end of 2005. That expiration date framed a principal task for the 109th Congress—namely, to study the implementation of these enhanced procedures and to enact legislation to improve and extend them if warranted.

Within the Senate, this Committee and the Committee on the Judiciary have shared jurisdiction over the FISA—involving, as it does, both foreign intelligence and judicial matters—ever since the initial period of 1976 to 1978 when the two committees worked together to secure its enactment in 1978. In the 109th Congress, both reported legislation to extend or make permanent the expiring provisions and also to modify those and other investigative authorities.

This Committee held three open hearings in April and May 2005, and also a closed hearing, receiving testimony and statements from a broad range of government and non-government witnesses. The testimony at the open hearings, and related materials, are printed as S. Hrg. 109-341.

At its open hearing on April 19, 2005, the Committee heard testimony from Gregory T. Nojeim, Associate Director and Chief Legislative Counsel of the American Civil Liberties Union; James X. Dempsey, Executive Director of the Center for Democracy and Technology; and Heather MacDonald, Senior Fellow at the Manhattan Institute for Policy Research. The Committee also placed in the record statements from Bob Barr, former Member of Congress from Georgia and chairman of Patriots to Restore Checks and Balances; former Attorney General Edwin Meese III and Paul Rosenzweig, both from The Heritage Foundation; Professor Orin Kerr of the George Washington University Law School; and Kate Martin, Director, Center for National Security Studies. At its second open hearing, on April 27, 2005, the Committee heard testimony from Attorney General Alberto Gonzales, FBI Director Robert S. Mueller III, and CIA Director Porter J. Goss.

On May 24, 2005, the Committee held a third open hearing. Prior to the hearing, the Committee provided to the witnesses a draft bill that had been prepared by committee counsel for consideration by the Committee, and asked the witnesses to comment on it. The witness on the first panel on May 24 was Valerie Caproni, FBI General Counsel. The witnesses on the second panel were

David S. Kris, a former Associate Deputy Attorney General; Joseph Onek, Senior Policy Analyst at the Open Society Institute and Director of the Liberty and Security Initiative at the Constitution Project (and also a former Deputy Associate Attorney General); Daniel P. Collins, a former Associate Deputy Attorney General and Chief Privacy Officer at the Department of Justice; and James X. Dempsey, Executive Director of the Center for Law and Technology. The Committee also placed in the record a letter setting forth the views of Professor Richard A. Seamon of the University of Idaho College of Law.

On June 16, 2005, the Committee reported an original bill, S. 1266, to permanently authorize various provisions of the PATRIOT Act, clarify certain definitions in the FISA, and provide additional tools for intelligence investigations. The bill was accompanied by a report, S. Rep. No. 109–85, with additional and minority views. The vote to favorably report the bill was 11 ayes to 4 noes.

The main elements of S. 1266 included:

- Permanent authorization for nine intelligence-related authorities in Title II of the PATRIOT Act. These included provisions on information sharing (Section 203), roving wiretaps (Section 206), pen register and trap and trace authority (Section 214), business records (Section 215), the threshold test for FISA collection that “a significant purpose” is to obtain foreign intelligence information (Section 218), and immunity from damages for communications providers that provide information, facilities, or technical assistance in accordance with a court order (Section 225).

- A four-year extension, until December 31, 2009, of the sunset for the “lone wolf” provision of the Intelligence Reform Act of 2004, which expanded the definition of agent of a foreign power (and therefore the FISA(s) reach) to include surveillance of an individual who engages in international terrorism or preparation for it regardless of whether there is a known connection to an international terrorist group or other foreign power. This provision applies only to non-United States persons.

- A proposal to amend the definition of foreign intelligence information in the FISA to include information for the protection of national security by use of law enforcement methods such as criminal prosecution.

- An amendment to the business records provision of Title V of the FISA, as amended by Section 215 of the PATRIOT Act, to provide that the recipient of an order may disclose to his or her attorney, for the purpose of obtaining legal advice or assistance, that the FBI is seeking records. The amendment also provided for judicial review in the FISA Court of both the requirement to produce documents and the prohibition on disclosure that the Government is seeking information.

- A new title of the FISA on national security mail covers. The mail cover title would provide that, on request of the FBI, including Special Agents in Charge of field offices, the Postal Service shall furnish information relevant to an authorized investigation to obtain foreign intelligence information or to protect against international terrorism or clandestine intelligence

activities. The information would be that on the outside cover of any mail or a record of the contents of any unsealed mail as authorized by law.

- A new title of the FISA on administrative subpoenas in national security investigations. The new title would authorize the Attorney General or designated officials (including designated Special Agents in Charge of FBI field offices) to issue administrative subpoenas. The subpoenas could require production of any records relevant to an authorized investigation to obtain foreign intelligence not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities. The title would provide for judicial enforcement of the subpoenas as well as judicial review of them on application by the person or entity that received one.

Several sets of additional and minority views were filed and included in the report accompanying S. 1266. These views explain in greater detail the various viewpoints of the Committee members and address many of the provisions listed above as well as amendments that were not adopted by the Committee.

The Judiciary Committee also reported a bill to reauthorize the USA PATRIOT Act, S. 1389. After the House passed its reauthorization act, H.R. 3199, the Senate leadership chose to act on the bill reported by the Judiciary Committee. That bill passed the Senate and was the basis for a conference with the House. This Committee's bill thus remained, until the end of the Congress, on the Senate Calendar. In recognition of the Committee's historical and jurisdictional interest in foreign intelligence surveillance legislation, the Chairman and Vice Chairman of the Committee were chosen to join the leadership of the Judiciary Committee as Senate managers at the conference. Five of the Senate's 10 conferees were members of this Committee.

On December 8, 2005, the conference committee submitted a report, H.R. Rep. No. 109–133. The House agreed to the conference report. After an unsuccessful cloture vote in the Senate, Congress postponed until February 3, 2006, the expiration of provisions scheduled to sunset. A second act extended the sunset until March 10, 2006. On March 1, 2006, the Senate passed S. 2271, the USA PATRIOT Act Additional Authorizing Amendments Act of 2006, which resolved three objections to the conference report. That enabled invocation of cloture on H.R. 3199 and its passage in the Senate, after which the House agreed to the additional amendments by passing S. 2271. The two measures were signed by the President on March 9, 2006, as Pub. L. Nos. 109–177 and 109–178.

In sum, the PATRIOT Act reauthorization accomplished a number of objectives of great interest to the Committee, including:

- Making permanent 14 of the 16 PATRIOT Act authorities, plus the “lone wolf” authority in the Intelligence Reform Act of 2004.
- Extending for four years, until December 31, 2009, the sunset for the remaining two PATRIOT authorities that had been scheduled to sunset—those for roving wiretaps under Section 206 of the PATRIOT Act and for business records orders under Title V of the FISA, as had been amended by Section 215 of the PATRIOT Act.

- Amending the business records title to provide that the records sought must be relevant to an authorized investigation, the application include a statement of facts showing reasonable grounds to believe that, the order only require production of things that could be obtained by a grand jury subpoena or other court order, and that there be minimization procedures on the retention and dissemination of information obtained.
- Further amending the FISA business records title to provide for judicial review on the application of the recipient of an order to produce documents or bar disclosure of the receipt of an order, and also providing for high-level FBI approval and statistical reporting to Congress on applications for the production of library, bookseller, tax, firearm sales, and educational records.
- Including amendments regarding national security letters (NSLs) to provide for judicial enforcement on application of the Government, or judicial review at the behest of the recipient, of an NSL for production of any of the categories of documents covered by the existing five NSL statutes or of an order barring disclosure of an NSL.
- Requiring two comprehensive audits by the Department of Justice IG to be completed in two stages each by the end of 2007. One is on the effectiveness and use, including any improper or illegal use, of the investigative authority provided to the FBI under the business records title of the FISA. The other, with a similar span, concerns the use of NSLs issued by the Department of Justice. The first phase of each audit was completed and submitted to the Congress in March 2007.
- Establishing a National Security Division in the Department of Justice headed by an Assistant Attorney General for National Security who would serve as the Department's primary liaison to the DNI. The new Division brings together the Department's main intelligence oversight office, the Office of Intelligence Policy and Review, and its principal users of intelligence information, the criminal sections responsible for counterterrorism and counterespionage prosecutions.

III. OVERSIGHT ACTIVITIES

A. HEARINGS AND BRIEFINGS

1. Annual worldwide threat overview

It is the Committee's long-standing practice to begin each session of the Congress with a hearing to review the Intelligence Community's assessment of the current and projected national security threats to the United States. The hearings in the 109th Congress covered a wide range of issues and were held in open and closed sessions. The hearings provided the heads of various all-source analytic agencies an opportunity to inform the Committee and the American public about the threats facing the country and the abilities of their organizations to provide information on and counter such threats.

