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Restructuring the Intelligence Community

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THE TRAGIC EVENTS of September 11, 2001, highlighted two weaknesses in U.S. intelligence and operational capabilities for countering terrorism. First, the U.S. intelligence community could not operate in an integrated manner because its structure was a Cold War relic with no one in charge. Second, the executive branch lacked an effective planning mechanism for counterterrorism operations. These two problems, and recommendations for solving them, figured prominently in the report released in July 2004 by the bipartisan National Commission on Terrorist Attacks Upon the United States.¹ The Commission recommended creating a Director of National Intelligence (DNI) who has sufficient authority over the intelligence community to force integration among its component intelligence agencies and to be accountable for its performance. The

1. National Commission on Terrorist Attacks Upon the United States, *Final Report of the National Commission on Terrorist Attacks Upon the United States* (W. W. Norton, 2004) (hereinafter “*The 9/11 Commission Report*”).

Commission also recommended creating a National Counterterrorism Center to integrate counterterrorism intelligence activities and to plan executive branch-wide counterterrorism operations.²

Proposals for restructuring the intelligence community by creating a DNI had been floated for decades prior to 9/11, to little effect.³ In addition, the Commission's recommendation for a National Counterterrorism Center represented a virtually unprecedented approach to bridging executive branch departments and effecting interagency coordination. Only six months later, Congress enacted and the president signed the Intelligence Reform and Terrorism Prevention Act of 2004 to implement these two recommendations.⁴ This chapter summarizes the rationale behind, and the law's provisions concerning, the DNI and a National Counterterrorism Center. It also responds to common criticisms and offers some thoughts on implementation.

I. THE GOLDWATER-NICHOLS DEPARTMENT OF DEFENSE REORGANIZATION ACT OF 1986

The Goldwater-Nichols Department of Defense Reorganization Act of 1986⁵ served as a model for the intelligence reform advocated by the Commission and enacted by Congress.⁶ The 1986 act

2. For the 9/11 Commission's recommendations on intelligence reform, see *The 9/11 Commission Report*, 399–428.

3. Richard Best Jr., *Proposals for Intelligence Reorganization, 1949–2004* (Congressional Research Service, 2004), available at www.fas.org/irp/crs/RL32500.pdf.

4. Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458 (2004) (hereinafter "Intelligence Reform Act"). The legislation also covered a wide variety of other counterterrorism topics. This article only deals with the provisions creating the Director of National Intelligence and the National Counterterrorism Center.

5. The Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. No. 99-433 (1986).

6. U.S. Senate Committee on Governmental Affairs, Report on the National Intelligence Reform Act of 2004 and Accompanying Views, S. Rep. No. 108-359, 108th Congress, 2d Sess. (2004), 5–8.

reformed the organizational structure of the Department of Defense (DoD) in order to foster greater integration among the military services. The services had a history of coordinating their activities on a loose, arm's-length basis. A confederated organizational structure for DoD was arguably sufficient for situations in which the services could fight wars with only limited interaction. However, as the late twentieth century unfolded and technology advanced, warfare required much greater integration across the military services to perform combat operations effectively against sophisticated enemies on a global scale.

Before 1986, however, DoD only had weak mechanisms for achieving integration. For example, the Joint Chiefs of Staff was composed of the heads of the military services and was responsible for providing military advice to the president and the secretary of defense, but its advice frequently represented the lowest common denominator among the services. DoD also had "combatant commands" organized on geographic (e.g., Europe—the European Command) and functional (e.g., military transportation—the Transportation Command) topics and responsible for integrating forces supplied by the military services to fight wars and carry out missions. Prominent combatant commanders have included General H. Norman Schwarzkopf, who led U.S. troops in the Gulf War, and General Tommy Franks, who commanded U.S. troops in the Iraq War. However, these combatant commands lacked effective control over service assets. The resulting lack of integration of service assets produced inefficient and ineffective combat operations.

Congress passed the Goldwater-Nichols Act following a string of military failures in the late 1970s and early 1980s, including the disastrous Iran hostage rescue operation, the tragic bombing of the U.S. Marine barracks in Beirut, and the botched yet successful Grenada invasion. Congress sought to foster greater integration—or "jointness"—among the military services. Of course, Congress could not simply command military officers to "think joint." Instead, it

sought to change the military's organizational structure to create incentives for officers to think about issues from a joint perspective—and thus to foster an integrated, corporate DoD culture. For example, Congress elevated the chairman of the Joint Chiefs of Staff, making that official the single, principal military adviser to the president and the secretary of defense; strengthened the authorities of the combatant commanders to make them the preeminent warfighters and the principal figures responsible for fighting wars and performing missions; and required military officers to serve in assignments outside their services to qualify for promotion to general or admiral.

This last requirement in particular led to a sea change at DoD, as the best-and-brightest military officers flocked to serve on the chairman's and the combatant commanders' staffs. By serving on those staffs, the military's best-and-brightest officers not only raised the quality of those staffs but also learned to view DoD issues from a DoD-wide perspective rather than from the viewpoints of their individual services. Twenty years after the legislation passed, the act is credited with having fostered significantly greater integration across DoD, and the notion of returning to a pre-Goldwater-Nichols DoD is essentially inconceivable.⁷

II. THE INTELLIGENCE COMMUNITY'S STRUCTURE BEFORE 9/11

The craft of intelligence has two basic components. The first is collection, in which information about particular intelligence targets is gathered. Collection is done through different methods: human intelligence, meaning spies and informants; signals intelligence, meaning intercepted communications; imagery intelligence; and open-source intelligence, referring to information derived from

7. See generally, Gordon Lederman, *Reorganizing the Joint Chiefs of Staff: The Goldwater-Nichols Department of Defense Reorganization Act of 1986* (Greenwood Publishing Group, 1999).

publicly available, rather than secret, sources. The second component is analysis, which involves studying collected information and deriving conclusions, judgments, or predictions. In general, analysis should drive collection so that collection focuses on obtaining the information that analysts need in order to render their conclusions, judgments, or predictions. “All-source analysis” refers to analysis of an intelligence topic using information collected by all relevant methods.

The U.S. national security establishment that fought the Cold War originated in the National Security Act of 1947. That legislation created the National Security Council (NSC), the Director of Central Intelligence (DCI), and what eventually became DoD and the secretary of defense. The Central Intelligence Agency (CIA) was created two years later and was a stand-alone agency, not subsumed within any other cabinet-level department.⁸ The CIA was responsible for human intelligence collection and all-source analysis.

