

**Statement of Frederick M. Kaiser, Specialist in American National Government
Congressional Research Service**

**Before
The Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management, the Federal
Workforce, and the District of Columbia
House of Representatives**

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on

“Government-wide Intelligence Community Management Reforms”

Mr. Chairman, Mr. Voinovich, and Members of the Subcommittee:

Thank you for inviting me to participate in this hearing on government-wide Intelligence Community (IC) management reforms, with attention also to congressional oversight of this evolving field.¹ My prepared statement focuses on the current oversight structure, its effectiveness, and areas of inquiry that the panel might wish to pursue.

Introduction

The Intelligence Community (IC) rubric is formally applied to the 16 entities under the umbrella of the Director of National Intelligence (DNI).² But another intelligence entity also exists. The group, which may be called the homeland security intelligence community (HSIC), is a separate collective, although it overlaps with the national security IC.³ Ideally, the HSIC can overcome the “foreign-domestic divide” that, according to the 9/11 Commission, hampered effective intelligence gathering, evaluation, and dissemination.⁴ Both intelligence communities require a substantial amount of interagency cooperation and coordination, to provide for a sharing of relevant and timely information as well as to engage in multi-agency activities and operations. The HSIC mission also requires coordination and cooperation between the federal government, on the one hand, and state and local governments, on the other.

Oversight of intelligence is — and has always been — a challenge to Congress, because of the high degree and pervasiveness of secrecy surrounding such operations, activities, and even organizational characteristics. This feature, which appears to be expanding and increasingly institutionalized, constrains congressional oversight in a

¹ For more detail and citations, see CRS Reports RL32525, *Congressional Oversight of Intelligence: Current Structure and Alternatives*, by Frederick M. Kaiser; and RL32617, *A Perspective on Congress’s Oversight Function*, by Walter J. Oleszek.

² U.S. Director of National Intelligence, *An Overview of the United States Intelligence Community* (2007), available at [http://www.DNI.gov/who_what/members_IC.htm]. See also CRS Report RL34231, *Director of National Intelligence Statutory Authorities: Status and Proposals*, by Richard A. Best, Alfred Cumming, and Todd Masse.

³ This still somewhat “nebulous” community is examined in detail in CRS Report RL33616, *Homeland Security Intelligence: Perceptions, Statutory Definitions, and Approaches*, by Todd Masse, p. 1.

⁴ U.S. National Commission on Terrorist Attacks Upon the United States, *Final Report*, pp. 399-428, available at [<http://www.goiaaccess.gov/911/pdf/fullreport.pdf>].

number of ways. It may restrict: communicating directly with the executive; gaining access to classified national security information as well as to a growing amount of sensitive (but not classified) information; sharing information, analysis, and insights among Members, committees, and staff of Congress; and using congressional support agencies. Secrecy may also present obstacles to Congress benefitting from the findings, conclusions, and other contributions of non-governmental organizations, which are limited in their access to government-controlled information.

National security concerns may also affect other oversight capabilities. Importantly, certain offices of inspector general operate under security constraints. The heads of seven departments or agencies (out of the more than 60 with statutory offices of inspector general) — the Departments of Defense, Homeland Security, Justice, and the Treasury; the Central Intelligence Agency (CIA); the Federal Reserve Board; and the U.S. Postal Service — may prevent the inspector general from initiating, carrying out, or completing an audit or investigation. The reasons for exercising this power are to protect national security matters or ongoing criminal investigations. These reasons are to be communicated to the Senate Homeland Security and Governmental Affairs Committee (HSGAC), the House Oversight and Government Reform Committee, and the authorizing committees for the agency for all the agencies except the CIA, whose reports are submitted only to the House and Senate select committees on intelligence.⁵

Current Oversight Structure

Oversight of intelligence has been consolidated in the House and Senate select committees on intelligence since the latter 1970s, when the panels were established.⁶ These committees have exclusive jurisdiction and authority over legislation and authorizations for the Central Intelligence Agency and the Director of National Intelligence, and formerly had such over the Director of Central Intelligence, a now abolished office. But the select committees share legislative jurisdiction and authority for the rest of the intelligence community with other committees in their respective chambers.⁷ The intelligence committees, moreover, do *not* hold exclusive oversight over the DNI and CIA or any other component of the intelligence community. Current Senate rules, importantly, repeat the original directive in the establishing charter for its Select Committee on Intelligence:

Nothing in this resolution shall be construed as prohibiting or otherwise restricting the authority of any other committee to study and review any intelligence activity to the extent that such activity directly affects a matter otherwise within the jurisdiction of such committee⁸

Examples of such oversight include the Permanent Subcommittee on Investigations, which, in 1985 (the so-called “Year of the Spy”), conducted hearings into the federal

⁵ 5 U.S.C. Appendix for all but the CIA (P.L. 101-193).