On February 16, 2005, the Committee held an open hearing on the current and projected threats to the United States. Testifying

before the Committee were Porter J. Goss, DCI; Robert S. Mueller, III, Director of the FBI; Vice Admiral Lowell E. Jacoby, Director of the DIA; Admiral James Loy, Deputy Secretary, Department of Homeland Security; and Carol A. Rodley, Principal Deputy Assistant Secretary of State for Intelligence and Research. The transcript of the Committee's February 16, 2005 open hearing, "Current and Projected National Security Threats to the United States," was printed and is available to the public as S. Hrg. 109-61 (2005).

Director Goss identified widely dispersed terrorist networks as one of the most serious challenges to U.S. security interests at home and abroad. In Iraq, the insurgency remained a serious threat to creating a stable representative government. He highlighted continuing proliferation challenges from North Korea and Iran. North Korea claimed to have made new nuclear weapons from reprocessed fuel rods previously stored under International Atomic Energy Agency monitoring at its Yongbyong reactor and continued to develop, produce, deploy, and sell ballistic missiles of increasing range and sophistication. While Britain, Germany, and France were seeking objective guarantees from Iran that it would not use nuclear technology for nuclear weapons, Tehran publicly announced that it would not give up its ability to enrich uranium, and continued its pursuit of long-range ballistic missiles. Director Goss also noted that China's military modernization and military buildup was tilting the balance of power in the Taiwan Strait and that improved Chinese capabilities threaten U.S. forces in the region.

On February 2, 2006, the Committee held an open hearing on the current and projected threats to the United States. This was the first open threat hearing since the confirmation of the new DNI and Director John D. Negroponte presented a consolidated statement on behalf of the Intelligence Community. He was accompanied by Porter J. Goss, Director of the CIA; Robert S. Mueller III, Director of the FBI; General Michael V. Hayden, Principal Deputy DNI; Lieutenant General Michael Maples, Director of the DIA; Charles E. Allen, Chief Intelligence Officer, Department of Homeland Security; and Carol A. Rodley, Acting Assistant Secretary of State for Intelligence and Research. The record for this hearing has not yet been printed.

In his February 2006 statement to the Committee, Director Negroponte explicitly identified terrorism as "the preeminent threat to U.S. citizens, Homeland, interests, and friends." He said that al-Qa'ida, "battered but resourceful," remained the top concern. Al-Qa'ida had inspired other Sunni jihadist groups, which, though posing less danger to the homeland, increasingly threatened U.S. allies and interests abroad. He added that unaffiliated individuals, groups, and cells represented a different kind of threat, which nonetheless posed a serious intelligence challenge. The future terrorist environment would be influenced both by the outcome in Iraq and in the world-wide debate between Muslim extremists and moderates. Director Negroponte identified the ongoing development of dangerous weapons and delivery systems in North Korea and Iran as the second major threat posed to the nation, U.S. troops, and U.S. allies.

2. China

The Committee conducted considerable oversight of intelligence collection and analysis of China in the 109th Congress. The Committee held an oversight hearing on June 23, 2005 to provide members with assessments of China's military modernization, as well as to gain an understanding of how the analytic community assesses intelligence sources and gaps that may exist in forming their judgments. The Committee was especially focused on the community-wide organizational structure for maximizing collection efforts on China. Committee staff traveled to China, Hong Kong, Taiwan, and Japan to make independent determinations. Committee staff received regular briefings from most key collector agencies and groups on China, including from the ODNI, CIA, DIA, State Department Bureau of Intelligence and Research, the Office of Naval Intelligence, NSA, NGA, and FBI, as well as from non-governmental and academic experts on China.

3. Counterterrorism

The Committee maintained a consistent focus on counterterrorism issues throughout the 109th Congress. In addition to open hearings on Worldwide Threats and the Patriot Act, the Committee held more than two dozen formal briefings on counterterrorism related topics. The Intelligence Community regularly provided Committee members with briefings on current intelligence about terrorist threats to the United States. The Committee devoted extensive attention to ensuring that the Intelligence Community received both the resources and authorization needed to combat violent extremists. For example, the Committee focused on further developing potent human intelligence capable of penetrating terrorist networks and increasing the number of intelligence officers in the field. The Committee also reviewed the effectiveness of programs focusing on terrorist finances and communications.

Following the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, which included the statutory authority for the National Counterterrorism Center (NCTC), the Committee confirmed Vice Admiral Scott Redd to serve as the new NCTC Director and closely followed the development of the organization.

Committee oversight of counterterrorism initiatives was not confined to formal hearings. Committee Members traveled to the detention facilities in Guantanamo Bay, examined counterterrorism efforts in Pakistan and Afghanistan, and devoted extensive attention to Intelligence Community efforts in Southeast Asia and Africa.

4. Cover issue

Since 1997, when the Committee staff conducted its first cover audit, the Committee has been concerned about the Intelligence Community's ability to maintain cover for clandestine operations. To improve cover, the Intelligence Authorization Act for Fiscal Year 2005 provided the Intelligence Community with enhanced cover authority. Official cover and non-traditional cover of clandestine officers continue to be challenged by the increased sophistication of

commercial and technological programs. The Committee held numerous briefings and, in June 2005, held a hearing on cover issues. The Committee included language in the Classified Annex to the fiscal year 2006 authorization bill designed to focus Intelligence Community resources and management attention on this critical intelligence challenge.

5. India-U.S. Nuclear Cooperation Agreement

On July 18, 2005, President Bush announced that the Administration would seek to create a new relationship with India that would allow for cooperation in civil nuclear energy. India, not a member of the Nuclear Nonproliferation Treaty, exploded its first nuclear device in 1974 and exploded a device as recently as 1998. In anticipation of the debate on legislation to implement the agreement, and in addition to ongoing oversight of relevant Intelligence Community analysis of this subject, the Committee held a briefing for members on March 29, 2006. At that hearing, the National Intelligence Officer for Weapons of Mass Destruction and Proliferation and the National Intelligence Officer for Near East and South Asia testified about the Intelligence Community's analysis of intelligence issues related to the passage of this change in our bilateral relationship, and the effect of this change on India's military nuclear program. The briefing also covered issues related to the current division between Indian civilian and military nuclear development, understanding Indian leadership's views of strategic nuclear issues and the effect of this agreement on that thinking, the effect on this agreement on India's options to test nuclear devices in the future, and India's record as a responsible actor in global proliferation.

The Senate passed H.R. 5682, The United States and India Nuclear Cooperation Promotion Act of 2006 by 85-12 on November 16, 2006, and the President signed the bill into law on December 18 (Pub. L. 109-401).

6. Iraq

In addition to exhaustive review of prewar Iraq intelligence as part of the Committee's Phase II investigation, the Committee conducted regular briefings at the member and staff levels on current activities in Iraq. The Committee received testimony from the National Intelligence Officers with analytic responsibilities for the Near East and Military Issues and reviewed a large number of reports on conditions and trends in Iraq. The Committee also had numerous meetings with analysts and collectors from the Central Intelligence Agency, Defense Intelligence Agency, State Department Bureau of Intelligence and Research, military services, and technical collection agencies concerning their views and activities related to the ongoing conflict in Iraq. In addition, numerous members of the Committee visited Iraq throughout the 109th Congress. These members not only increased their knowledge of the situation in Iraq but were able to make independent assessments of the contribution of the Intelligence Community to the effort.

7. Overhead reconnaissance architecture

The Committee conducted numerous staff briefings and interviews, and one hearing with senior Intelligence Community officials, to discuss our nation's satellite reconnaissance architecture. These sessions dealt with agreements between the Department of Defense and the then fledgling Office of the Director of National Intelligence; cost concerns relating to major system acquisition; ongoing studies about an objective architecture and investments related to achieving that architecture; and concerns over the agencies' fiscal discipline. In the Classified Annexes to the annual Intelligence Authorizations bills, the Committee expressed concern over the rising costs of ill-defined or poorly managed programs; continued "stovepiped" acquisitions; inadequate investment in foundational capabilities; inadequate functional management of the broader intelligence enterprises; and an apparent reluctance to embrace new and more cost-effective technologies.

8. Department of Treasury Intelligence Program

On May 11, 2006, the Committee conducted a hearing with the Department of the Treasury on the Terrorist Finance Tracking Program. The program involves the issuance of subpoenas to collect information from a company that operates a worldwide messaging system used to transmit bank transaction information. The information obtained is searched for counterterrorism purposes. The program was publicly acknowledged on June 23, 2006. Subsequent to the hearing, Committee staff conducted several briefings on the program. In addition, the Committee held a hearing on July 20, 2006, on terrorist financing.

B. COMMITTEE REVIEWS

1. Phase II of the inquiry into the prewar intelligence assessments on Iraq

In June 2003, the Committee began a review of U.S. intelligence related to the existence of Iraq's weapons of mass destruction (WMD) programs, Iraq's ties to terrorist groups, Saddam Hussein's threat to stability and security in the region, and his violations of human rights including the actual use of WMD against his own people.