In contrast to the CIA, the rest of the intelligence community’s membership was located in other executive branch departments.⁹ The National Security Agency was created within DoD in 1952 to conduct signals intelligence and to unify the military services’ disparate efforts in that area. Another DoD agency, called the National Geospatial-Intelligence Agency, was created to provide imagery intelligence. The National Reconnaissance Office, also located in DoD, procures, launches, and maintains orbiting, information-gathering satellites.¹⁰

Other entities in the intelligence community include DoD’s Defense Intelligence Agency, which supports the secretary of defense, the Joint Chiefs of Staff, and military commanders. The Defense Intelligence Agency does some collection through human

8. Central Intelligence Agency Act of 1949, Pub L. No. 81-110 (1949).

9. The Office of the Director of Central Intelligence was also not located within a department.

10. *The 9/11 Commission Report*, 86–87.

sources, as well as some technical intelligence collection.¹¹ The intelligence community also includes the national security elements of the Federal Bureau of Investigation (FBI); the State Department's Bureau of Intelligence and Research, which supports State Department policy makers; and intelligence components of the Treasury and Energy Departments.

The intelligence community before 9/11 could be understood as being divided along two axes. The first was the CIA/DoD divide. The CIA—doing human intelligence collection and all-source analysis—was an independent entity, while agencies performing signals and imagery intelligence were located within DoD. The second axis was the foreign/domestic divide. The National Security Act of 1947 forbid the CIA from performing internal security functions. At the same time, the FBI protected its role as the premier domestic intelligence and law enforcement agency. Moreover, the abuses committed by intelligence agencies in the 1960s and early 1970s, chronicled by Congress's Church and Pike Committees, led to an understandable reluctance across the intelligence community to bridge the foreign/domestic divide.

III. THE DIRECTOR OF CENTRAL INTELLIGENCE'S INSTITUTIONAL WEAKNESS

The intelligence community lacked a strong central management structure. The DCI had three jobs: head of the intelligence community, principal adviser to the president on intelligence matters, and head of the CIA. Each, by itself, would overwhelm any single person. In addition, the DCI suffered from an inherent conflict of interest: As head of the intelligence community, the DCI was supposed to make resource and policy decisions for the intelligence community as a corporate unit. But the DCI was also head of the

11. *Ibid.*, 87.

CIA, a component of the intelligence community with its own specific views and interests.

Most important, however, the DCI lacked sufficient authority to manage the intelligence community. Because the CIA is independent of any executive branch department, the DCI had plenary authority over the CIA and did not share control of the CIA with any other department secretary. In contrast, as noted above, the other elements of the intelligence community are resident in other departments, and the DCI had to share authority over those entities with the relevant department secretaries. However, as discussed below, the balance of power was tipped in favor of the department secretaries and against the DCI.

Determining the scope of the DCI's authority and responsibilities requires an understanding of how federal departments and agencies are funded. The standard procedure begins with budget proposals assembled by departments and submitted to the president. The president, with the assistance of the Office of Management and Budget, reviews those proposals and submits the integrated budget proposal to Congress. Congress reviews the president's budget proposal and passes appropriations bills, one for each department or area of government (e.g., the Defense Appropriations Bill for DoD and the Commerce-Justice-State Appropriations Bill for the Departments of Commerce, Justice, and State), that dictate the actual funding for the next fiscal year. Upon passage of the appropriations bills, the Office of Management and Budget apportions the funds, setting a schedule for each department to draw funds from the U.S. Treasury. Each department then executes its appropriation by drawing funds from the Treasury, distributing them among departmental components, and using the funds to pay salaries, buy computers, acquire equipment, and so on.

Despite being the nominal head of the intelligence community, the DCI lacked key authorities that any chief executive officer in the private sector would find essential, including control over the orga-

nization's funding, the movement of resources to respond to new priorities, and the hiring of senior managers. His hands were tied in a number of specific ways.¹²

- *Developing the Intelligence Budget:* Under the National Security Act, the DCI had the responsibility to “facilitate the development” of the intelligence budget for consideration by the president and then submission to Congress.¹³ This vague language was interpreted in the executive branch as essentially requiring that the DCI and the secretary of defense jointly fashion the budgets for intelligence agencies and programs within DoD, such as the National Security Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office.
- *Executing the Intelligence Appropriation:* In contrast to all other departments, the intelligence appropriation is classified. To keep the amount classified, the funding needs to be hidden in other departments' appropriations. Because most intelligence agencies and entities are actually located in other departments, the result was that the intelligence agencies, aside from the CIA (the only intelligence agency not located in another department), received their appropriated funds directly from their department heads and with little DCI involvement. Thus, the DCI had no responsibility for executing funds for most of the intelligence community's agencies and components, aside from the CIA.

Without responsibility for executing these intelligence funds, the DCI had little knowledge of how intelligence agencies other than the CIA were actually spending their funds. As a result, the DCI did not know where pools of unspent money were located and, thus, what was available for transfer to higher or

12. Ibid., 410.

13. 50 U.S.C. section 403-3(c), prior to passage of the Intelligence Reform and Terrorism Prevention Act of 2004.

emerging priorities. Moreover, the DCI lacked the leverage over intelligence agencies that comes from being able to control the funding spigot. For example, the DCI could not slow the flow of funds to an agency to discipline it for failing to implement DCI directives or to cooperate with other intelligence agencies.

- *Moving Resources to Meet New Priorities:* The DCI had no unilateral authority to move funds and personnel across the intelligence community to respond to emerging threats. The DCI could only move funds and personnel from an intelligence agency with the concurrence of the secretary of the department housing that agency. And the DCI had no authority at all to move funds and people from the FBI.¹⁴
- *Hiring Senior Officials:* The DCI had only limited authority over the selection of senior intelligence officials. The secretary of defense was required to seek the DCI's concurrence before submitting a recommendation to the president for the directors of the National Security Agency, National Geospatial-Intelligence Agency, and National Reconnaissance Office. However, the secretary of defense could forward his or her recommendation to the president over a DCI objection, provided the secretary notified the president of the DCI's objection. The DCI had an even lesser role in selecting other senior intelligence officials of other agencies aside from the CIA. The secretaries of the relevant departments merely had to consult the DCI before appointing or making a recommendation to the president regarding the assistant secretary of state for intelligence and research and the directors of the Treasury and Energy intelligence offices. And the DCI had little influence over the selection of senior FBI intelligence officials.¹⁵

14. 50 U.S.C. section 403-4(d), prior to passage of the Intelligence Reform and Terrorism Prevention Act of 2004.

15. 50 U.S.C. section 403-6, prior to passage of the Intelligence Reform and Terrorism Prevention Act of 2004.

Without control of the purse strings and other key formal authorities, the DCI's power across the intelligence community became a function of the DCI's relationship with the president. In the executive branch, a senior official's close relationship with the president brings enhanced prestige and, thus, greater informal power in internal executive branch politics. As the president's principal intelligence adviser, the DCI theoretically had access to the president. However, the DCI's relationship with the president varied across administrations and by personality. Some DCIs had daily and direct access to the president, while others had only limited access.

The DCI did have some authority "on paper" in the National Security Act that he could have exploited to foster integration and a strong corporate culture across the intelligence community. However, the DCI's lack of authority over funding meant that he had little institutional power to enforce integration. In addition, the DCI's inherent conflict of interest as head of the CIA also dissuaded him from enforcing integration. The net result was that the intelligence community lacked strong centralized management and, therefore, functioned as a loose confederation of agencies—or "stovepipes"—rather than as a single corporate unit.