⁶ The two select committees have reserved seats for other committees with shared jurisdiction. On the Senate side, these include a majority and minority member from four panels: the Committees on Appropriations, Armed Services, Foreign Relations, and the Judiciary. U.S. Congress, Senate, *Nonstatutory Standing Orders*, no. 94, sec. 2(a). By coincidence, in the 110th Congress, one member of the Committee on Homeland Security and Governmental Affairs (i.e., Senator John Warner) is also a member of the Select Committee on Intelligence.

⁷ *Ibid.*, sec. (3)(a)-(b).

⁸ *Ibid.*, sec. (3)(c). This provision originated in 1976, when the Senate Select Committee on Intelligence was established by S. Res 400, 94th Cong., 2nd sess.

government's security clearance programs.⁹ In the late 1980s, Congress commissioned a review of the intelligence community workforce, conducted by the National Academy of Public Administration (NAPA).¹⁰ Over the years, various Senate and House panels (other than the select committees on intelligence) have looked into aspects, activities, and operations of the intelligence community. In July 2001, for instance, two subcommittees of the House Committee on Government Reform (now Oversight and Government Reform) reviewed computer security programs at nearly all executive departments and agencies. The lone exception was the CIA; it declined to participate in the hearings and in an earlier survey by the General Accounting Office, now the Government Accountability Office (GAO).¹¹ The CIA's position on cooperation led the chairmen of the two subcommittees to criticize that stand as a threat to effective oversight.¹²

Throughout its history, the CIA has taken the position that it is, in effect, off-limits to the Government Accountability Office, because of special statutory provisions giving the Agency a protected status.¹³ GAO has countered that it has the necessary independent authority to review and audit the CIA but that the Office lacks effective enforcement powers to ensure its cooperation.¹⁴ Significantly, other IC components state positions that are in contrast to the CIA's. The Department of Defense (DOD), which houses the largest number of the IC units, for example, instructs its personnel to "cooperate fully with the GAO and respond constructively to, and take appropriate corrective action on the basis of, GAO reports."¹⁵

Effective Oversight of Intelligence

There are a number of options that Congress and its committees could explore to increase effective oversight of intelligence.¹⁶ Such options of interest to this subcommittee might include:

- Engaging in cooperative ventures with other subcommittees on HSGAC and/or with other committees that have shared or overlapping jurisdiction. This could help to spread the workload among several panels and create a setting where additional viewpoints could arise.

⁹ U.S. Congress, Senate Permanent Subcommittee on Investigations, *Federal Government Security Clearance Programs*, hearings, 99th Cong., 1st sess. (Washington: GPO, 1985).

¹⁰ *The Intelligence Community Workforce for the 1990s* (Washington: NAPA, 1989).

¹¹ U.S. Congress, House Subcommittees on Government Efficiency and on National Security, *Is the CIA's Refusal to Cooperate with Congressional Inquiries a Threat to Effective Oversight of the Operations of the Federal Government?*, hearings, 107th Cong., 1st sess. (Washington: GPO, 2001), pp. 1 and 5.

¹² The CIA had initially agreed to cooperate in the GAO survey but later declined. The Agency reportedly attempted, unsuccessfully, as it turned out, to enlist other intelligence agencies to do the same. Finally, the CIA declined to participate in any subcommittee hearings, even though the chairmen had agreed to hold these in executive or secret session. *Ibid.*, pp. 1-8.

¹³ For citations to the statutory provisions and related materials, see CRS Report RL32525, *Congressional Oversight of Intelligence*, pp. 21-22.

¹⁴ *Ibid.*

¹⁵ DoD Instruction 7650.02, November 20, 2006.

¹⁶ For elaboration, see CRS Report RL32525, *Congressional Oversight of Intelligence*, pp. 14-23; and CRS Report RL30240, *Congressional Oversight Manual*, by Frederick M. Kaiser, et al.

- Possibly applying the standards and requirements of the Government Performance and Results Act (P.L. 103-62; 107 Stat. 285) to the CIA, which is currently exempt from it. (CIA reports might be classified and submitted to the House and Senate select committees on intelligence.)
- Establishing a post of Inspector General of the Intelligence Community, with jurisdiction paralleling that of the DNI.¹⁷ This might expand IG capabilities, provide a community-wide perspective, and improve coordination among the inspectors general in each IC component.
- Making requests to relevant inspectors general for studies, audits, investigations, or inspections.¹⁸
- Reviewing the findings, conclusions, and recommendations of the ombudsman-like offices in the Department of Homeland Security (i.e., the Privacy Officer, Officer for Civil Rights and Civil Liberties, and special duties assigned to the Inspector General).¹⁹ The resulting oversight efforts could help assess DHS's compliance with its statutory obligations, including the protection of civil rights and liberties.
- Contracting with nongovernmental organizations, such as NAPA or the Rand Corporation, to conduct relevant studies.
- Engaging the Government Accountability Office directly in planned oversight endeavors, through advanced requests for specific reviews, briefings, and testimony at hearings.
- Clarifying GAO's authority to audit all components of the Intelligence Community, possibly as proposed in the Intelligence Community Audit Act of 2007 (S. 82 and H.R. 978, 110th Congress).