In February 2004, the Committee voted unanimously to authorize formally the ongoing review and to expand the scope of the work as previously described by the Chairman and Vice Chairman in June 2003. It was the stated intention of the Chairman to produce an initial report covering areas that were near completion. The expanded scope along with questions related to the accuracy of prewar WMD and terrorism assessments became the five topics in a second phase of the Committee's Iraq Review. The other topics in Phase II were to be prewar intelligence about postwar Iraq, whether prewar public statements were substantiated by intelligence information, the Intelligence Community's use of information provided by the Iraqi National Congress, and intelligence activities within the Office of the Under Secretary of Defense for Policy.

The Phase I report—the Report of the Select Committee on Intelligence on the U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq, S. Rep. No. 108–301—was submitted to the Senate on July 9, 2004. On September 8, 2006, the Committee submitted to the Senate redacted unclassified reports on two Phase II matters: (1) Postwar Findings About Iraq’s WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments, S. Rep. No. 109–331 (“Accuracy Report”); and (2) The Use by the Intelligence Community of Information Provided by the Iraqi National Congress, S. Rep. No. 109–330 (“INC Report”). Unredacted classified copies of the reports are available to all members of the Senate for reading at the Committee.

The Committee’s vote to adopt the findings and conclusions of the Accuracy Report was 14 ayes and 1 no. The Committee vote to adopt the findings and conclusions of the INC Report was 11 ayes and 4 noes. Language offered in the form of amendments was incorporated in the reports. The Committee Actions section of both reports includes a description of each amendment offered and action taken on the amendment. Several sets of additional and minority views to each report were filed by Senators. All of those views are printed in the reports.

At the end of 109th Congress, the Committee was continuing its work evaluating prewar intelligence about post-invasion Iraq, and whether prewar public statements were substantiated by intelligence information. In early 2007, the Committee received a report from the Department of Defense IG on the intelligence activities of the Office of the Under Secretary of Defense for Policy that had been requested by the Committee Chairman in August 2005.

2. *Able danger*

The Committee began a review of a Department of Defense program, Able Danger, in August 2005, when certain allegations relating to the program gained prominence in the media. Able Danger was the unclassified name for a 1999 effort directed by then-Chairman of the Joint Chiefs of Staff, General Henry H. Shelton, U.S. Army, to develop a campaign plan against transnational terrorism with an initial focus on the al Qa’ida terrorist network.

Committee staff examined four specific claims made in the media about the Able Danger effort:

Claim 1: The Able Danger program had linked Mohammed Atta and three other September 11 hijackers to al Qa’ida on a chart prepared almost two years prior to September 11, 2001.

Claim 2: Soon after the September 11 attacks, the pre-September 11, 2001 chart with Mohammed Atta’s picture was passed to then-Deputy National Security Advisor Stephen Hadley.

Claim 3: Defense Department lawyers prevented Able Danger team members from sharing Able Danger’s findings with the FBI.

Claim 4: Defense Department lawyers wrongly interpreted intelligence oversight law and issued legal guidance that unnecessarily restricted the Able Danger effort and caused the destruction of Able Danger program data.

Committee staff interviewed numerous individuals who had worked on the Able Danger program or had knowledge of the issues surrounding its activities, including each of the five individuals who claimed to have seen Mohammed Atta's name and picture on an Able Danger chart produced prior to 9/11. In September 2005, Committee staff briefed Committee members about this inquiry. Following that brief, Committee staff conducted additional interviews and document reviews.

In September 2006, the Department of Defense IG completed a report examining many of the issues that the Committee staff had been reviewing plus additional areas of inquiry. The Committee staff met with the IG and reviewed the report in detail.

In December 2006, Chairman Roberts and Vice Chairman Rockefeller wrote to the members of the Committee to inform them that the Committee staff had concluded its work and judged that Able Danger did not identify Mohammed Atta or any other 9/11 hijacker at any time prior to September 11, 2001. The Chairman and Vice Chairman reported further that Committee staff found no evidence to support the allegation that Able Danger team members were prevented from pursuing contact with the FBI to share terrorism related information found by the Able Danger program; no evidence that the Able Danger program produced any actionable intelligence or any information which would have warranted sharing with the FBI; and the Committee staff concluded that Department of Defense lawyers correctly interpreted intelligence oversight law and issued appropriate legal guidance on the collection, retention, and destruction of information. The text of the letter from the Chairman and Vice Chairman is available on the Committee's website at <http://intelligence.senate.gov/>.

C. FINANCIAL ACCOUNTING, INSPECTORS GENERAL, AND AUDITS

The Committee's rules provide that within its staff there "shall be an element with the capability to perform audits of programs and activities undertaken by departments and agencies with intelligence functions. Such element shall be comprised of persons qualified by training and/or experience to carry out such functions in accordance with accepted auditing standards." During the 109th Congress, the name of the staff element was changed from Audits and Investigations to Audits and Evaluations. In addition to audits, this element has responsibility for assisting in the Committee's oversight of Intelligence Community compliance with financial accounting standards and also the Committee's interaction with the various IGs whose work includes or covers the Intelligence Community.

1. Intelligence community compliance with Federal financial accounting standards

During the 109th Congress, the Committee continued to closely monitor the Intelligence Community's financial management practices. The foundation for these activities is the 1990 Chief Financial Officers Act, which requires public sector agencies to report financial information in a structured and uniform manner. One goal of the Act was to establish a process to provide reliable, useful, and timely financial information to support decision making and ac-

countability regarding the use of federal funds. The Act requires independent audits of agency financial information to evaluate performance against this goal. The results of these audits are public information.

Since the enactment of the Chief Financial Officers Act, the federal government has made substantial progress in strengthening financial management and accountability. In fiscal year 2004, 16 of the original 24 federal agencies required to comply with the financial statement audit requirement received unqualified opinions on their financial statements. According to the Government Accountability Office, the underlying trend at these 16 agencies was that they embraced the idea of obtaining auditable financial statements, as opposed to giving reasons why it would be too costly or difficult to achieve the requirement.

The elements of the Intelligence Community were not included in the original 24 agency pilot program. In its report accompanying the Intelligence Authorization Act of 2002, S. Rep. No. 107-63, at 15-16 (2001), this Committee required that the DCI, in consultation with the Secretary of Defense, direct a statutory IG to perform audits of the "form and content" of the fiscal year 2001 financial statements for the NSA, DIA, CIA, and the National Imagery and Mapping Agency, since renamed the National Geospatial-Intelligence Agency, and report the audit findings to the Intelligence Committees by April 1, 2002. The Committee further directed that the DCI, in consultation with the Secretary of Defense "ensure that all agencies in the DoD-NFIP [Department of Defense National Foreign Intelligence Program] aggregation, including the CIA, receive an audit of their financial statements by March 1, 2005."

The fiscal year 2001 form and content reviews were not comprehensive audits; rather, they were intended to prepare the agencies to undergo a comprehensive financial statement audit of their fiscal year 2004 data. The IGs completed the form and content reviews but the agencies were unable to meet the 2004 audit requirement, a deadline that has been extended several times. In December 2006, when it became evident that the NSA, NGA, and DIA were still unable to comply, the Chairman and Vice Chairman granted another extension, providing that the fiscal year 2007 financial statement audits for all Intelligence Community agencies shall be completed by November 15, 2007, and that by March 1, 2007, the DNI, in consultation with the Office of Management and Budget, shall submit to the Committee a plan for Intelligence Community compliance with the financial statement audit requirement.

Beyond the need to satisfy the existing financial statement audit requirement, the Committee remained concerned throughout the 109th Congress that the agencies of the Intelligence Community cannot quantify their cost of doing business nor demonstrate a tangible plan to improve financial management. In its May 2006 report on the Intelligence Authorization Act for Fiscal Year 2007, the Committee directed the DNI and the Director of the Office of Management and Budget to develop a plan to transform Intelligence Community financial management. One objective is the preparation of a strategic plan for a single Intelligence Community financial management system, including a consolidated financial statement for the National Intelligence Program for fiscal year 2009.

The Committee directed that the plan should address development of a common accounting code and standard business processes for the Intelligence Community. S. Rep. No. 109–259, at 44.

2. Oversight of Intelligence Community Inspectors General

During the 109th Congress, the Committee continued to monitor the activities of the Intelligence Community IGs. This oversight included: review of numerous IG products, including audit reports, inspection reports, reports of investigation, and semi-annual reports of IG activities; numerous visits to IG offices for updates on plans and procedures; and attendance and participation at several IG conferences. In addition to a number of Committee hearings on issues reviewed by the IGs, staff conducted a number of briefings with Intelligence Community program officials and IG personnel in order to follow up on the status of IG recommendations. Examples include employee grievances, management of operational activities, contracting procedures, employee recruitment and security processing, the CIA's Working Capital Fund, and effective use of resources on new technology.

