

CHAPTER 11

THE ROLE OF DEFENSE  
IN SHAPING U.S.  
INTELLIGENCE POLICY

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The participation of the U.S. Intelligence Community (IC) goes to the heart of the role of defense in all the issues relating to U.S. intelligence. It is essential to understand the role of defense in shaping intelligence policy. It is also essential to understand the role of defense in shaping intelligence policy. It is also essential to understand the role of defense in shaping intelligence policy.

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## 2. THE YEARS OF REFORM

The National Security Act of 1947 established a new national-security structure within the United States, including the first components of a national Intelligence Community (IC).<sup>2</sup> In 1949, a new Director of Central Intelligence (DCI), Lt. Gen. Walter Dornhoffer, began to shape the nation's disparate intelligence agencies into something resembling an "intelligence Community," a term first used during his tenure (Dornhoffer, p. 6). He convinced the Department of State and the Joint Chiefs of Staff of the value of intelligence operations and pushed successfully to bring the separate intelligence capabilities of the several agencies under civilian control.

Given that there is a consistently and/or serious of conflict has emanated the IC, typically prompted by a real or perceived abuse of power or shortfalls in the community's performance.<sup>3</sup> The Cuban Missile Crisis drove much of the reform in the 1950s. Concern over the conduct of covert operations and government abuse of Americans' civil liberties formed many of the reforms in the 1970s, which led to greater oversight in both the legislative and executive branches.<sup>4</sup> The signing of Executive Order 11652 by President Dwight D. Eisenhower in 1950 was the then-new president's effort to protect the rights of Americans and outline the civil and operational responsibilities of the members of the IC, particularly the Director of Central Intelligence (DCI). Many of the proposed intelligence reforms of the 1950s were the result of pressure to stop a "space dividend" by downsizing the IC after the end of the Cold War.<sup>5</sup>

The executive branch once again found itself under significant pressure to reform the IC after the 9/11 Commission report, released just before the 2006 presidential election. Initially, President George W. Bush's National Security Council, working with the senior leadership in the IC, publicly responded to the report by drafting several new executive orders that strengthened the intelligence oversight of the DCI.<sup>6</sup> Whether the Congress and its constituents found them sufficient and continued to push for legislation.

<sup>2</sup> The central elements of this early intelligence system were the Central Intelligence Agency and the Departments of Justice, State, War, and Navy.

<sup>3</sup> For more information on the history of intelligence reform, see both the Mitchell Commission's "Controlling Intelligence" in *Foreign Affairs* or the CSIS publication, "The Decline of Intelligent Systems."

<sup>4</sup> The Senate Select Committee on Intelligence was created in 1976 and the House Permanent Select Committee on Intelligence followed in 1977.

<sup>5</sup> The House Permanent Select Committee's Staff Report (2003) and the Joint Process Commission Report titled "Preparing for the 21st Century: An Appraisal of U.S. Intelligence" are examples of some of the calls to reform intelligence.

<sup>6</sup> President Bush signed five executive orders on August 19, 2007: "Directing the Streamlined Management of the Intelligence Community," "Establishing the National Counterterrorism Center (NCTC)," "Strengthening the Clarity of Provisions Information to Protect Americans," and "Establishing the President's Board on Safeguarding Americans' Civil Liberties."



The advocates of these pushing more aggressive reforms, including an assertive group of family members of the victims of 9/11, came to realize several the factors that the DC would struggle with: scattered management and that the reform consisted—a DC struggle with both overseeing the performance of the IC as well as managing the day-to-day operations of the United States Intelligence Agency (CIA)—was unrealistic. This was certainly central to the recommendations included in the 9/11 Commission Report released in July 2002 and echoed in the 9/11 legislative proposal by the Senate.<sup>17</sup> The proposal to create a strong Director of National Intelligence (DNI) was far more ambitious within the Office of Representative, which advocated a different vision for intelligence reform.