IV. THE INTELLIGENCE COMMUNITY, THE COLD WAR, AND TWENTY-FIRST CENTURY THREATS

Despite its failure to produce integration, the intelligence community's organizational structure was arguably sufficient for the Cold War, due to the nature of the enemy and the world environment. For more than four decades following World War II, America's principal adversary was a coalition of lumbering, bureaucratic, and technologically challenged nation-states led by the Soviet Union. Cell phones, e-mail, and the Internet did not exist, and events in general flowed at a slower pace as compared with today's "Internet

time.” The Soviet bloc’s main weapon was its military, featuring legions of conventional and nuclear forces and backed by a massive military-industrial complex. The Soviet bloc hid behind the Iron Curtain, keeping as much of its information secret as possible and publicly releasing mainly propaganda. Finally, the Soviet bloc was deterred by the concept of Mutual Assured Destruction: The United States would be able to identify the Soviet bloc as the source of a nuclear attack and respond with devastating force.

The intelligence community’s task was to penetrate the Iron Curtain to assess the Soviet bloc’s military and industrial assets. It focused on stealing secrets; open-source intelligence was less important. The intelligence community also sought to ensure that the Soviet behemoth did not strike unexpectedly. It knew, though, that a Soviet conventional strike would likely be preceded by a relatively obvious mobilization windup. Given that the targets were slow, bureaucratic nation-states, the intelligence community could operate at a more deliberate speed. Cold War intelligence activity was like a track-and-field meet composed of individual competitions—the pace was deliberate, and each agency could operate with relative autonomy and merely arm’s-length assistance from each other. The threat of Soviet espionage also dissuaded intelligence agencies from designing information-sharing links oriented toward rapid transmission. Finally, the conventional, hierarchical, and bureaucratic nature of the target lent itself to a relatively easy cataloguing of who-needed-to-know-what-information within the intelligence community. Agencies shared information among themselves in a slower, more formal, and less intimate manner, dominated by the need-to-know principle.

In addition, the nature of the threat permitted the intelligence community to maintain a sharp divide between foreign and domestic intelligence agencies. Although the United States did face the threat of Communist intelligence activity domestically, it was less grave than the threat of suicidal terrorists bent on mass destruction.

And, as noted above, the civil liberties abuses perpetrated by the intelligence community in the 1960s and early 1970s made the intelligence community of the 1980s and 1990s understandably reluctant to take forward-leaning measures to bridge the foreign/domestic divide. Thus, the foreign-oriented intelligence agencies and the domestically oriented FBI operated with little integration. The foreign/domestic divide rendered the game of espionage like football: Offense and defense were sharply distinguished, and the intelligence community fielded separate squads for each.

But the nature of the threat against America changed dramatically in the 1990s. The world was transformed by the Internet, other advanced communication technology, and the myriad linkages fostered by globalization. Sophisticated trade and transportation pathways spread across the world. International travel became routine. Migration of people and organizations across borders grew easier. As the Soviet threat receded, the Islamic extremist movement, epitomized by al Qaeda, rose. Rather than fielding military phalanxes, al Qaeda dispersed operatives around the world. The 9/11 hijackers, for example, nestled in a variety of places, including a university in Germany and the camps of Afghanistan, and traveled globally. Terrorists could buy off-the-shelf telecommunications equipment cheaply, giving them worldwide instantaneous communications capabilities.¹⁶ They had access to reservoirs of private funding. And, willing to commit suicide in order to attack civilians, they were not deterred by the concept of mutual assured destruction.

As a result of these capabilities, terrorists could strike around the globe with little warning. Bruce Berkowitz called the new threat “a swarming attack,” in which

members of the swarm are interconnected by communications.
Each occasionally “pings” its brethren to find out what they are

16. *The 9/11 Commission Report*, 88.

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doing and what information they have. . . . [T]hey keep a low profile to avoid detection. When they spot their target, they pounce to attack, possibly simultaneously from several directions or when the target is most vulnerable.¹⁷

Fighting these new terrorist networks requires the intelligence community to integrate intelligence agencies' capabilities. To have stopped the 9/11 hijackers, the intelligence community needed the agility to have, among other things, discovered Islamic terrorist cells in Germany, Afghanistan, and the United States; tracked individual terrorists as they traveled around the world; penetrated these small groups of Islamic extremists; and extinguished the financial and logistical network that sustained them.

In other words, the intelligence community needed the capability to find, track, and disrupt a handful of sophisticated and networked needles constantly moving through a global haystack. This demands much more intimate cooperation among intelligence agencies than during the Cold War—hence, the parallel with DoD's need for greater integration prior to the Goldwater-Nichols Act. Hunting global terrorist groups is like assembling a giant jigsaw puzzle in which the significance of one piece might not be known until it is arrayed—in real time—against other ostensibly unrelated pieces. Accordingly, at the simplest level, the need-to-know principle became a significant hindrance to effective information-sharing, because the nature of counterterrorism made it difficult to ascertain who needed to know what.

As with the need-to-know principle, the strict foreign/domestic separation that had dominated the intelligence community became more problematic inasmuch as al Qaeda plotted the 9/11 attack abroad, crossed the U.S. border with relative ease, and struck the American homeland from within. In this sense, the intelligence

17. Bruce Berkowitz, *The New Face of War: How War Will Be Fought in the 21st Century* (The Free Press, 2003), 102.

game began to resemble less football and more basketball and hockey: fast-paced, rapidly covering a lot of territory, moving back and forth seamlessly between offense and defense—that is, across the foreign/domestic divide—and with little time to field a separate squad or substitute players.

As the 9/11 attacks demonstrated, the intelligence community's loose and confederated organizational structure was unsuited for twenty-first century threats, which required agility and flexibility. In an effort to bridge agency stovepipes, an organization called the DCI's Counterterrorist Center was developed to integrate counterterrorism capabilities across the intelligence community. However, the Counterterrorist Center never fulfilled this objective. In keeping with the community's domination by agencies, the Counterterrorist Center was subsumed by the CIA and did not emerge as an independent body separate from any agency.¹⁸ As a result, there was no one below the DCI who had authority or responsibility to marshal the intelligence community's capabilities, as a whole, on behalf of counterterrorism.

In December 1998, then-DCI George Tenet issued a memorandum stating that America was at war with al Qaeda and calling on the intelligence community to spare no resources in prosecuting the fighting.¹⁹ However, little happened as a result of this directive. The director of the National Security Agency did not believe that the memorandum applied to his agency, while the CIA believed it applied to the other intelligence agencies.²⁰ And most important, Tenet had limited authority to shift resources within the intelligence

18. Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, Report of the U.S. Senate Select Committee on Intelligence and the U.S. House Permanent Select Committee on Intelligence, Together with Additional Views, S. Rep. No. 107-351, H. Rep. No. 107-792, 107th Congress, 2nd Sess. (2002), 339; and *The 9/11 Commission Report*, 353–358.