During the 109th Congress, the Committee continued its work to ensure the effectiveness and independence of the administrative, non-statutory IGs at the NRO, NSA, NGA, DIA, and the ODNI. The Committee reinforced the importance of the IG function through its regular interaction with agency directors, the IGs, and their staffs. The administrative IGs also submitted annual reports to the Committee detailing their requests for fiscal and personnel resources, and the plan for their use. These reports included the agency programs and activities scheduled for review during the fiscal year, comments on the office's ability to hire and retain qualified personnel, any concerns relating to the independence and effectiveness of the IG's office, and an overall assessment of the agency's response to the IG's recommendations during the previous year. These annual reports served as a basis for Committee oversight throughout the 109th Congress.

Additionally the Committee included provisions in the fiscal years 2006 and 2007 Intelligence Authorization bills to add the IGs at the NRO, NSA, NGA, and DIA to the Section 8G of the Inspector General Act of 1978. This statutory designation will provide the IGs with additional authorities to conduct investigation including the ability to compel the production of information. Both years' Authorization bills also included a provision amending the National Security Act of 1947 to establish a statutory charter for the DNI IG.

3. Audits

During the 109th Congress, the Committee's audit staff completed audits of the CIA's In-Q-Tel venture and the implementation of the FISA, and made substantial progress toward completing three other audits.

a. In-Q-Tel

In-Q-Tel was established in 1999 as an independent, private, not-for-profit company to identify and deliver cutting-edge information technology solutions to the CIA. In May 2005, in response to the

Committee's concerns about the success of In-Q-Tel in achieving this goal, the Chairman and Vice Chairman asked the Audit and Evaluations Staff to conduct an audit. The audit staff examined the success of In-Q-Tel, specifically in terms of the commercial technologies actually reaching the CIA.

In April 2006, the final report of the audit was transmitted to the DNI for dissemination within the Intelligence Community. The audit determined that while In-Q-Tel has not revolutionized the way the CIA does business, the venture capital model has produced some successes, primarily in the area of analytic tools. The CIA's aging information technology infrastructure and bureaucratic software accreditation process have hindered In-Q-Tel technology transfer. The audit concluded that the Committee should continue to support the In-Q-Tel program while encouraging the CIA to upgrade its infrastructure to better enable In-Q-Tel commercial technology infusion and to place a higher priority on transferring In-Q-Tel products to CIA end users.

b. Foreign Intelligence Surveillance Act

The Committee has periodically reviewed the implementation of the FISA since the law was enacted in 1978. The last Committee audit of the FISA process, prior to the audit completed in the 109th Congress, was conducted in 1998. Since then, Congress had made numerous important changes to the statute that warranted review of their implementation. While the Committee's Audit and Evaluations Staff began its formal review of the FISA process in the 108th Congress, the final audit report on procedures, practices, and use under the FISA was completed in the 109th Congress in support of the Committee's deliberations regarding the USA PATRIOT Act. The classified report was provided to the DNI for distribution to appropriate Intelligence Community elements. In its June 2005 report to accompany its PATRIOT Act bill, the Committee described the audit, which was then nearing completion, to be "one of the most thorough reviews of Executive branch activities under the FISA since the USA PATRIOT Act was enacted." S. Rep. No. 109-85, at 2.

The audit included a review of the backlog of requests for FISA coverage, an analysis of the impact of the temporary FISA provisions that were included in the USA PATRIOT Act of 2001, and an assessment of the resource requirements associated with FISA activities. The audit report made a total of 43 recommendations. Twelve recommendations were addressed to the Committee; of these, ten were the subject of legislation that was ultimately approved by the Congress.

In conducting its review, the Committee noted that some delays in processing FISA warrants were attributable to inadequate staffing levels, inefficient organizational structures within the Office of Intelligence Policy and Review (OIPR), and differences of opinion between the FBI and the OIPR. The Committee offered several recommendations to address these delays including the drafting of a Memorandum of Understanding that outlines each organization's responsibilities for FISA applications. The Committee also examined the use of new technology to enhance administrative aspects of the FISA process throughout the Intelligence Community. Using

technology to improve the connectivity between the FBI and the OIPR would enhance access to relevant documents, thereby decreasing the amount of time necessary to process a FISA request.

During the course of the audit, it came to the Committee's attention that most FBI field divisions did not have sufficient Sensitive Compartmented Information Facilities to house national security personnel and provide ready access to secure communications equipment and resources. The Committee recommended that the FBI Director take immediate steps to address this shortfall. Finally, the Committee recommended that the Attorney General develop new FISA minimization procedures to reflect modern target profiles and communication capabilities, as well as information processing technologies.

c. Intelligence community personnel growth

The Final Report of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) recommended that the Director of the CIA emphasize rebuilding that agency's analytic and human intelligence collection capabilities. President Bush endorsed this recommendation and, in November 2004, directed the CIA to increase its number of all source analysts and case officers by 50 percent, increase the number of language qualified officers by 50 percent, and double the number of personnel doing research and development. Although the President's directive focused on the CIA, there have been significant personnel increases in other agencies as well.

In February 2005, the Committee initiated an audit to examine the full scope of the activities and resources that would be necessary to support the proposed personnel growth. During the 109th Congress, the Audit and Evaluations Staff reviewed whether the Intelligence Community has in place the practices and procedures necessary to properly recruit, train, equip, field, and retain the additional personnel, and to determine the associated funding levels necessary to implement this growth in personnel.

While the audit was not issued and provided to the Intelligence Community until early 2007, it essentially was complete at the end of 2006. The findings indicate that the projected growth of new personnel across the Intelligence Community has not been well defined. The requirements for the additional personnel have not been documented and there has been limited planning for a comparable growth in support functions. Specifically, the audit has identified the following issues:

- Insufficient hiring processes to meet the personnel targets
- Significant shortages in training capacity and secure office space
- Inadequate planning for administrative, logistics, and technical support
- Minimal controls over the use of contractor support

To address the concerns identified in this audit, the Committee included language in the proposed Intelligence Authorization Act for Fiscal Year 2007 that fenced funds associated with personnel growth and required the DNI to provide a comprehensive personnel growth strategy. In the report accompanying the authorization bill, the Committee took note of the personnel growth audit, stating

that the Intelligence Community faces significant challenges implementing the proposed growth.

d. Document exploitation

In December 2005, the Committee's Audit and Evaluations staff began a review of the practice of collecting, processing, translating, and reporting on information obtained from overtly captured and/or clandestinely acquired paper documents and electronic media. This overall activity, called document and media exploitation or "DOCEX," is an effort that since 2001 has realized a rapid increase in funding because of the valuable intelligence information it provides to both tactical operations and strategic analysis.

The Committee is concerned about the varied and disparate Intelligence Community initiatives to process, translate, and exploit captured documents and electronic media. The audit has analyzed the costs of the various document and media exploitation efforts and associated technology development programs. The audit is also evaluating the intelligence value derived from these efforts and the budget implications for sustaining these initiatives over the long-term.

Building on the preliminary results of this ongoing audit, the Committee, in the May 2006 report accompanying its fiscal year 2007 bill, encouraged the DNI to appoint a program manager for National Intelligence Program DOCEX efforts, develop a national DOCEX strategy, and form a DOCEX technology investments board to guide and develop a coordinated Community-wide research and development strategy.

e. Compartmented program

The Committee's Audit and Evaluation Staff conducted a review of a compartmented Intelligence Community program. Given the significant amount of time and money that had been invested in that program, the Committee was concerned about the termination of a major program element and whether the Committee had been adequately informed about the program's overall status. The audit examined the series of events and activities that led to the current program status, as well as the associated cost. This audit will be completed in early 2007 and will guide the Committee in making future funding decisions regarding this program.

D. RESTRICTED ACCESS PROGRAMS

During the 109th Congress, public disclosures of two previously highly classified programs focused attention on the Executive branch practice of providing notification of certain intelligence activities to only a limited number of members of Congress. This practice is sometimes known as a "Gang of Eight" notification because of the procedure contained in Section 503(c)(2) of the National Security Act of 1947. That section authorizes the President, in extraordinary circumstances, to limit notification of covert action findings to eight members of Congress—the Chairman and ranking members of the intelligence committees, the Speaker and minority leader of the House, and the majority and minority leader of the Senate. In the case of these two programs, once they were disclosed

they became the subject of intense legislative interest although very few members were knowledgeable of the details of either.

1. Detention and interrogation

In November 2005, press stories appeared describing a program of clandestine detention facilities in various foreign locations being run by the CIA. On September 6, 2006, the President acknowledged the existence of a CIA program to detain and question suspected terrorists outside the United States. He also announced the transfer of 14 individuals detained under this program from these foreign sites to the U.S. military facility at Guantanamo Bay. According to the President, these 14 were the only individuals detained in the overseas CIA facilities at the time of the announcement.