Despite significant obstacles, the Congress managed to push through, and President Bush signed, the Intelligence Reform and Terrorism Prevention Act (IRTPA) in December 2002. The new law created a DNI whose primary responsibilities were to serve as principal adviser to the president on intelligence matters, to manage and oversee the programs and activities of the various components of the IC—half of which are currently housed within the Department of Defense—and to determine the National Intelligence Program (Section 502).<sup>18</sup> While the IRTPA gave the DNI strengthened authority in a number of areas, neither the Congress nor the Executive branch were willing to go so far as to create a Department of Intelligence, a dream of some reformers. At the end of the day, IRTPA did not provide the DNI with more latitude than the DC had in managing the IC.

One opposition to consolidating too much authority in a DNI was led by the Department of Defense and the members of Congress on the armed services committees, most notably Representative Duncan Hunter (R-CA) and Senator Carl Levin (D-MI), John Warner (R-VA), and Ted Staines (R-AK). In the fall of 2002, the Congress had returned to a stalemate, and the legislation was in jeopardy. Defeat-minded members of Congress, led by Senator Susan Collins (R-ME), Joseph Lieberman (D-CT) and Representative John Hancock (D-VA), were concerned that this was opportunity to pass reform legislation might be squandered if they compromised their original positions significantly to ensure passage. This compromise included that there a controversial provision that said:

Section 502 generally states that the president shall issue guidelines to the DNI explaining how the DNI will manage the components of the IC without abrogating the authority authority of other members of the executive branch.<sup>19</sup> Within the IC, and elsewhere, should follow the DC immediately recognized that Section 502

<sup>17</sup> Even at the Senate, notably Senators John McCain and Arlen Specter, had actually drafted legislation that would in essence create a Department of Intelligence.

<sup>18</sup> The National Intelligence Program is a Department of Defense program providing various components with supplied the National Foreign Intelligence Program. The FY 04 top line for the NIP is \$22.7 billion.

<sup>19</sup> Section 502 states: "The President shall issue guidelines to ensure the effective management of the IC within the exclusive branch of the authority granted to the Director of National Intelligence . . . as a means that respect and do not abrogate the statutory responsibilities of the head of departments . . ."







The first test of the viability of this new concept came with the determination of the DDC's new policy on joint-data assignments. Joint data assignments personnel retention systems consisted of encouraging and facilitating acquisition of joint data elements of the IC.<sup>17</sup> Joint-data assignments were in fact developed by senior officers and leaders with an enterprise-wide perspective, collaborating across agencies and networks and reflecting information sharing. This is an example of a sound legal initiative that proved very difficult to implement. As a result of Section 502, the DDDO did not transfer the personnel-management authority over intelligence personnel to the Secretary of Defense when it changed the DDC and establishing this new personnel policy.<sup>18</sup> Thus, the DDC would have to change its personnel policy before the new joint-data policy would have any significant effect.

The new joint-data assignments for members of the IC had been viewed for some time as a double-edged sword. Personnel assigned during the early Eisenhower Defense, although some believed that the DDDO caused the joint-data program under the DDC, to face a similar IC assignment program. However, as plans under the DDC since the mid-1960s, it found that, as war time, some agencies and their base and projects out on mission and more people in "vacation" that would allow them to create their own rules on what a reasonable retention assignment.

Although I supported both the open and intense of the joint-data assignment program, I greatly feared its new role as DDDO. The difficulties in cooperation within the DDC military intelligence officers could not be prevented. In addition, civilian intelligence officers were assigned under the DDC. During my DDC role, I worked to create rules within the Defense Civilian Intelligence Management System that would support the joint-data program while at the same time "calibrate" the Institute's authority. This was a difficult task and I think I pushed it through the Department, but not without great difficulty.