19. *The 9/11 Commission Report*, 357.

20. *Ibid.*, 357.

community to meet an emerging and dangerous threat and to back up his memorandum with resources.

As with DoD before Goldwater-Nichols, greater integration across the intelligence community's capabilities was needed to counter twenty-first century threats. Reacting to the lack of integration and corporate leadership in the intelligence community, the 9/11 Commission recommended dividing the DCI into two separate officials: a Director of National Intelligence with strengthened authorities and a CIA director who was subordinate to the DNI. The DNI would have authority over the intelligence community's funding, movement of resources in response to emerging threats, and selection of senior intelligence officials.

There were several considerations informing this approach:

- *Freeing the DNI to Concentrate on Community Affairs:* Relieving the DNI of responsibility for overseeing the CIA on a day-to-day basis would make his or her workload more manageable and would remove an inherent conflict of interest.
- *Empowering the DNI to Create an Intelligence Network:* The intelligence agencies need to be integrated into a network in which information, people, and resources flow freely and the agencies' capabilities are harnessed synergistically to achieve missions. But creating a network requires common protocols among agencies concerning security, information technology, personnel, and other policies and procedures. The DNI would set those protocols to achieve maximum integration and would have the funding and other necessary authorities to force agencies to abide by those protocols.
- *Concentrating the Intelligence Community on Mission-Oriented Centers:* Integrating intelligence capabilities requires creating National Intelligence Centers that are truly separate from the

intelligence agencies and that have the authority to marshal the agencies' capabilities against particular intelligence targets. The National Intelligence Centers would concentrate on transnational and geographic topics reflecting key National Security Council or DNI priorities—for example, the Middle East or East Asia. The model for these centers is DoD's combatant commands—separate from the military services and responsible for integrating the services' capabilities to fight wars and accomplish missions. Only a strong and independent DNI could establish and nurture these centers as entities distinct from the agencies and able to integrate the agencies' capabilities to accomplish intelligence missions. These centers would also decentralize the intelligence community's execution of its missions. No longer would the DCI be the sole point at which all of the intelligence community's capabilities come together against a particular target. Instead, the head of a National Intelligence Center would be responsible for the community's performance against that center's target.

- *Clarifying Accountability for the Intelligence Community's Performance:* The DNI would have sufficient authority to be held accountable for the intelligence community's performance and, thus, would have the motivation to develop communitywide strategies and capabilities to enhance the intelligence community's performance.

As part of its recommendation for creating a DNI, the 9/11 Commission advocated declassifying the top line (i.e., the aggregate dollar amount) of the intelligence appropriation and also the top line appropriation for each intelligence agency.²¹ There were two rationales. First, informing the public how intelligence spending compares with spending on other areas would increase accounta-

21. Ibid., 416.

bility. It would also allow the public to get an impression of the intelligence community's relative priorities among different types of collection methods. Second, and more important, declassifying the intelligence appropriation would enable Congress to appropriate the intelligence funds directly to the DNI for distribution among the intelligence agencies, rather than having the funds flow through departmental secretaries to the intelligence agencies within their respective departments. A declassified appropriation would permit the DNI to have clear control of the purse strings and would eliminate opportunities for department secretaries to exploit their control over the flow of funds to try to control intelligence agencies within their respective departments.

V. PLANNING EXECUTIVE BRANCH-WIDE COUNTERTERRORISM OPERATIONS

The Commission's recommendation for a DNI focused on improving the performance of the intelligence community against networked twenty-first century threats. However, the Commission also identified a larger problem connected to counterterrorism that afflicted the entire executive branch. The Commission observed that counterterrorism is a complex and interdisciplinary problem that requires the combined efforts of a wide variety of government agencies. Acquiring intelligence against terrorism is, of course, essential. But so too are many other tasks: military operations for destroying terrorist facilities; diplomatic action for building multilateral coalitions and dissuading states from supporting terrorism; public diplomacy and foreign aid for swaying terrorist sympathizers and giving potential terrorist supporters a greater stake in stability; law enforcement operations for apprehending and incarcerating terrorists; and border security operations for blocking terrorists from entering, and for deporting terrorists from, the United States.

However, there was no mechanism within the executive branch

for ensuring that departments' counterterrorism operations worked under a common strategy and set of objectives. Just as the intelligence community was dominated by the intelligence agencies, the executive branch writ large was dominated by strong departments—with weak mechanisms for cooperation among them.

Without an executive branch body responsible for planning operations, the task fell to the NSC staff. However, that staff was ill-suited to the task. The Iran/Contra Affair of the mid-1980s, in which NSC staffers ran a rogue operation to trade weapons to Iran in exchange for the release of U.S. hostages in Lebanon and to fund the Contra guerrillas fighting in Nicaragua, illustrated the dangers of having operations planned inside the White House. In addition, despite a significant post-9/11 expansion in size, the NSC lacked the staff resources to handle the overwhelming pace of tactical matters associated with counterterrorism operations.²² Most important, the NSC staff exists to provide policy and strategic support to senior decision makers; focusing on tactical and operational matters distracts the staff from its primary purpose.

The 9/11 Commission's recommendation for a National Counterterrorism Center was designed to remedy the intelligence community's structural problems, particularly the lack of an appropriate entity for performing executive branch-wide counterterrorism operational planning. The Commission conceived of the National Counterterrorism Center as having two directorates. The first would essentially serve as the National Intelligence Center for Counterterrorism within the intelligence community. It would focus on the counterterrorism mission and have responsibility for integrating the intelligence agencies' capabilities against terrorism. It would be the preeminent body for analyzing terrorism and assessing the terrorist threat. It would also establish requirements to guide intelligence agencies' collection activities against terrorism.

22. *Ibid.*, 402.

The National Counterterrorism Center's second directorate would develop plans for counterterrorism operations for the entire Executive Branch and would assign responsibilities for implementation to various departments. By design, though, this directorate would lack the authority to order departments to carry out the plans; that authority would remain with department secretaries.

To give the National Counterterrorism Center the prestige and influence necessary to impel departments to carry out its plans voluntarily, the Commission advocated giving the director of the National Counterterrorism Center a role in the selection of key counterterrorism officials across the executive branch, such as the State Department's ambassador-at-large for counterterrorism and the heads of key military commands that carry out counterterrorism operations, such as the Special Operations Command. In this vein, the Commission also recommended making the National Counterterrorism Center director responsible for reviewing the counterterrorism-related budget proposals of various departments. Due to these authorities, senior counterterrorism officials in the departments would be primed to adhere to the National Counterterrorism Center's plans.²³ Thus, the National Counterterrorism Center would be the beginning of a Goldwater-Nichols for the executive branch—to integrate the executive branch's capabilities to accomplish missions.