This Committee had been briefed in a general way about the existence of a CIA detention program from its inception. Key aspects of the program, however, were briefed to the Chairman and Vice Chairman. In November 2006, the information that had been restricted previously was provided to the full membership of the Committee.

At the same time the President acknowledged the existence of the CIA detention program, he announced his intention to send a legislative proposal to the Congress to establish military tribunals to try terrorism suspects and also “to ensure that the CIA program goes forward in a way that follows the law.” Several bills on this topic were introduced and debated. On September 28, 2006, S. 3930, the Military Commissions Act of 2006 passed the Senate. It passed the House the next day and was signed by the President as Pub. L. No. 109–366. On signing the bill, the President reiterated that he had “one test for the bill Congress produced: Will it allow the CIA program to continue?”

The Military Commissions Act addresses a number of matters of interest to the responsibilities of the Committee. It establishes rules on the protection and introduction of classified information in military commission. It specifies the conduct that would constitute grave breaches of Common Article 3 of the Geneva Conventions and be subject to U.S. criminal penalties. It authorizes the President to promulgate administrative regulations regarding violations of the Geneva Conventions and to publish interpretations on the meaning and application of the Conventions in the Federal Register. It provides that the President shall take action to ensure compliance with the prohibition on cruel, inhuman, or degrading treatment that had been enacted in the Detainee Treatment Act, including through the establishment of administrative rules and procedures.

2. NSA surveillance

In December 2005, press reports described an NSA program to collect electronic communications intelligence inside the United States absent a warrant issued under the FISA. The Executive branch subsequently disclosed that knowledge of this program had been limited to very few members of Congress—the Gang of Eight plus senior members of the Defense Appropriations Subcommittees and a few other members of the congressional leadership. The

Chairman and Vice Chairman sought to have member access to this program expanded for the members of this Committee. In March 2006, the Committee reached agreement with the Executive branch to establish an ad hoc subcommittee of seven members, including the Chairman and Vice Chairman, to oversee the program. In May 2006, the restriction was further modified and all members of this Committee were given access to information about the NSA program.

Following resolution of the access question, the Committee, and three members of the staff, received several briefings about the legal parameters and operation of the program. The program generated significant interest in the Congress. Different pieces of legislation related to the program were introduced. Three of these bills were reported by the Senate Judiciary Committee and others were placed on the Senate Calendar without referral to a committee, but no floor action occurred in the Senate. Early in the current Congress, this Committee announced its intention to examine carefully legislative proposals on surveillance matters.

E. REVIEW OF INTELLIGENCE RELATED TO IRAN

In the 109th Congress, the Committee initiated a Community-wide review of how well our intelligence agencies are collecting and analyzing information about Iran, including its WMD programs. The review has focused on mapping the Community's efforts in order to establish a baseline of what the various agencies of the Community are doing to collect information on Iran, what their analytic judgments on Iran are, and how well grounded those assessments are. The Committee has designated a staff team to undertake this review, which has had briefings from, or meetings with, various agencies on their Iran programs, including the CIA, DIA, NGA, NSA, ODNI, Department of Energy, Department of State Bureau of Intelligence and Research, NCTC, U.S. Special Forces Command, and National Intelligence Council.

The review is also looking at how well the various intelligence agencies work together under the DNI on Iran matters. This includes to what extent lessons learned, as identified in the Committee's 2004 report on the performance of the Intelligence Community before the Iraq War, have been applied to current issues such as Iran. It is anticipated that the review will result in recommendations to improve U.S. intelligence capabilities concerning Iran and in general.

F. COVERT ACTION

Under the National Security Act, the DNI shall keep the congressional intelligence committees fully and currently informed of all covert actions that are the responsibility of, are engaged in by, or are carried out for or on behalf of any department or agency of the United States, including significant failures. The National Security Act defines a covert action to be an activity of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the U.S. Government will not be apparent or acknowledged publicly. The DNI shall furnish the committees with any information concerning covert actions

that is in the possession of any U.S. Government entity and which is requested by either intelligence committee in order to carry out its responsibilities. The only qualification on this reporting responsibility is consistency with due regard for protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.

Under the Committee's rules, the Staff Director shall ensure that U.S. Government covert action programs receive appropriate consideration by the Committee no less frequently than once a quarter. Every quarter, the Committee receives a written report on each covert action that is being carried out under a presidential finding. Committee staff then devote several sessions, often over a couple of days, to review with Intelligence Community personnel the reports on each subject, and often pose follow up questions and receive further briefings or written answers.

As the Committee has written in past reports, the purpose of these reviews includes to ensure that their means and objectives are consistent with U.S. foreign policy goals, were conducted in accordance with U.S. law, produce or can be expected to produce reasonable benefits for the resources expended, and are consistent with U.S. ideals and principles. There is often questioning about the effectiveness of the programs.

G. INDEPENDENT COST ESTIMATES

During the 109th Congress, the Committee continued its efforts to address the growth in major acquisition costs by the Intelligence Community. The Intelligence Authorization Act for Fiscal Year 2004 formalized the process for developing independent cost estimates for major Intelligence Community acquisitions. The Act required the preparation of an independent cost estimate of the full life-cycle cost of development, procurement, and operation of any system projected to cost more than \$500 million. The Act further required the President's budget request to reflect the amounts identified in the independent cost estimates, or if it did not, to explain why it differed.

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

Throughout the 109th Congress, the Committee continued to monitor compliance with this Act, including prohibitions on the obligation or expenditure of funds for the development or procurement of major systems without statutory independent cost estimates. Committee staff reviewed independent cost estimates for major program acquisitions in the National Intelligence Program. The Committee relied on the independent work done by the Department of Defense and Intelligence Community Cost Analysis

Improvement Groups (CAIGs). The Committee has reviewed several independent cost estimates from the Department of Defense and Intelligence Community CAIGs relating to major National Intelligence Program acquisitions. These estimates have been very useful tools for the Committee in its ongoing effort to instill fiscal discipline into the Intelligence Community's budget.

H. DECLASSIFICATION

During the 109th Congress, the Committee dealt with a number of issues related to declassification of information.

1. *CIA accountability report*

The December 10, 2002, Report of Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001 of the Senate and House intelligence committees included a three-part recommendation on accountability. First, the DCI should report to the Committees in 2003 on steps taken to implement a system of accountability throughout the Intelligence Community. Second, in the confirmation process for Intelligence Community officials, Congress should require an affirmative commitment to the implementation and use of strong accountability mechanisms.

Third, a review of whether employees deserved awards for outstanding service or should be accountable for failing to satisfactorily perform their duties should be conducted. With regard to accountability, the recommendation stated:

. . . the Inspectors General at the Central Intelligence Agency, the Department of Defense, the Department of Justice, and the Department of State should review the factual findings and record of this Inquiry and conduct investigations and reviews as necessary to determine whether and to what extent personnel at all levels should be held accountable for any omission, commission, or failure to meet professional standards in regard to the identification, prevention, or disruption of terrorist attacks, including the events of September 11, 2001.

S. Rep. No. 107-351 and H. Rep. No. 107-792, Recommendation 16 (2002).

Each of the IGs listed in the recommendation completed and submitted a report to the Committee.

In July 2004, the Department of Justice IG completed a 421-page classified report entitled *A Review of the FBI's Handling of Intelligence Information Relating to the September 11 Attacks*. This report was provided to the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) and to the House and Senate Judiciary and Intelligence Committees. In June 2005, at the request of the Senate Judiciary Committee, the Department of Justice IG publicly released an unclassified, redacted version of that report, on all matters except Zacharias Moussaoui, against whom criminal proceedings were then pending in the United States District Court for the Eastern District of Virginia. In June 2006, after the conclusion of the Moussaoui case, the IG released the full

unclassified report, including the section on the FBI's handling of the Moussaoui matter. The total length of the Department of Justice IG unclassified report was 370 pages, amounting to approximately 87 percent of the original classified report.

In the introduction to the unclassified report, the Department of Justice IG noted that the review of the FBI's handling of information about two September 11 hijackers, Nawaf al Hazmi and Khalid al Mihdar (who entered the United States in January 2000 and first resided in San Diego), required obtaining a significant amount of information from the CIA about its interactions with the FBI on that matter. The report notes that the IG Office at the Department of Justice had to rely on the cooperation of the CIA in providing access to CIA witnesses and documents, and that while they were able to obtain CIA documents and interview CIA witnesses they "did not have the same access to the CIA that [they] had to Department of Justice information and employees." The Department of Justice IG noted that CIA IG was conducting his own inquiry into CIA actions regarding al Mihdar and al Hazmi.

The CIA IG report was completed in June 2005 and delivered to the Committee as a classified document in August of that year. In contrast to the Department of Justice IG report, no part or summary of the CIA IG report has yet been made public.