This was the first of many extremely intricate policy issues that I and the other members of the IC Executive Committee grappled with as the DDC continued to push for reforms.<sup>19</sup> On other occasions, as I developed intelligence policy for DDC and the DDC developed national intelligence policy for the larger IC, we found ourselves in legal impasses as a result of Section 502. Despite our desire to work toward a reasonable solution, we were informed that, and again after the legally we could not compromise. The core of the joint-data of Defense could not legally make his authority to involve outside officers in order to be wanted to do so.

<sup>17</sup> The military has had a similar system in place since the passage of the Goldwater-Nichols Act in 1974. It consisted each of the Defense Service Act and the joint data creation of the military in another system.

<sup>18</sup> The DDDO is composed of the heads of the various components of the IC, and the DDDO.



## 2.2 Executive Order 12333

The difficulties that the DCI had in formulating policy were magnified by challenges unique to the IC: ambiguity of roles in addressing the Executive Order, formulating the intelligence program and budget, managing personnel of interest and need to Congress, and establishing a new and healthy relationship between the OONI and the CIA.

Congress was becoming increasingly impatient with what it perceived was a lack of progress on their front. Despite an ever-growing DCI staff, what the Congress and others failed to acknowledge, however, was that the system they created with Section 1003 became part of the RPTA could not be exercised by the DCI staff or any organization composed of IC leaders. The only course left to the DCI, short of rewriting the legislation, was to develop the presidential guidance referenced in Section 1003. The President's Intelligence Advisory Board also encouraged what the DCI felt was not a necessary but step and encouraged the President to begin the effort to revise Executive Order 12333.

President Bush signed DCI McCaswell's draft redrafting Executive Order 12333, which had been replaced with few revisions since 1950. McCaswell's redrafting foundered in a court case based by the president's former legal counsel while regarding the rights and civil liberties of all Americans. For the months changed in the executive order are not underwritten by the DCI's legal staff. McCaswell began this effort in the early fall of 1997 by bringing together the IC agency leaders and the order policy and legal offices of the IC for a two-day effort to discuss what changes to the order should and should not be made. The purpose of the effort was encouraged to take of their particularities and put on their "pre-emptive" hats in recommending changes to the executive order that would better allow a DCI to do his or her job. The group included a fairly lengthy list of recommended changes to the executive order, but recommended that the DCI not change the section that protected the rights and civil liberties of the American people.

Good early and important decisions made by the DCI on the redrafting of the executive order on a productive course. After the initial effort, DCI McCaswell established a senior leadership group that included Secretary Gates and worked closely with us throughout the drafting process. Both the Secretary and I vowed to help him engage constructively throughout the process and keep the lines of communication open, even when we had the most difficult and contentious issues. Later, once the DCI had completed an initial draft of the change to the executive order, the DCI staff established a Principals Committee, a Staffs Committee, and groups of "trustees" whose responsibility was to work through the policy and legal issues raised during the redrafting, and only the most difficult policy choices were left. These were then directed to my level, or if necessary, to the level of the "Principals," which included the National Security Advisor Stephen Hadley, DCI McCaswell and Secretary of Defense Gore.

After a great deal of debate and deliberation throughout the winter and spring of 1998, these groups produced an executive revision to Executive Order 12333.

which President Bush signed on July 26, 1983. Now I know the results were accomplished before the end of the administration. The DDC, General, Friedman, and I recognized that we had only a narrow window of time from the signing of the House bill to the enactment of the DDCB and the realignment of experienced senior officials.

A few days left were given over to setting the entire effort. The main effort of these weeks for the Department of Defense was the challenge of making sure Section 202 was to be integrated and implemented. On the one hand, we recognized that Section 202 possessed the authority and responsibilities of Secretary of Defense in the world of national intelligence, critical to the support of the US during times of conflict. Not only did many officials within the Department believe in the necessity of preserving these authorities—the staff and senior executives felt strongly as well. On the other hand, we recognized Section 202 as hampering the DCR in his efforts to reform. Making some modifications seemed clearly necessary.