VI. THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004

Congress responded to the Commission's report immediately. The 9/11 Commission received significant media attention during the course of its work due to the importance of its endeavor and to the Commission's series of publicly released staff statements and high-

23. *Ibid.*, 405–406.

profile hearings. Controversy surrounding whether National Security Advisor Condoleezza Rice would testify and the testimony of former NSC staffer Richard Clarke dominated the national stage. Also, the public put pressure on Congress, in general, to act on the recommendations to protect the United States against terrorism, and the presidential election—in which counterterrorism issues were playing a major role—loomed in November. Finally, the Iraq War underscored the intelligence community's problematic performance, even after 9/11. President George W. Bush supported the Commission's recommendations for a DNI and National Counterterrorism Center, in part by issuing executive orders to enhance the DCI's authorities and to lay the groundwork for the center.

Intelligence reform was one of the crown jewels of legislative activity, having been proposed as early as the 1950s but continually running into opposition from departments that would lose some authority over intelligence agencies and from those departments' overseers in Congress. But in a frenetic six-month sprint from late July to December 2004, Congress passed and the president signed legislation that implemented the Commission's recommendations for a DNI and a National Counterterrorism Center, as well as a wide range of other Commission recommendations and counterterrorism measures.

A. Background on the Legislative Process

Following the release of the Commission's report, both the Senate and the House began to draft implementing legislation. The Senate effort was led on a bipartisan basis by Republican Senator Susan Collins of Maine and Democratic Senator Joseph Lieberman of Connecticut. The bill emerging from the Senate had a robust conception of the DNI and described operations of the National Counterterrorism Center in detail. In addition, it created a Privacy and Civil Liberties Oversight Board, which the Senate felt was necessary to

balance the risks to civil liberties of a more integrated intelligence structure, and an information-sharing structure across the executive branch. The bill required the declassification of the intelligence appropriation's top-line total and gave the DNI unlimited authority to move intelligence personnel and funds in response to emerging threats without the affected department secretaries' concurrence. The bill also created a series of officials to assist the DNI, such as a chief financial officer, and it established entities within the intelligence community to promote competitive analysis and analysts' independence from politicization. The Senate passed the bill, 96–2.

The House of Representatives took a different approach. Its bill covered a wide expanse of counterterrorism issues, including immigration and criminal penalties. The House characterized its bill as implementing nearly the full range of the Commission's recommendations, although the House bill contained controversial immigration provisions not recommended by the Commission. The House bill also took a more restricted view of the DNI's authorities, kept the intelligence appropriation classified, and provided for only a skeletal DNI staff. It had very little detail about the National Counterterrorism Center but implied that the center's planning directorate would focus only on high-level strategy rather than on operationally oriented issues. Finally, the House legislation lacked a Privacy and Civil Liberties Oversight Board. House Democrats preferred the Senate bill, and the House bill was passed on a generally party-line vote.

In keeping with the standard legislative procedure, a "conference" was held between the Senate and House to resolve differences between the bills. The major issues in the conference included the DNI's authorities and how they affected department secretaries' authorities over intelligence agencies housed within their respective departments, whether to declassify the top line of the intelligence appropriation, the extent to which the legislation should create specific DNI staff positions, the scope of the National Counterterrorism

Center, the creation of the Privacy and Civil Liberties Oversight Board, the creation of an information-sharing environment in the executive branch, criminal penalties, and immigration provisions. The DNI, National Counterterrorism Center, Privacy and Civil Liberties Oversight Board, and information-sharing issues were resolved, and many controversial immigration provisions were dropped. The final bill was adopted 89–2 in the Senate and 336–75 in the House. The president signed the Intelligence Reform and Terrorism Prevention Act of 2004 on December 17, 2004.

B. Major Provisions

The legislation creates a Senate-confirmed DNI separate from the CIA director and responsible for leading the intelligence community and serving as the president’s principal intelligence adviser. The DNI is the same pay-grade as department secretaries (Executive Schedule Level I). The legislation grants the DNI sufficient authority to manage the intelligence community and to be held accountable for its performance. The DNI has several critical responsibilities:

- *Determining the Intelligence Budget:* The legislation states that the DNI shall determine the intelligence budget proposal submitted to the President for consideration and submission to Congress.²⁴ Congress understood that the administration would interpret the word “determine” to mean that the DNI has sole authority, rather than having to gain the secretary of defense’s concurrence, to submit a budget proposal to the president for intelligence that included intelligence agencies within DoD. Under the legislation, the DNI may interact directly with the intelligence agencies in the formation and submission of their

24. Intelligence Reform Act, section 1011, inserting section 102A into the National Security Act of 1947.

budget proposals, rather than having to go through department secretaries.²⁵

- *Managing the Execution of the Intelligence Appropriation:* This area was at the heart of conference negotiations between the Senate and the House. The legislation keeps the intelligence appropriation classified and therefore flowing through departments such as DoD rather than going directly to the DNI. With both the House and the White House opposed to declassification, the Senate was forced to concede. However, the legislation gives the DNI significant control over the funds flowing through the departments to the intelligence agencies. The DNI gives “exclusive direction” to the Office of Management and Budget with respect to the apportionment of funds drawn on the U.S. Treasury.²⁶ A robust apportionment schedule will serve to curtail a department’s discretion in disbursing funds to components within the department, thus preventing a department from trying to influence its intelligence agencies by altering, or threatening to alter, the flow of intelligence funds to them. The legislation permits the DNI to audit and monitor how departments are expending the funds. Departments are required to disburse the funds expeditiously, and the DNI shall alert the president and Congress to any problems caused by the departments.²⁷ Thus, the legislation gives the DNI leverage over intelligence agencies via control of the intelligence funds.
- *Transferring Funds and Personnel:* These provisions were the other major focus of the conference negotiations concerning the DNI. The DNI does not need a department secretary’s approval to move up to \$150 million from agencies per fiscal year to meet emerging threats, provided that the funds moved are less than

25. Ibid.

26. Ibid.

27. Ibid.

5 percent of an agency's intelligence funding and that the fund movement does not terminate an acquisition program. Also, the DNI has authority to move personnel during the DNI's start-up phase. In perpetuity, the DNI may transfer one hundred personnel to a National Intelligence Center during the first year after that center's creation without the affected department secretary's approval. The DNI may make additional personnel transfers pursuant to joint procedures agreed upon with department secretaries. The legislation thus deletes the provisions in prior law that a department secretary may veto the DCI's transfer of intelligence funds and personnel and that FBI funds and personnel are exempt from any transfer.²⁸

- *Hiring Senior Officials:* The DNI receives strengthened authority to select senior officials. As under prior law, the secretary of defense must seek the DNI's concurrence before submitting a recommendation to the president for the directors of the National Security Agency, National Geospatial-Intelligence Agency, and National Reconnaissance Office. However, the secretary of defense may not forward a recommendation to the president if the DNI objects. The same arrangement is maintained for the selection of the assistant secretary of state for intelligence and research, the assistant secretary of homeland security for information analysis, and other senior officials across the intelligence community with the respective department heads.²⁹

In addition, the legislation creates the National Counterterrorism Center and authorizes the DNI to create National Intelligence Centers as the DNI deems appropriate. The expectation is that the DNI will create these centers on geographic and transnational top-

28. Ibid.

29. Intelligence Reform Act, section 1014, amending section 106 of the National Security Act of 1947.

ics according to the DNI's and NSC's priorities. A National Counterproliferation Center is also created, but the president may waive its creation; this discretion is granted because Congress did not want to tie the president's hands prior to the March 2005 submission of the report of the presidentially appointed Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction.

