

**STATEMENT FOR THE RECORD BY THE
DIRECTOR OF NATIONAL INTELLIGENCE
BEFORE THE
SENATE SELECT COMMITTEE ON INTELLIGENCE
ON THE
INTELLIGENCE AUTHORIZATION PROPOSAL FOR FY10
MAY 19, 2009**

Chairman Feinstein, Vice Chairman Bond, Members of the Committee, thank you for the opportunity to offer my views on a proposed Intelligence Authorization bill for Fiscal Year 2010.

I believe that the Intelligence Authorization Bill is critical to ensure that the Intelligence Community has the tools necessary to operate effectively and efficiently. In addition, the bill affirms that Congress has a strong voice regarding how the Intelligence Community operates and the bill provides a vehicle for the Committee's important oversight role. I want to work with you this year to pass a bill that meets these important goals.

The Administration has closely reviewed the authorities of the Intelligence Community and has been working on a set of proposals to enhance and update those authorities to allow the Community to more efficiently and effectively accomplish its mission. The Administration anticipates formally transmitting its proposals for the Fiscal Year 2010 Authorization Bill soon. In the interim, I want to share with you some of the important themes in the proposals.

1. PROTECTING SOURCES AND METHODS

I take seriously my obligation to protect intelligence sources and methods and to safeguard intelligence information. Indeed, safeguarding national intelligence is an imperative. With this in mind, the Administration anticipates submitting several proposals that will help to ensure that sources and methods are protected.

Operational Files: We need to ensure that operational information that is shared between an element of the Intelligence Community and the ODNI does not lose the protections it receives from the element that provided the information. Consistent protections for information contained within intelligence community operational files will further facilitate information sharing and are critical to the effective operation of the Intelligence Community. For example, with certain exceptions, the Central Intelligence Agency's operations files are exempted from search, review, and disclosure under the Freedom of Information Act (FOIA). In an era of information sharing, these files may be forwarded to the ODNI as part of information sharing or to assist the ODNI in its management and oversight functions. It is imperative that those files are accorded the same protections at the ODNI as they are accorded at the CIA. Similarly, a specific

FOIA exemption for terrorist identity information, as maintained by the National Counterterrorism Center, would also encourage appropriate dissemination of that information and protect it from unauthorized disclosure.

Privacy Act: Protection of sources and methods information under the Privacy Act could also be strengthened by providing the DNI with an exemption for certain records systems akin to that enjoyed by the Director of the Central Intelligence Agency. At the same time, information sharing under that Act would be promoted with the enactment of a measure that would exempt national intelligence information, as determined by the DNI, from interagency non-disclosure requirements.

Federal Advisory Committee Act: Advisory committees can play an important role in intelligence oversight and in formulating intelligence policy. The Federal Advisory Committee Act (FACA), however, requires that the proceedings of advisory committees be available for public inspection. For advisory committees handling extremely sensitive materials, this openness requirement is inconsistent with national security or business confidentiality requirements. Providing the DNI with a FACA exemption identical to the exemption the Director of the CIA has, which he also used for DCI advisory committees prior to the IRTPA, would allow me to make effective use of advisory committees while still protecting intelligence sources and methods.

While we are on the subject of protecting sources and methods, I want to take this opportunity to discuss other legislation currently pending in Congress that, if not properly crafted, could put intelligence sources and methods and intelligence information at risk. Specifically, there is pending legislation that provides conditions for (1) the federally compelled disclosure of information by certain persons connected with the news media, (2) the exercise of the state secrets privilege, and (3) whistleblower protections. At the outset, it is important to recognize that, at a basic level, each of these legislative proposals share the same important goal --- striking an appropriate balance between ensuring transparency and openness in government and protecting the national security. I believe that working together, we can find a way to achieve this balance and I ask for your support to ensure that all of these legislative proposals contain appropriate language to protect intelligence sources and methods and other classified information.

2. FUNDING AND ACQUISITION AUTHORITIES

During the last few years we have made great strides in bringing together the elements of the Intelligence Community to facilitate integration, information sharing, and efficiency. As we continue to move forward, we need to operate in an ever-changing environment. To do this, the community must be flexible and adaptable in dealing with the challenges it faces.