In August 2005, Chairman Roberts wrote to then-CIA Director Porter Goss and requested that the CIA IG report be declassified "as soon as practicable and to the maximum extent possible." Chairman Roberts repeated this request in a second letter the following month, stating: "I believe that the deaths of nearly 3,000 citizens on September 11, 2001 gives the American public a strong interest in knowing what the IG found and whether those whose performance was lacking will be held accountable." Although Director Goss responded to both letters, he did not make any commitment regarding declassification of the report.

In January 2006, Senator Wyden wrote to Director Goss, again requesting that the report be redacted and declassified. In an April 2006 reply, Director Goss declined to commit to releasing the report.

The issue was raised during the confirmation hearing for the new CIA Director, General Michael Hayden, who stated in a May 2006 letter to Senator Wyden that he intended to examine the issue. In June 2006, Committee staff prepared a proposed redacted version of the Executive Summary of the report which Chairman Roberts sent to General Hayden for comment. In August 2006, General Hayden notified the Committee that he did not intend to declassify the report.

In September 2006, Chairman Roberts forwarded the proposed redacted Executive Summary to DNI Negroponte, and requested that he work with the Committee to determine what redactions would be necessary in order to release the report. In a November 2006 reply, Director Negroponte declined to do so.

In January 2007, upon the organization of the Committee in the current Congress, Chairman Rockefeller, Vice Chairman Bond, and Senator Wyden wrote to Director Negroponte with their comments on his November letter. Because the letter completes the exchange

with Director Negroponte, we describe it here. The letter begins by describing the importance of the CIA IG report:

This report provides a unique perspective on one of the defining events in American history, and we believe that, while the body of the report is reviewed for later release, the Executive Summary should be declassified without further delay and released to the public. We recognize that the report contains some sensitive national security information, and this information must be redacted from the Executive Summary before the Summary is released.

The letter states that if the DNI has particular concerns about the proposed redaction of the Executive Summary prepared at the Committee, he should “propose specific further redactions that are based on particular classification grounds.” It notes that one reason advanced in the DNI’s November 2006 letter for declining action on declassification is not a valid basis for classification under current law and executive orders. While it is possible that some high-profile intelligence officials could be identified by their title alone, that possibility has not prevented those officials from being described in other public reports. To the extent that the DNI expressed concern about damage to the reputation of high-profile intelligence officials whose identities could be revealed in the report, the letter encourages the DNI to permit release of redacted versions of their responses to the IG report.

Finally, the letter notes that the Department of Justice IG had produced a similar report and that most of it had been appropriately declassified and released, “providing a clear example to be followed.”

2. Reports on prewar intelligence regarding Iraq

In September 2006, as described above, the Committee released two reports on prewar intelligence regarding Iraq. In the introduction to its report on the accuracy of prewar assessments of Iraqi WMD and links to terrorism, the Committee expressed disagreement with the Intelligence Community’s decision to classify certain portions of the report and concluded that this decision was not justified.

Seven members of the Committee wrote to the then recently-constituted Public Interest Declassification Board to request that it review the documents and make recommendations regarding their classification. In an interim response, the Board indicated that it might not be able to conduct such a review without White House authorization. This was followed by a letter from six senators in October, expressing their disagreement with the Board’s interpretation of its mandate and requesting that the Board begin its review. Chairman Roberts and Vice Chairman Rockefeller repeated this request in a November letter. These letters are available at the National Archives website (<http://www.archives.gov/declassification/pidb/declassification-requests.html>).

In December 2006, the Board wrote to the Chair of the Homeland Security and Governmental Affairs Committee, requesting that the statute authorizing the Board be clarified to establish that the Board could begin, without approval by the White House, a de-

classification review requested by the Congress. In January 2007, that Committee reported legislation to achieve this objective.

3. *Iraq WMD Retrospective Series*

The Committee's report on the accuracy of prewar intelligence on Iraqi WMD included an appendix that briefly described five papers that the CIA had published, starting in January 2005, as part of its Iraq WMD Retrospective Series. A sixth retrospective was in progress. The series addressed the CIA's current post-Operation Iraqi Freedom understanding of Iraq's WMD and delivery programs. The Committee stated that it was evident that "the retrospective series will be an important source of information about the history of these times. For that reason, the Committee has asked the CIA to declassify the retrospectives to the extent consistent with national security." That declassification has not yet occurred.

4. *National Archives audit*

In early 2006, a National Archives' Information Security Oversight Office audit disclosed that records had been removed from public access at the National Archives for classification reasons. In April 2006, the officials from Information Security Oversight Office briefed Committee staff on the results of the audit. The audit found that a large number of documents had been improperly classified, declassified, or reclassified, and made a number of recommendations for improvement of the classification process. The audit and recommendations were publicly released and can be found on the web page of the National Archives (<http://www.archives.gov/declassification/>).

I. OVERSIGHT OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Following confirmation of John Negroponte as the first DNI in April 2005, Committee staff conducted oversight of the establishment of the ODNI and the implementation of the Intelligence Reform Act.

Committee staff met with and received numerous briefings from components of the ODNI, including the offices of the four Deputy Directors authorized by the Intelligence Reform Act. The DNI used that authority to establish Deputy Directors for Analysis (who also serves concurrently as the Chairman of the National Intelligence Council), Collection, Management (including development and execution of the National Intelligence Program budget), and Requirements. The Committee staff also received briefings from the DNI's NCTC, National Counterproliferation Center, the Mission Managers for Iran and North Korea, the DNI IG, the Chief Information Officer, the Chief Financial Officer, and the Civil Liberties and Privacy Officer, among others.

The ODNI submitted numerous reports and strategy documents to the Committee during 2005 and 2006. For example, the ODNI provided the National Intelligence Strategy, the National Intelligence Priorities Framework, the Annual Report of the United States Intelligence Community, semiannual progress reports on the implementation of the DNI's budget authorities, the Implementation Plan for the Information Sharing Environment, the Intel-

Intelligence Community's Annual Report on the Hiring and Retention of Minority Employees, a report on efforts to address foreign language shortfalls, a report describing reviews of analytic products, the report of the Future Overhead SIGINT Architecture Panel, and updates on the activities of the Office of Analytic Integrity and Standards & Ombudsman.

IV. NOMINATIONS

During the 109th Congress, ten nominations were referred to the Committee, nine directly upon receipt in the Senate and one sequentially after referral to and reporting by another committee. The Committee held hearings for nine of the ten nominees and recommended to the Senate that it give its advice and consent to each of those nine nominations, which was done.

Throughout the Congress, referrals to the Committee were governed for the first time by Section 17 of S. Res. 400 of the 94th Congress, which had been added by S. Res. 445 of the 108th Congress and was further augmented during the 109th Congress. As a result of S. Res. 445, all nominations to advice and consent positions in the Intelligence Community are referred to this Committee, even when they are positions—such as the Assistant Secretary of the Treasury for Intelligence and Analysis or the Assistant Secretary of State for Intelligence and Research—that are within departments which are primarily under the jurisdiction of other Senate committees.

Four of the nominations were for positions created by the Intelligence Reform Act of 2004 that were being filled for the first time: DNI; Principal Deputy DNI; the Director of the NCTC; and the General Counsel, Office of Director of National Intelligence.

Three nominations were for positions, also filled for the first time, that were created by other legislation in the 108th or 109th Congress: Assistant Secretary of the Treasury for Intelligence and Analysis, established by the Intelligence Authorization Act for Fiscal Year 2004 (December 13, 2003); Chief Information Officer, ODNI, established by the Intelligence Authorization Act for Fiscal Year 2005 (December 23, 2004); and Assistant Attorney General for National Security, established by the USA PATRIOT Improvement and Reauthorization Act of 2005 (March 9, 2006).

A primary task of the Committee during the 109th Congress was to examine in detail, for the first time in the setting of a nomination, the responsibilities of these new leadership positions in the Intelligence Community. The Committee accomplished this not only through questioning the nominees at their confirmation hearings but also through extensive prehearing questions, the responses to which have been or will be printed in the hearing volumes for these nominations.

During the 109th Congress, the Committee also received and acted on a nomination for Director of the CIA, but not as an immediate consequence of the Intelligence Reform Act of 2004. In a formal opinion in January 2005, the Office of Legal Counsel at the Department of Justice concluded that when the Intelligence Reform Act took effect (within six months of its enactment in December 2004), the then-current DCI would not require a new appointment to the office of the Director of the CIA should the President wish

him to serve in that position. In accordance with that opinion and the President's wish, the DCI, who was then Porter Goss, served as Director of the CIA until his resignation in May 2006, at which time the President nominated and the Committee and Senate acted on the nomination of General Michael Hayden to be Director of the CIA.

