

The Honorable Donald Rumsfeld  
Secretary of Defense  
The Department of Defense  
Washington, DC 20301

Dear Secretary Rumsfeld:

We are writing to seek additional information about the Department of Defense's development of a human intelligence capability reportedly called the "Strategic Support Branch." Recent news stories have discussed the Department's apparent creation of a "full spectrum" human intelligence capability to conduct human intelligence operations and possibly covert operations across a host of countries. As authors of the Intelligence Reform and Terrorism Prevention Act of 2004, we are concerned that this capability could undermine Congress's vision for intelligence reform as embodied in this new law.

The Intelligence Reform and Terrorism Prevention Act of 2004, signed into law by President Bush on December 17, 2004, enacts the most comprehensive overhaul of our nation's intelligence agencies in more than 50 years. The legislation's objective is to ensure that the Intelligence Community has the leadership, resources, personnel, coordination, and oversight necessary to counter the security threats of today and the future. Central to the legislation is the creation of a strong Director of National Intelligence (DNI) – one person who will be in charge of and accountable for the Intelligence Community. Under the legislation, the DNI serves as the head of the Intelligence Community and the principal intelligence adviser to the President.

The legislation also states that the Director of the Central Intelligence Agency (CIA) reports to the DNI. Under the legislation, the CIA Director has the responsibility to "collect intelligence through human sources" and -provide overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other departments, agencies, or elements of the United States Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that appropriate account is taken of the risks to the United States and those involved in such collection.

*Intelligence Reform and Terrorism Prevention Act of 2004, P. L. 108-458, section 1011 (adding section 104A to Title I of the National Security Act of 1947, 50 U.S.C. section 402 et seq.).*

The legislation envisions that intelligence agencies' capabilities will be integrated by mission-oriented National Intelligence Centers, which will conduct all-source strategic analysis and also drive collection requirements. The legislation also establishes a National Counterterrorism Center (NCTC) to forge unity of effort across the Executive Branch, both by integrating the Intelligence Community's capabilities against terrorism and by conducting strategic operational planning against terrorism on an Executive Branch-wide basis.

Based on our concern that the Department's alleged development of a "full spectrum" human intelligence capability would detract from the Intelligence Reform and Terrorism Prevention Act of 2004, we ask that you provide us answers to the following questions:

- To what extent does the Department's reportedly expanded human intelligence capability duplicate or overlap with the CIA's capabilities? Is the Department's human intelligence capability focused only on counterterrorism - or also on other intelligence topics? And how will the CIA Director ensure that the most effective use is made of the nation's human intelligence capabilities?
- Will the NCTC Director, who reports to the DNI regarding all counterterrorism intelligence matters, have access to the human intelligence developed by this Department capability relating to the national counterterrorism effort? And if the Department's human intelligence activities extend beyond terrorism, will they be integrated with other intelligence capabilities via the National Intelligence Centers?
- How does the DNI retain authority over and accountability for the Intelligence Community and fulfill the role of being the President's principal advisor on intelligence if the Department has a competing worldwide intelligence capability?
- The intelligence reform bill does not materially alter statutory requirements contained in Title 50 of the United States Code for Presidential authorization of covert action and notification to Congress. We understand that there are different authorization and notification requirements for activities carried out under the authority of Title 10 of the United States Code as opposed to Title 50. However, we are concerned that a broad interpretation of Title 10 authority could allow the Executive Branch to engage in covert action without complying with Title 50 authorization and notification requirements. Please describe in detail the Department's plans for compliance with Title 50 requirements concerning covert action or provide the legal basis for any conclusion that Title 50 does not apply in certain circumstances.

Staff of the Senate Committee on Homeland Security and Governmental Affairs have attempted for more than a month to secure information from the Department on these matters, which have now received widespread media attention. We write because we know that you understand the importance of Congressional oversight of Executive Branch actions as well as Congress's responsibility to ensure that its laws are faithfully executed.

Thank you for your consideration of this request.

