

Testimony of Michael V. Hayden
U.S. Senate Committee on Homeland Security and Governmental Affairs
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Chairman Lieberman and Ranking Member Collins, thank you for inviting me to offer an assessment of the impact of the Intelligence Reform and Terrorism Prevention Act of 2004 on U.S. Intelligence Community reform, and to comment more specifically about the adequacy of the authorities which the 2004 Act conferred on the Director of National Intelligence.

My testimony today closely tracks the views I expressed in an article that I published in 2010 *World Affairs*, an international affairs journal. The views I expressed then remain unchanged.

The 2004 Act, the very direct result of your hard work and commitment, established the new position of DNI, who was given two principal tasks. The DNI was to serve as senior intelligence advisor to the President. He also was to enhance the Intelligence Community's coordination and integration.

It is the DNI's second task – that of enhancing the IC's coordination and integration – that I will focus on today. But before I do, I would like first to briefly review the historical context that led to this legislation being proposed and approved by Congress, and signed into law by President George W. Bush.

In 2004, Congress, as were we all, was frustrated by the IC's failure to prevent the 9/11 attacks and its faulty national intelligence estimate on Iraq's weapons of mass destruction. As a result, Congress felt it needed to act. Because it is difficult to legislate better analysis, more aggressive intelligence collection, or perfect covert action, Congress faced three more limited choices in reacting to these failures: it could move money, move people, or restructure organization charts and strengthen authorities.

Congress chose the last option – organizational restructuring and enhancing authorities. Its goal arguably was to recalibrate for the Intelligence Community the critical balance that any complex organization needs: the balance between freedom of action for the parts and the unity of effort for the whole. Too little autonomy for the parts leads to inaction, inflexibility, hesitation, and lost opportunities. Too little unity of effort means that individual excellence is not synchronized, harmonized, exploited, or leveraged.

In short, Congress was determined to strengthen the center of the Intelligence Community. In doing so, it relocated and renamed the center. The director of central intelligence, also known as the DCI, would become the director of national intelligence, referred to as the DNI, who would be no longer serving in the dual-hatted role of both director of the Intelligence Community and the Central Intelligence Agency. Rather, the DNI's sole responsibility would be to direct the Intelligence Community. Indeed, the legislation directed that the DNI was not even to be allowed to have his offices at Langley, where the CIA has its headquarters.

I was very concerned in 2004 about the merits of reorganizing the Intelligence Community. I thought doing so would be a drain on time and energy, during a period when we were waging relentless and successful global war against al-Qaeda and providing, at that point, valuable and accurate analysis on post-invasion Iraq. I also disagreed with the notion that the former DCI was not especially strong. The DCI under whom I had spent significant time working while I was director of the National Security

Agency, George Tenet, used to task me regularly. In fact, I believed that the strongest “glue” we that we had in terms of creating unity of effort and operational cohesion within the Intelligence Community was the DCI. He was head of the Community, while at the same time he headed up the operationally relevant agency within, the CIA.

But I also understood and believed even more strongly that the DCI’s role of the head of CIA brought inherent limitations. It was difficult, if not impossible, for a single individual to effectively perform both as head of the community and CIA. The DCI would be challenged to make resource allocation tradeoffs between human and signals intelligence when he was the head of the agency responsible for human intelligence.

As a result, I was equally convinced that, if we were going to establish the new position of DNI separate from the CIA director, then we had to make sure that the legislation dealt the new office a very powerful hand – and that it did formally and specifically. Indeed, that is what I recall recommending to you both when we met in the summer of 2004.

Lt. Gen. James Clapper, then head of the National Geospatial Intelligence Agency and now DNI, and I warned the House Permanent Select Committee on Intelligence later that summer that a “feckless” DNI would actually make matters worse than not having a DNI. Lt. Gen. Clapper and I also met with then-Defense Secretary Rumsfeld and his team and made the case for the Defense Department supporting a strong DNI.

Our fears were realized when Congress inserted language into the reform bill stipulating that, in exercising any robust authorities that the two of you successfully inserted into the legislation elsewhere, such as budget control, the DNI could not abrogate the authorities of the cabinet officers of department in which elements of the Intelligence Community were located. Section 1018 of the bill represented an effort to protect the secretary of defense’s prerogatives when it came to his critical combat support agencies: the National Security Agency, the National Geospatial Intelligence Agency, and the National Reconnaissance Office.