The following were the nominations referred to the Committee during the 109th Congress, listed in accordance with the date of the nomination:

A. JOHN D. NEGROPONTE, DIRECTOR OF NATIONAL INTELLIGENCE

As described earlier in this report, the Intelligence Reform Act of 2004 created the position of DNI and assigned to the DNI the responsibility of serving as the head of the Intelligence Community and acting as the principal adviser to the President for intelligence matters relating to national security. The Reform Act provides that any individual nominated to be appointed as DNI shall have extensive national security experience.

Among the position's duties and responsibilities, the DNI is charged with determining the annual National Intelligence Program budget and ensuring the effective execution of it. The DNI is to determine requirements and priorities for the collection, analysis, and dissemination of national intelligence. The DNI shall ensure compliance with the Constitution and laws by the CIA and, through their host departments, by the other elements of the Intelligence Community.

On March 17, 2005, the President nominated John D. Negroponte, then serving as U.S. Ambassador to Iraq, to be the first DNI. In the course of a long diplomatic career, he had served as U.S. Ambassador to Honduras, Mexico, and the Philippines, and, immediately before Iraq, as the U.S. Permanent Representative to the United Nations. He had also served in the White House as a Deputy National Security Adviser and in the State Department as an Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

After receiving Ambassador Negroponte's responses to the Committee's standard questionnaire, and responses to the Committee's prehearing questions about his understanding of the duties and responsibilities of the office to which he had been nominated, the Committee held a nomination hearing on April 12, 2005. Following the hearing, members also posed additional questions in writing. Ambassador Negroponte's testimony and answers to the written questions are printed in S. Hrg. 109-79.

The Committee reported the nomination favorably on April 14, 2005, by a vote of 14 to 1. The Senate confirmed Ambassador Negroponte's appointment to be DNI on April 21, 2005, by a vote of 98-2.

B. MICHAEL V. HAYDEN, PRINCIPAL DEPUTY DIRECTOR OF NATIONAL INTELLIGENCE

The Intelligence Reform Act established the position of Principal Deputy Director of National Intelligence (PDDNI) to assist the DNI in carrying out the duties and responsibilities of the Director under

the National Security Act. The Act provides that the PDDNI shall exercise the powers of the DNI during the DNI's absence or disability, or in the event of a vacancy. It also provides that an individual nominated for appointment as PDDNI shall not only have extensive national security experience (a requirement applicable to the DNI as well) but also management expertise. It contains a sense of Congress that under ordinary circumstances, one of the persons serving as DNI or PDDNI shall be a commissioned officer in active status or have, by training or experience, an appreciation of military intelligence.

On April 11, 2005, the President nominated Lieutenant General Michael V. Hayden, USAF, who was then serving as the Director of the NSA, to be the first PDDNI. General Hayden entered active duty in 1969. During his career, he served as Commander of the Air Intelligence Agency and Director of the Joint Command and Control Warfare Center, Deputy Chief of Staff, United Nations Command and U.S. Forces Korea, and then, beginning in 1999 as Director of NSA for six years.

The Committee held a nomination hearing on April 14, 2005. General Hayden's testimony and his responses to the Committee's questionnaire and prehearing questions are printed in S. Hrg. 109-270. The Committee reported the nomination favorably that day, by a unanimous vote of 15 to 0. On April 21, 2005, the Senate agreed by voice vote to the nomination, together with General Hayden's nomination to be a full General, which had been reported by the Committee on Armed Services.

C. JANICE BRADLEY GARDNER, ASSISTANT SECRETARY OF THE TREASURY FOR INTELLIGENCE AND ANALYSIS

The Intelligence Authorization Act for Fiscal Year 2004 created the Treasury Department's Office of Intelligence and Analysis to replace the Office of Intelligence Support. The Office of Intelligence and Analysis is responsible for the receipt, analysis, collation, and dissemination of foreign intelligence and counterintelligence information related to the operation and responsibilities of the Treasury Department.

Janice Bradley Gardner was nominated by the President to the position on May 16, 2005. She served for more than twenty years as an intelligence officer, entering on duty at the CIA in 1983. For a decade she worked as an analyst focusing on East Asia issues, followed by service as the Chief of the CIA's Persian Gulf Branch, as the DCI Representative to the National Security Council, as Special Advisor to the Vice President for Foreign Affairs, and then as Deputy Director of the Foreign Broadcast Information Service, before beginning as a Senior Intelligence Officer at the Department of the Treasury in 2002. In May 2004, Ms. Gardner assumed the position of Deputy Assistant Secretary of the Treasury for Intelligence and Analysis to stand up the office that Congress had then just established. Ms. Gardner is the first person named to fill the position of Assistant Secretary.

On June 16, 2005, the Committee held a public hearing on the nomination. The nominee's testimony and responses to the Committee's questionnaire and prehearing questions are printed in S. Hrg. 109-269. The nomination was reported favorably by the Com-

mittee on July 26, 2005, by unanimous consent. She was confirmed by the Senate on July 28, 2005, by voice vote.

D. BENJAMIN A. POWELL, GENERAL COUNSEL, OFFICE OF THE
DIRECTOR OF NATIONAL INTELLIGENCE

The position of General Counsel for the ODNI was created by the Intelligence Reform Act of 2004. The Act provides that the General Counsel is the chief legal officer of the ODNI and shall perform such functions as the DNI may prescribe. The explicit law-related function of the DNI is to ensure compliance with the Constitution and laws of the United States by the CIA and ensure such compliance by other elements of the Intelligence Community through their host executive departments.

Benjamin A. Powell was nominated by the President to the position on June 9, 2005. Since July 2002 and at the time of his nomination, Mr. Powell served as Associate Counsel and Special Assistant to the President. Prior to that, he served as a corporate counsel and as a law clerk for United States Supreme Court Justices Byron White and John Paul Stevens. Mr. Powell is the first person named to fill the position of General Counsel.

On July 19, 2005, the Committee held a public hearing on the nomination. The nominee's testimony and answers to the Committee's questionnaire and prehearing questions are printed in S. Hrg. 109-242. His nomination was reported favorably by the Committee on July 26, 2005, by unanimous consent, but not acted on by the Senate in the first session of the 109th Congress.

Mr. Powell received a recess appointment by the President on January 4, 2006, and was nominated again on February 10, 2006. Following filing of a cloture motion on April 5, 2006, the Senate approved his nomination on April 6, 2006, by voice vote.

E. JOHN S. REDD, DIRECTOR OF THE NATIONAL COUNTERTERRORISM
CENTER

The Intelligence Reform Act of 2004 established, within the ODNI, a National Counterterrorism Center (NCTC).

The Act provides that the NCTC Director has two reporting responsibilities: to the DNI on NCTC's budget and programs, the activities of its Directorate of Intelligence, and the conduct of intelligence operations implemented by other elements of the Intelligence Community; and to the President on the planning and progress of joint counterterrorism operations other than intelligence operations.

The Act provides that NCTC is the government's primary organization for the analysis of counterterrorism and terrorism intelligence, except for intelligence pertaining solely to domestic terrorism. Beyond analysis, it is to conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement. It is to assign roles and responsibilities to lead agencies, but not direct the execution of resulting operations. It is to ensure that agencies receive the necessary intelligence support to fulfill their own operational or in-

telligence missions. The Director of NCTC serves as the principal adviser to the DNI on counterterrorism operations.

On June 30, 2005, the President nominated retired Vice Admiral John S. Redd to be the first Director of the NCTC. Admiral Redd had most recently served as Executive Director of the Commission on the Intelligence Capabilities of the United States regarding Weapons of Mass Destruction, often referred to as the WMD or Robb-Silberman Commission. Immediately prior to that, he served as Deputy Administrator and Chief Operating Officer for the Coalition Provisional Authority in Iraq. A retired Navy veteran, Admiral Redd held a number of senior military positions, including Commander of the Navy's Fifth Fleet in the Middle East.

The Committee held a nomination hearing on July 21, 2005. Admiral Redd's testimony and his answers to the Committee's standard questionnaire and prehearing questions are printed in S. Hrg. 109-241. The Committee acted favorably on Admiral Redd's nomination on July 26, 2005, by unanimous consent. The Senate confirmed his appointment on July 28, 2005, by voice vote.

F. DALE W. MEYERROSE, CHIEF INFORMATION OFFICER, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

The Intelligence Authorization Act for Fiscal Year 2005 (December 23, 2004) established an additional Senate-confirmed position, that of Chief Information Officer (CIO), within the ODNI. It provided that the new official would serve as the Chief Information Officer of the Intelligence Community. Among the CIO's responsibilities are managing activities relating to the information technology infrastructure of the Intelligence Community and directing and managing all information technology-related procurement for the Community. The CIO has the responsibility to ensure that all expenditures for information and research and development activities are consistent with the Intelligence Community enterprise architecture and the strategy of the DNI for that architecture.