The centers and other entities that the DNI may wish to create are housed in an administrative body called the Office of the DNI, which technically is an independent agency because it is not located within any other executive branch department or entity. The DNI's staff is also located in the office of the DNI. There is a Senate-confirmed principal deputy DNI, and the DNI may appoint up to four deputy DNIs and designate their authorities and responsibilities. The office of the DNI also has a Senate-confirmed general counsel, a civil liberties protection officer, and a director of science and technology.

The National Counterterrorism Center has two parts. Its Directorate of Intelligence is akin to a National Intelligence Center for counterterrorism, responsible for integrating the intelligence agencies' capabilities. The Directorate of Intelligence is the preeminent body for counterterrorism analysis in the intelligence community and also proposes collection requirements to the DNI to guide the agencies' collection activities. The Directorate of Strategic Operational Planning engages in planning for counterterrorism operations across the executive branch. The term "strategic operational planning" is lifted from the administration's Executive Order establishing a National Counterterrorism Center but is defined in essence according to the Senate bill. In fact, there were no magic words for describing the National Counterterrorism Center's planning work, because it existed in a gray area between high-level strategy and detailed, tactical planning. As Senator Joseph Lieberman, one of the Senate authors of the bill, explained:

The legislation defines strategic operational planning to include “the mission, objectives to be achieved, tasks to be performed, interagency coordination of operational activities, and the assignment of roles and responsibilities.” Examples of missions include destroying a particular terrorist group or preventing a terrorist group from forming in a particular area in the first place. Objectives to be achieved include dismantling a terrorist group’s infrastructure and logistics, collapsing its financial network, or swaying its sympathizers to withdraw support. Tasks include recruiting a particular terrorist, mapping a terrorist group’s network of sympathizers, or destroying a group’s training camp. Examples of interagency coordination of operational activities include the hand-off from the CIA to the Department of Homeland Security and the FBI of tracking a terrorist as that terrorist enters the United States, or the coordination between CIA and special operations forces when operating against a terrorist sanctuary abroad.³⁰

The legislation makes clear that the National Counterterrorism Center has no authority to order a department to carry out a plan, but the legislation buttresses the center’s influence so that departments will have incentives to do so. Unlike the Commission, the legislation gives the National Counterterrorism Center director a dual reporting chain: to the DNI for intelligence matters and directly to the president for strategic operational planning issues. The director, a deputy secretary–level official who is confirmed by the Senate, has the authority to make recommendations to the president concerning departments’ counterterrorism budget proposals. Thus, the director has sources of influence to ensure that the National Counterterrorism Center becomes a major player in the executive branch. The legislation did not adopt the Commission’s recommendation that the director have a role in selecting senior counterterrorism officials across the executive branch.

30. Statement of Senator Joseph Lieberman, *Congressional Record*, December 8, 2004, S11972.

VII. COMMON OBJECTIONS TO THE COMMISSION'S FINDINGS AND RECOMMENDATIONS

The Commission's recommendations for, and the legislation creating, the DNI and National Counterterrorism Center have been subject to a range of criticism. Neither separately nor taken together do they offset the advantages of restructuring.

First, critics argued that the Commission had been reductionist in its focus on intelligence reform. Even if the DCI had sufficient authority and had reorganized and transformed the intelligence community into a functioning network, critics argued, the 9/11 attacks probably would not have been prevented. This is because the intelligence community can never guarantee 100 percent success in stopping terrorists. If the intelligence community had disrupted the nineteen hijackers, al Qaeda might have regrouped and then perpetrated an attack through other means. Indeed, the 9/11 hijackers penetrated U.S. border security and ultimately boarded aircraft carrying box-cutting tools that were permitted by Federal Aviation Administration regulations. Finally, even if the intelligence community had predicted the use of aircraft as weapons, policy makers might have resisted increasing airline safety due to the resulting cost to airlines and passengers.

In fact, many governmental failures, unrelated to the intelligence community, occurred before 9/11. Of course, this does not mean that the intelligence community itself did not fail. Indeed, weakness in other government areas simply means that the need to improve counterterrorism activities is deep and far-reaching. Moreover, good intelligence is critical for other government agencies to achieve maximum success against terrorism. For example, due to the shortage of resources and the desire to minimize disruption to commerce, border security agents need good intelligence in order to concentrate on the most suspicious travelers and packages. Likewise, combating terrorist finances amid the global economy

requires pinpoint intelligence regarding terrorist assets, accounts, and donors. To borrow a military phrase, good intelligence is a “force multiplier” because it increases the effectiveness of other counterterrorism activities. Thus, intelligence reform is needed not only because intelligence is one link in the chain of executive branch counterterrorism activities, but also because it is critical for improving the performance of each executive branch activity against terrorism.

A related but important point is that it is unreasonable, if not foolhardy, to expect the intelligence community to stop all terrorist attacks. In sports, even the best defenses are scored upon. And terrorists need only one attack to inflict enormous physical, economic, and psychological damage and achieve spectacular success. However, the fact that the intelligence community will never perform perfectly is not a justification for permitting problems in the intelligence community to fester.

Second, critics argued that merely getting better people would remedy the intelligence community’s problems. DCI Tenet’s December 1998 “declaration of war” memorandum was offered in evidence. The Commission had viewed the intelligence community’s lack of response to this memorandum as emblematic of the DCI’s lack of authority over the intelligence community. However, critics could argue that the memorandum’s lack of effect was due to DCI Tenet personally not making an aggressive effort to implement his memorandum—by, for example, summoning the heads of various intelligence agencies to demand action. And more generally, DCIs had authorities on paper in the National Security Act that they arguably did not exploit, so why create a DNI with stronger authorities? For example, although the DCI had to obtain the concurrence of department secretaries to transfer funds and personnel in response to emerging needs, there was little evidence that the DCI had aggressively attempted to force the issue.

Good people are, of course, a prerequisite for an organization’s

success. The most pristine organizational structure will not deliver effective performance if populated with incompetent personnel. However, even the best personnel cannot make a fundamentally flawed organizational structure work satisfactorily on a sustained basis. Most basically, people respond to incentives, and incentives arise from organizational structure. Changing organizational culture thus required changing incentives, which in turn required changing organizational structure. Indeed, the argument that getting better people would improve the organization's performance over the long term had been offered before passage of the Goldwater-Nichols Act—and history has soundly rejected it.