In the end, this section was modified so that it required the president to issue guidance on what the DNI could and could not do in order not to abrogate cabinet officers’ authorities.

The Bush Administration attempted to issue such guidance by revising Executive Order 12333, the basic document through which the president organizes and controls the Intelligence Community. The order was badly in need of update, having been issued in 1981 by President Reagan and rarely modified since. As part of the revision process, an attempt was made to soften the affect of Sec. 1018 by including a presumption that the DNI’s activities were not an abrogation of cabinet secretaries’ authorities. After much effort, however, the final version of the executive order repeated that the DNI shall not abrogate the authorities of the various department heads.

Another factor that undermined efforts to strengthen the center of the Intelligence Community was the creation of the undersecretary of defense for intelligence – or USDI. The USDI was stood up a year before Congress had even begun to focus seriously on intelligence reform, and this new position foreshadowed the challenges that lay ahead in for those attempting to strengthen the Intelligence Community’s center.

In establishing the position of USDI Secretary Rumsfeld, who had been dissatisfied with the intelligence he had been receiving, placed an empowered Pentagon official between the national intelligence chief – then the DCI, now the DNI – and several his biggest collection entities, the National Security Agency and the National Geospatial Intelligence Agency. When Secretary Rumsfeld later delegated his “authority, direction and control” of the major Defense Department intelligence agencies to the USDI, he effected major reorganization and power shift in the IC. By the time Congress turned its full attention to intelligence reform in 2004, that critical shift was already locked in.

Whatever its merits, the concept of the USDI cuts across the grain of legislation designed to strengthen the “center,” to give the leader of the national intelligence community more strength, and to give the DNI more say over the current operations and future direction of the entire intelligence community.

The relationship between the DNI and the CIA director is also critical. The 2004 law states that the DNI shall recommend to the President the candidate to be CIA director. However, in my experience this has only happened once – when DNI Negroponce recommended me to be the CIA director. Director Negroponce and I overlapped, with him as DNI and me as CIA director, for only six months. By all indications, DNI Blair played no role in the selection of Leon Panetta to be CIA director.

Even in the best of times, the relationship between the DNI and the CIA director is a challenging one. The 2004 law puts the DNI at the center of the Intelligence Community, but the CIA has pride of place and a culture that is very reluctant to admit otherwise. While CIA director, I would frequently say that since the CIA director and the DNI were on or near the same grid reference, the only way to prevent fratricide was to separate us at different altitudes. The DNI should work at the higher altitudes—set policy, give overall direction, manage conflict – whereas the DCIA should work the lower by coordinating, conducting, and operating. The CIA director must guarantee the DNI transparency; the DNI has to give the CIA director space to operate. This sounds simple, but the DNI under whom I served after DNI Negroponce’s departure, Admiral Mike McConnell – we had known each other for years, were friends, and between us had nearly three quarters of a century of intelligence experience – and I still found that this relationship took a lot of effort.

The complexity of the law, competing conceptions of what it meant, and the sheer magnitude of the Intelligence Community’s global mission and reach meant that success depended upon a series of intangibles: the DNI’s political deftness, the DNI’s closeness to the President, and the DNI’s relationship to the CIA director.

DNI Blair did not know President Obama before being appointed as DNI. He made some well-intentioned moves that caused him to have to dig out of political holes. In addition, the Obama administration moved the DNI down the protocol list and seemed to have little interest in the Intelligence Community’s inner workings.

DNI Blair and CIA Director Panetta became embroiled in a dispute concerning a DNI directive stating that the DNI could name his own representatives overseas. The issue had come up when I was CIA director, and I resisted advice to take this issue to the White House because I thought there was no way that the White House would fail to back the DNI on an issue of authority. But when the issue got to the White House in the Obama administration, the administration backed the CIA director. The DNI lost, and lost publicly.

After DNI Blair's departure, a news story clearly sourced to White House officials described Mr. Brennan as the President's "invaluable go-to person" on many intelligence questions. Simultaneously, the current Secretary of Defense, Robert Gates, suggested that the DNI position is closer to that of "a powerful congressional committee chair than it is to a CEO."

We are thus left where we began: a continuing effort to balance unity of effort with autonomy of action. This is never easy. I have said in other fora that the current structure is as good as any in giving us a chance to make it happen. But our experience does point out the limits of structure and the importance of personal relationships and other intangibles.