On September 8, 2005, the President nominated Major General Dale W. Meyerrose to be the first Intelligence Community CIO. During the course of the nomination process, he completed his retirement from active duty. Over a thirty-year career in the Air Force, General Meyerrose had extensive information technology, communications, and information sharing experience. He was a Chief Information Officer of three Air Force major commands and three joint combatant commands, including the North American Aerospace Defense Command and the U.S. Northern Command.

On November 17, 2005, the Committee held a public hearing on the nomination. (As of the filing of this report, the hearing record had not been printed). Following the hearing that day, the Committee favorably reported the nomination by unanimous consent. The Senate confirmed General Meyerrose on December 17, 2005, by voice vote.

G. JOHN A. RIZZO, GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

On March 15, 2006, the President nominated John Rizzo to be General Counsel of the CIA. The position of General Counsel had

become vacant on August 1, 2004, upon the resignation of Scott Muller. During the period of the vacancy, Mr. Rizzo has served as the Acting General Counsel. No hearing on the nomination was scheduled during the 109th Congress. On December 9, 2006, upon the final adjournment of the 109th Congress, the nomination was returned to the President under the provisions of Rule 31.6 of the Standing Rules of the Senate. Mr. Rizzo has been renominated in the 110th Congress.

H. KENNETH L. WAINSTEIN, ASSISTANT ATTORNEY GENERAL,
NATIONAL SECURITY DIVISION, DEPARTMENT OF JUSTICE

As described earlier in this report, the National Security Division at the Department of Justice and the position of Assistant Attorney General for National Security were created by Congress in the USA PATRIOT Improvement and Reauthorization Act of 2005, which became law on March 9, 2006, in an effort to coordinate national security investigations and prosecutions within the Department of Justice. The Assistant Attorney General serves as the Attorney General's principal legal advisor on national security issues and is the primary liaison for the Department of Justice to the DNI.

On March 13, 2006, the President nominated Kenneth L. Wainstein, who was then the United States Attorney for the District of Columbia, to fill the new position. Previously, he had served in two capacities at the FBI, as the General Counsel and as the Chief of Staff for the FBI Director. For approximately nine years, he had served as an Assistant United States Attorney in the District of Columbia.

Under a procedure established in the PATRIOT Act Reauthorization, and incorporated in Senate Resolution 400 of the 94th Congress on this Committee's jurisdiction and procedures, nominations for the position are referred first to the Judiciary Committee and then sequentially to this Committee. The nomination was reported favorably by the Judiciary Committee on June 15, 2006. It was then referred sequentially to this Committee which held a public hearing on May 16, 2006. (As of the filing of this report, the hearing record had not yet been printed.) The Committee reported the nomination favorably on June 22, 2006, by unanimous consent. The Senate confirmed Mr. Wainstein on September 21, 2006, by voice vote. Upon the confirmation, the new National Security Division commenced operation.

I. MICHAEL V. HAYDEN, DIRECTOR, CENTRAL INTELLIGENCE AGENCY

As the head of the CIA, the Director is responsible, under the Intelligence Reform Act of 2004, for collecting intelligence through human sources, evaluating and disseminating intelligence related to the national security, and for providing overall direction and coordination of the collection of national intelligence outside the United States. The Act provides that the Director shall report to the DNI regarding the activities of the CIA.

On May 8, 2006, the President nominated General Hayden, then serving as the PDDNI, to fill the vacancy created by the resignation of Porter Goss as Director of the CIA.

On May 18, 2006, the Committee held a public hearing on the nomination. The Committee reported the nomination favorably on May 23, 2006, by a vote of 12 to 3. The nominee's testimony and responses to the Committee's questionnaire and prehearing questions are printed in S. Hrg. 109–808. The Senate considered and approved the nomination on May 26, 2006, by a vote of 78–15.

J. RANDALL FORT, ASSISTANT SECRETARY OF STATE FOR
INTELLIGENCE AND RESEARCH

The State Department Bureau of Intelligence and Research (INR), a member of the Intelligence Community, was established in 1946. It is not a collection agency; rather, it provides intelligence support to the Secretary of State and other Department policy makers on issues that fall within the purview of the Department, as well as being the source of high level analysis for the entire community.

On June 12, 2006, the President nominated Mr. Randall Fort to be the Assistant Secretary of State for INR. From 1996 through 2006, he had been employed in various capacities by the global investment bank Goldman Sachs. He previously served for four years as Deputy Assistant Secretary for Functional Analysis and Research at INR. From 1987–1989, he was the Special Assistant to the Secretary for National Security and Director of the Office of Intelligence Support at the Department of the Treasury.

On July 27, 2006, the Committee held a public hearing on the nomination. Mr. Fort's nomination was reported favorably by the Committee on August 2, 2006, by voice vote. (As of the filing of this report, the hearing record had not yet been printed.) The Senate considered and approved the nomination on August 3, 2006, by voice vote.

V. SUPPORT TO THE SENATE

The Committee undertook a number of activities to support the Senate's deliberations. In addition to its unclassified reports, the Committee has sought to support Senate deliberations by inviting the participation of members outside the Committee in briefings and hearings on issues of shared jurisdiction or interest. The Committee has made available for the Senate intelligence information regarding topics relevant to current legislation. Members outside the Committee have frequently sought and received intelligence briefings by members of the Committee staff. Members have also requested and received assistance in resolving issues with elements of the Intelligence Community. Finally, the Committee routinely invites staff from other Committees to briefings on intelligence issues of common concern.

VI. APPENDIX

SUMMARY OF COMMITTEE ACTIONS

A. Number of meetings

During the 109th Congress, the Committee held a total of 125 on-the-record meetings, briefings, and hearings, and numerous off-the-record briefings. There were 13 oversight hearings, 11 con-

firmation hearings, seven hearings on the Intelligence Community budget, and four legislative hearings. Of these 35 hearings, 12 were open to the public and 23 were closed to protect classified information pursuant to Senate rules. The Committee also held 62 on-the-record briefings and 28 business meetings. Additionally, the Committee staff conducted 106 on-the-record briefings and interviews and numerous off-the-record briefings.

B. Bills and resolutions originated by the Committee

S. Res. 22—An original resolution authorizing expenditures by the Select Committee on Intelligence.

S. 1266—A bill to permanently authorize certain provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, to reauthorize a provision of the Intelligence Reform and Terrorism Prevention Act of 2004, to clarify certain definitions in the Foreign Intelligence Surveillance Act of 1978, to provide additional investigative tools necessary to protect the national security, and for other purposes.

S. 1803—Intelligence Authorization Bill for Fiscal Year 2006.

S. 3237—Intelligence Authorization Bill for Fiscal Year 2007.

C. Bills referred to the Committee

S. 640—To amend title 10, United States Code, to provide for the establishment of a unified combatant command for military intelligence, and for other purposes.

S. 2175—To require the submittal to Congress of any Presidential Daily Briefing relating to Iraq during the period beginning on January 20, 1997 and ending on March 19, 2003.

S. 2408—To require the DNI to release documents captured in Afghanistan or Iraq during Operation Desert Storm, Operation Enduring Freedom, or Operation Iraqi Freedom.

S. 2660—To amend the National Security Act of 1947 to require notice to Congress of certain declassifications of intelligence information, and for other purposes.

S. 3536—To ensure oversight of intelligence on Iran, and for other purposes.

S. 3968—Intelligence Community Audit Act of 2006.

D. Publications

S. Print 109-12—Rules of Procedure (Amended January 26, 2005).

S. Print 109-22—Rules of Procedure (Amended March 15, 2005).

S. Report 109-85—Report to accompany S. 1266.

S. Hrg. 109-61—Current and Projected National Security Threats to the United States (February 16, 2005).

S. Report 109-142—Report to Accompany S. 1803.

S. Hrg. 109-79—Nomination of Ambassador John D. Negroponte to be Director of National Intelligence.

S. Hrg. 109-241—Nomination of Vice Admiral John Scott Redd to be Director, National Counterterrorism Center (July 21, 2005).

S. Hrg. 109-242—Nomination of Benjamin A. Powell to be General Counsel of the Office of the Director of National Intelligence (July 19, 2005).

S. Hrg. 109-269—Nomination of Janice B. Gardner to be Assistant Secretary of the Treasury for Intelligence and Analysis (June 16, 2005).

S. Report 109-259—Report to accompany S. 3237, FY 2007 Intelligence Authorization Bill.

S. Hrg. 109-341—USA PATRIOT Act hearings (April 19, April 27, and May 24, 2005).

S. Hrg. 109-270—Nomination of Lieutenant General Michael V. Hayden, to be Principal Deputy Director of National Intelligence.

S. Report 109-331—Report of the SSCI on Postwar Findings about Iraq's WMD Programs and Links to Terrorism and How They Compare with Prewar Assessments.

S. Report 109-330—Report of the SSCI on the Use by the Intelligence Community of Information Provided by the Iraqi National Congress.

S. Hrg. 109-808—Nomination of General Michael V. Hayden, to be Director of the Central Intelligence Agency.