Possible Areas for Inquiry

¹⁷ Currently, an IG in the Office of the DNI exists; but the DNI is granted full discretion to create and construct the office (P.L. 108-458). A proposal to establish a IC-wide inspector general has been advanced in the Intelligence Authorization Act for Fiscal Year 2008 (H.R. 2082, 110th, 2nd sess.), which has been cleared for the White House. For a description of such an office, see U.S. Congress, Senate Select Committee on Intelligence, *Intelligence Authorization Act for Fiscal Year 2008*, S.Rept. 110-75, 110th Cong., 1st sess., pp. 16-19. This new IG, however, would not replace the existing statutory inspectors general in the departments and agencies under the IG Act of 1978, as amended, or in legislation covering the CIA (P.L.101-193).

¹⁸ Under the Inspector General Act of 1978, as amended, IGs have nearly total discretion in determining their priorities and projects, although some have responded to congressional requests for specific audits or investigations. Current legislative proposals (H.R. 928 and S. 2324, 110th Congress) would also aid oversight, by increasing the IGs' independence and coordination among them. See CRS Report RL34176, *Statutory Inspectors General: Legislative Developments and Legal Issues*, by Vanessa K. Burrows and Frederick M. Kaiser.

¹⁹ P.L. 108-458; 118 Stat. 3867-3869.

There are a number of possible areas of inquiry with regard to the management of the intelligence communities — both the national security and homeland security communities — that the Subcommittee could choose to pursue.²⁰

The Range of Subjects. The wide range of subjects includes, among others: the collection capabilities of the agencies; the analytical quality of intelligence; cooperation and coordination among the components; effectiveness of new structures; and improvements in sharing information among the IC components themselves and with homeland security agencies. Such subjects may be affected by competing priorities and the different orientations and cultures of the agencies: e.g., intelligence for national security purposes, support for military operations, or anti-terrorism and other homeland security efforts. To varying degrees, the ability to meet these challenges is dependent on the powers and real power of the DNI to bring about the necessary coordination and sharing of responsibilities among the components. Along with this is the role of the DHS Secretary in ensuring that homeland security intelligence needs are met. Another overarching concern could be protection of civil liberties and individual rights, in light of the government's enhanced anti-terrorism powers.

Personnel Matters. Other possible interests center on personnel in the intelligence community.

One is their understanding of foreign cultures and languages, which, in turn, derives from their training, education, and experience.²¹ To what degree has this capability increased in the recent past? What impediments exist in recruiting, hiring, and/or training intelligence personnel in this regard?

Another area of inquiry may be the security clearance process. It is a key component for transferring and re-assigning personnel — temporarily or permanently — in the national security and homeland security intelligence communities. The process and its results appear to have improved, with an increased emphasis on reciprocity among the agencies and assigning most of the background investigations to one organization (i.e., the Office of Personnel Management now handles 90% of these).²² But the full process still faces obstacles, in light of the growing demand for more and higher-level clearances, which then require more frequent reinvestigations. Possible questions include:

- To what degree has the DNI been active in assessing or changing certain requirements (such as polygraph testing for the highest-level and special categories of clearances) or speeding up the process (through increased resources, for instance)?
- Has there been any reconsideration of the current requirement for withholding or delaying clearances for noncitizens? If so, how would this be changed?

²⁰ These areas and others are spelled out in three CRS reports: RL34231, *Director of National Intelligence Statutory Authorities: Status and Proposals*; RL33539, *Intelligence Issues for Congress*, by Richard A. Best; and RL33616, *Homeland Security Intelligence*.

²¹ For elaboration on this subject, see CRS Report RL31625, *Foreign Language and International Studies: Federal Aid Under Title VI of the Higher Education Act*, by Jeffrey J. Kuenzi.

²² See U.S. Office of Management and Budget, Security Clearance Oversight Group, *Report* (February 2008).

- To what degree has reciprocity been achieved between the CIA and FBI, which still conduct their own background investigations, and between either of these and other government agencies?
- Are there proposals to extend reciprocity to the adjudication phase of the security clearance process, at least on a temporary basis for certain individuals or on a pilot basis for agencies?
- Have the clearances at DHS kept pace with the rising demand brought on by new hires as well as existing staff needing or seeking higher levels of clearances?
- How many state and local officials have received clearances from DHS? Have any state or local officials involved in homeland security been denied clearances? If so, what happened to the positions?

Thank you for your attention. I would be pleased to answer any questions that you might have.