The issue of DCI Tenet's implementation of his declaration of war and the DCI's authorities goes to the heart of whether organizational restructuring was needed. The Congressional Joint Inquiry after 9/11 regarding pre-9/11 intelligence stated that DCI Tenet had been "unwilling or unable" to implement his "declaration of war."³¹ It recommended creation of a DNI with strong authorities. However, there was a major difference between "unwilling" and "unable." If "unwilling," then the solution would be to hire a new DCI. If "unable," then the DCI would need enhanced authorities.

The answer to "unwilling or unable" was that both were true. The Commission presented little evidence that DCI Tenet aggressively sought to implement his "declaration of war." The Commission found that DCI Tenet was focused on the CIA specifically, as his management plan for the intelligence community was essentially to rebuild the CIA.³² But more important, the position of DCI was institutionally weak when it came to running the intelligence community, which was a significant reason why a DCI such as Mr.

31. Findings of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence Joint Inquiry into the Terrorist Attacks of September 11, 2001, available at intelligence.senate.gov/findings.pdf, 6.

32. *The 9/11 Commission Report*, 358.

Tenet would focus only on the CIA, over which the DCI had supreme authority. Based on the authorities available to the DCI and the prestige associated with that position, there is little reason to believe that DCI Tenet would have been successful if he had tried to implement his “declaration of war” forcefully and to insist on major reallocations of resources across the intelligence community.

Third, critics contended that removing the DNI’s responsibility for running the CIA would deprive the DNI of “troops” and make the DNI into a bureaucratic eunuch. Without directly controlling the CIA, the DNI would become like the director of the Office of National Drug Control Policy—the so-called Drug Czar—an official in the Executive Office of the President who is regarded as having little bureaucratic power over how departments actually spend their funds for and conduct counternarcotics activities.

This criticism missed the point of the Commission’s recommendation in two ways. The Commission’s recommendation was designed to give the DNI authority for managing the intelligence community and transforming it into a network, including authority to control funds and set standards for security, information technology, and personnel. The DNI would control the purse strings over all of the intelligence agencies, be able to task collection and analysis, and set policies and standards. Thus, the DNI would be far different from the Drug Czar, who lacks control of the purse strings of departmental counternarcotics efforts.

Moreover, the DNI did not go from controlling the CIA (as DCI) to controlling no troops. Rather, the DNI would resemble a chief executive officer, who is the clear leader of the corporation but who concentrates on corporate-level issues rather than running a specific business unit. The DNI’s time would be ill-spent running CIA human intelligence operations or any other agency’s day-to-day operations. But the DNI would be able to reach into any intelligence agency to obtain whatever information the DNI needs. And the DNI would also rely on the new mission-oriented National Intelligence

Centers to assume responsibility for integrating intelligence agencies' capabilities. In other words, overall power in the intelligence community would be centralized in the DNI so that the DNI could then decentralize the execution of missions and operations, led by the National Intelligence Centers.

Fourth, critics worried that the reforms diminished the CIA's status. However, as already noted, the old situation, which involved dual-hatting the DCI as the CIA director, gave rise to an inherent conflict of interest and obstructed the intelligence community's transformation into a network. In addition, the CIA would actually benefit from the creation of a distinct CIA director, because this would provide it with a senior official devoted full-time to its management and improvement.

The likely nature of the CIA's relationship to the National Intelligence Centers is of special interest. The legislation retains the CIA's authority to conduct all-source analysis but also creates the National Counterterrorism Center (with a directorate of intelligence) and authorizes the DNI to establish National Intelligence Centers to do all-source analysis. The National Intelligence Centers would be the primary sites for all-source analysis for their subjects—NSC and DNI priorities—and would propose collection requirements to the DNI so that analysis would guide the intelligence agencies' collection efforts. The CIA's all-source analysis would concentrate on areas for which there is no National Intelligence Center and on subsidiary issues related to the subjects of the National Intelligence Centers, pursuant to a center's direction. Although the CIA as an institution would lose responsibility for all-source analysis on topics covered by the National Counterterrorism Center and the National Intelligence Centers, CIA analysts would likely be populating the centers (along with analysts from other agencies) as part of an integrated community effort. In other words, the CIA would be hiring and training all-source analysts, who then would be deployed to the National Intelligence Centers to do all-source analysis on major top-

ics or would stay within the CIA to retain all-source analytic expertise on other topics.

Fifth, critics argued that a strong DNI would dampen the conduct of “competitive analysis” and thus decrease the quality of intelligence provided to policy makers. As a general matter, “competitive analysis” refers to multiple analysts scrutinizing the same collected information. The objective is to avoid “group think,” in which certain assumptions or interpretations take root among analysts and are not challenged. More specifically, “competitive analysis” refers to the formal process by which the major intelligence agencies with all-source analysis capabilities—most important, the CIA, the State Department’s Bureau of Intelligence and Research, and DoD’s Defense Intelligence Agency—work together to produce national intelligence estimates (NIEs). These documents are landmark documents representing the intelligence community’s aggregate knowledge, consensus judgments, and consensus predictions regarding critical national security issues. By virtue of the involvement of various agencies, the NIEs are supposed to avoid becoming hostage to one agency’s assumptions and biases.

In fact, the creation of a DNI would not harm competitive analysis and would most likely improve it. The DNI would facilitate analysts across the intelligence community accessing the data collected on a topic by intelligence agencies because the DNI would use his or her authority to set security, information-technology, and personnel standards to ensure information sharing. Moreover, the DNI would likely increase the use of competitive analysis. Clearly accountable for the intelligence community’s performance, the DNI would probably want to take whatever steps necessary to make the produced intelligence as accurate as possible.

Thus, the creation of the DNI would not infringe upon the analytic autonomy of the agencies and entities involved in drafting NIEs. Indeed, as noted above, the better connectivity and information sharing throughout the intelligence community as devised

by the DNI would allow all participants in the NIE process to be better informed about the issue at hand. Also, the increased integration of intelligence agencies in their collection efforts that would result from the DNI's leadership would produce better collection and thus lead to better analysis and estimates. At the same time, the players in the NIE process would change. The National Intelligence Centers would be preeminent for key intelligence targets and would replace the CIA in the NIE process when the estimate's subject is within that center's purview. The players in the NIE process should be the three entities responsible for all-source analysis—the relevant National Intelligence Center (if any, or else the CIA), the State Department's Bureau of Intelligence and Research, and DoD's Defense Intelligence Agency, plus any other entities, such as the CIA, determined to have appropriate expertise.