The DDCB simply stated he needed the executive order to clarify that a "presumption" would be that he was not abrogating the authorities of the Department heads unless the Department could prove otherwise. This is the one of giving he was violating their authorities until with the decision to give the DCR would be due to exercise his authorities as until he was not to be able to determine. This was objectionable to all of the Departments, but it was critical to them to have the agreement regarding this language, as well as to help create within the entire language.

After many weeks of trying to create language, finding, States, and this was generally created language that would definitely explain how Section 202 was to be integrated and applied. In essence, the new language in the executive order "presumption clause" still maintains that the DCR may not abrogate Departmental authorities. However, there is an important point. It now states that "the time period and actions taken by the Director in the exercise of the Director's authority and responsibilities" shall be replaced by the Director. It will be that any Department head who believes that a Director is acting in a way that violates the requirements of Section 202 of the DDCB must bring this to the attention of the DCR, DCC, or the procedure for resolution. While this is more complicated and unclear, the EO language makes clear that if any Department head disagrees with what the DCR tells them to implement regarding potential conflicts with Departmental directors. It also creates a procedure whereby disagreements can bring any potential resolution of them to the attention of the DCR, and if necessary up the chain of command all the way to the President. In the end, the DCR felt the EO language gave him the political "cover" he needed to push his policies through. Unfortunately some senior officials felt that so much intellectual energy and effort was put into addressing this situation but only such effort is necessary to reach consensus on the need of high risk policy negotiations.





deployment for global intelligence coverage. The benefits of more uniform and comprehensive control five years after signing DODD are tremendous, and are particularly high within as well as outside the IC to encourage in the debate on how much control management of intelligence operations.

Regulation of the content of what defense ICs can reach seeks to address some of the intelligence know-in-the-field issues. Collaboration with our allies, especially within the area of homeland defense, will be vital. The expense for our own sake to collect data, analyze it quickly, and make that analysis relevant to the nation, called for by the DOD, of intelligence providing a "distinct advantage" may apply not only to personnel but to the value in SIGINT or other sources used to turn the right intelligence allowing time to react during the emergency. The need to share more will result less collaboration especially with our domestic, regional, and allied governments and with our international partners.

I will call with you first thoughts on the future of U.S. intelligence. First, we need DOD to achieve truly meaningful intelligence reform. The DOD cannot refer to the for Congress to clarify DOD's role. The DOD must rely on the staff agencies of the Department of Defense to carefully follow the DOD national intelligence priorities with the programing requirements within DOD for much relevant and sustainable intelligence. This cannot be done until the Secretary of Defense, the DOD work is fully proceeding to accomplish the nation's security. strict to the Secretary of State and Director of Central Intelligence.

Second, people matter. The making of the intelligence leadership team must be chosen carefully, not only for their years of experience and knowledge, but for their ability to be team players. Five years after the passage of DODD, and more than a year after signing DODD, the new administration will be creating intelligence team leaders on intelligence community that into a state of transition, and the individual leading the IC will still have a unique opportunity to continue the initial reform efforts. While the IC will make great strides similar to improving information sharing, the example that is still work to be done based on our experience within the IC and Defense intelligence history. The following should be among the priorities of the IC in the new administration: reforming intelligence operations, investing in technical modernization, reforming security-classified reform strategy, security and counterintelligence, intelligence, maintaining community collaboration, and forging closer intelligence relationships with foreign partners. Each of these areas will require strong leadership and integrity collaboration to develop and implement policies that will support long-term success.

"As described by former Secretaries," the key to intelligence-driven success is the collection of objective "truth" as well as the gaining of an appreciation of perspective, advantage and its absence. And an advantage can thereby become an ally's question, as also can its cost. The ability to liberate choice is the real objective of intelligence." For more information, see the DOD's Vision 2020: <http://www.dod.mil/gov/2020vision.pdf> and <http://www.dod.mil/gov/2020vision.pdf>.