Sixth, critics suggest that the creation of a DNI will hurt the warfighters. The military's reliance on intelligence produced by elements of the intelligence community, and particularly the intelligence agencies within DoD such as the National Security Agency and the National Geospatial-Intelligence Agency, has increased dramatically over the past two decades. The advent of "smart weapons" with highly precise and sophisticated guidance systems has increased the need for pinpoint intelligence. In addition, information technology has developed to the level that the military can deploy avenues of broadband connection to carry intelligence to troops in the field, thus further increasing the demand for intelligence. And the military's involvement in complex peace enforcement and counterinsurgency operations, in which the difference between friend and foe is murky yet the human and political consequences of mistaken identity are high, has also increased the military's appetite for intelligence. And, understandably, the military is tempted to rely on assets funded in the intelligence appropriation rather than pay for such assets out of the DoD budget, as the cost of DoD duplicating the intelligence community's assets is very high.

The creation of a DNI with strong authority over intelligence agencies, including those within DoD, would not hurt the men and women in combat roles. As a threshold matter, tactical military assets would remain under DoD's control. The DNI would only control so-called national assets, meaning the assets that serve the president and more than one department—in other words, the assets of the intelligence community. The military's response to that argument, though, was that the military had grown increasingly reliant on "national" assets fielded by DoD's intelligence agencies, namely, the National Security Agency, National Geospatial-Intelligence Agency, and National Reconnaissance Office. Yet the DCI had tasking authority over those assets under the prior National Security Act, so the intelligence reform legislation was only transferring control of them from one civilian official (the DCI) to another (the DNI). Moreover, it would be hard to imagine that the DNI would not make a priority of support to military operations; and if the president's national security priorities dictated that the DNI should direct assets away from supporting military operations, then DoD's complaint would be with the president, not with the DNI. Also, the military stands to benefit from a more integrated intelligence community that can deliver higher-quality intelligence, and the military would know whom to hold accountable—the DNI—for poor performance in intelligence support. In sum, the better product resulting from the DNI's integration of the intelligence community would both aid the military's actual operations and provide policy makers with better strategic information to guide the overall deployment of military forces.

Seventh, critics were concerned that the Commission did not take into account major changes in the intelligence community since 9/11. It is true that the Commission focused its plenary factual investigation on events before 9/11 and up until President Bush's speech to Congress and the nation on September 20, 2001. In contrast, the Commission only conducted a policy-level review of the

executive branch's counterterrorism activities after September 20th. However, the Commission's policy-level review did not uncover any changes to the intelligence community's management that forced the Commission to rethink its recommendations. The DCI's fundamental institutional weakness in statute and in practice was not remedied after 9/11.

For example, the post-9/11 creation of the Terrorist Threat Integration Center (subsequently folded into the National Counterterrorism Center) did not alleviate the Commission's concerns about the lack of integration across the intelligence community. The Terrorist Threat Integration Center's mandate—terrorist “threats”—was vague, and that center concentrated only on analysis rather than also on driving collection. The Terrorist Threat Integration Center's creation was a step forward, but that center did not have the preeminence nor did it represent the shift in organizational paradigm as compared with the National Counterterrorism Center and other national intelligence centers.

Similarly, the Commission's recommendation for the National Counterterrorism Center's operational planning function was based partially on the story of 9/11—how the executive branch tried but failed to track two future 9/11 hijackers as they traveled from Asia to the United States. However, the Commission's recommendation was also based on staff-level visits to U.S. posts in the Middle East, Asia, and domestically, which elucidated the disparate nature of counterterrorism operations and the haphazard and duplicative approach to interagency coordination.

Eighth, critics emphasized that structural reform would not solve all of the intelligence community's problems. Of course, structural reform by itself has limitations. It cannot guarantee information sharing and integration, and creating a DNI does not by itself solve problems within individual intelligence agencies. However, structural reform is designed to affect the incentives guiding personnel, with the aim of fostering a corporate, rather than

agency-specific, culture. Because he or she is accountable for the intelligence community's performance, the DNI will be motivated to use the new authorities to develop and enforce integration. And, while managing the intelligence community from a corporate perspective, the DNI will be motivated to hold agency heads accountable for reforming and achieving performance from the individual agencies. Ultimately, the legislation creates a performance-based system: The DNI is given sufficient authorities to manage the intelligence community, with flexibility in how to employ those authorities and structure the national intelligence centers and other community entities.

VIII. IMPLEMENTING THE LEGISLATION AND ACHIEVING THE INTELLIGENCE REFORM VISION

Ultimately, the legislation's success depends on the DNI's exercise of authority, set forth in the legislation, to weave the intelligence agencies into a network. Presidential support for the DNI will be critical as the DNI attempts to assert those authorities. In his press conference announcing Ambassador John Negroponte's nomination, President Bush signaled his backing for a strong DNI:

As DNI, John will lead a unified intelligence community, and will serve as the principle advisor to the President on intelligence matters. He will have the authority to order the collection of new intelligence, to ensure the sharing of information among agencies, and to establish common standards for the intelligence community's personnel. It will be [Ambassador Negroponte's] responsibility to determine the annual budgets for all national intelligence agencies and offices and to direct how these funds are spent.³³

The DNI must develop the common security, information technology, and personnel policies and procedures necessary to transform the intelligence community into a smoothly functioning network.

33. Press conference.

But the DNI needs to make clear that the heads of the intelligence agencies report to the DNI and that the CIA director does not report directly to the president. Also the DNI should set performance goals and then hold the leaders of the intelligence agencies and of the centers responsible for meeting them.

Numerous questions of implementation will arise: How should the personnel systems of intelligence agencies, and their respective departments, be revamped to ensure that the best-and-brightest professionals serve in the National Intelligence Centers? How many analysts from the CIA's Counterterrorist Center and other intelligence entities should transfer to the National Counterterrorism Center and other National Intelligence Centers? How should differing security, information technology, and personnel regimes across agencies be standardized and melded together? And how should legitimate security concerns be balanced with the imperative of information sharing? The DNI must articulate a strong vision for how the intelligence community should operate as a twenty-first century network or information enterprise and then implement that vision. The DNI should resolve the myriad practical implementation questions that will arise by reference to the principles underlying the Commission's and Congress's vision for a twenty-first century intelligence community: that the intelligence community's corporate interest is paramount; that the National Intelligence Centers should be the community's center of gravity and be staffed by the best-and-brightest intelligence professionals; and that the community must transform itself into—to use President Bush's phrase—a “single, unified enterprise.”³⁴

Patience will be needed in assessing the net effect of intelligence reform. Organizational culture will not change overnight but only as new professionals are hired and subject to policies that foster a corporate, rather than an agency-specific, mindset. The National

34. *Ibid.*

Intelligence Centers and other entities will take time to be established. And common security, information technology, and personnel policies will take time to be instituted. The legislation's full results will only be seen one or two decades from now.

Finally, the National Counterterrorism Center director will need strong presidential support so that he or she has the requisite clout to impel executive branch departments to implement the center's strategic operational plans. And the center should be sure to focus its planning not just on operations to attack and disrupt terrorists but also on operations—involving the full range of executive branch tools, including diplomacy, public diplomacy, and economic aid—to eliminate the root causes of terrorism.