We are evaluating the need for legislation and options to ensure there is the requisite flexibility to quickly focus the Intelligence Community on particular intelligence issues through coordinated efforts that use all available resources. While deliberations have not yet concluded, one of the authorities we have been evaluating

would allow the ODNI to grant an IC element head, upon request and showing need, the ability to exercise ODNI flexible acquisition authorities. The DNI would exercise close oversight over how the authority is used. The IRTPA vested the ODNI with acquisition flexibilities, but major acquisition programs are executed by the IC elements. Several IC elements (CIA, NRO, NGA) already have these acquisition flexibilities. Similarly, I anticipate that the Administration will request a provision, similar to a provision in the SSCI's FY09 bill, to give the DNI the authority to approve interagency financing for national intelligence centers and other boards, commissions, or councils. These provisions will increase the ability of the Intelligence Community to respond to new challenges and opportunities and to allocate its financial resources effectively and with greater flexibility.

3. PERSONNEL AUTHORITIES

In general, strategic workforce policies are among the most powerful levers available to an institution intent on transforming its culture, and the IC is no exception. To improve our strategic workforce management and planning, we expect to ask for a measure that will remove current personnel caps for organizations subject to those caps and allow IC elements to manage their respective workforces to budget—while simultaneously ensuring appropriate Congressional oversight. Personnel caps are inflexible and inadvertently increase our reliance on contractors. The Committee has been receptive to this proposal in the past, and I request your continued support for this provision. This is our highest priority human capital proposal.

Within the IC, all employees of the IC should be on a “level playing field,” and each IC element must have the authority to exercise similar personnel flexibilities. We do not want to be a community of “have” and “have-nots” when it comes to personnel flexibilities. Equality in this regard will facilitate the creation of a dedicated cadre of professionals who see themselves first and foremost as national intelligence officers who are part of a larger Intelligence Community. S. 2996 provided a number of personnel provisions which we strongly support. Indeed, I anticipate that the Administration will propose similar authorities for the FY10 Intelligence Authorization Bill to provide personnel authorities to IC elements without these flexibilities. For example, section 303 of S. 2996 would have allowed an IC element head who does not have this authority today to convert competitive service positions into excepted service positions. This provision would have permitted more personnel management flexibility among the smaller intelligence community elements. Section 303 also contained other measures that would have created a “level playing field” for all IC elements, such as the provision that made it possible for any IC element to use any compensation, performance management, or scholarship authority available to any other IC element, and a similar provision to extend critical pay authority throughout the IC to those elements that do not already have this authority to allow all IC elements to recruit and retain personnel with special expertise or skills critical to accomplishing an important IC mission.

In addition to the personnel provisions described above, there are additional personnel authorities that have been included in previous Senate authorization bills and that I expect will be included in the Administration's proposals. For example, the Senate bill contained a measure on detailees that would have allowed non-reimbursable assignments for up to three years. This provision enhances our ability to implement the IC Joint Duty Program which is intended to develop our leadership corps, strengthen collaboration and information sharing, and promote cross-fertilization within the IC. Three year details would be long enough to provide optimal benefits both to the IC element and to the detailees, and we look forward to seeing this provision again in FY10.

Furthermore, as a result of some experiences in the past year, we are also asking for a provision that would create a larger "pool" from which to fill temporary vacancies in Presidentially-appointed, Senate-confirmed positions. Currently, under the Vacancies Act, when an ODNI Senate-confirmed position is vacant, the President is limited to drawing an "acting" from within the ODNI. Our proposal would allow the President to fill ODNI vacancies with an "acting" chosen from any IC element. As we saw at the end of the prior administration, this authority would be useful in making sure that leadership gaps are filled by the best possible personnel during the transition from one Presidential appointee to another, and is in keeping with our other efforts to create a sense of "community" in the IC.

4. FY2009 INTELLIGENCE AUTHORIZATION BILL

In inviting me to testify today, you asked that I also discuss the Committee's FY2009 Intelligence Authorization Bill. I welcome this opportunity.

At the outset, it is important to recognize that the Committee included many provisions in the bill that we continue to support. Many of these provisions, such as an operational files and FACA exemptions, are included in the Administration's proposals for the Fiscal Year 2010 Intelligence Authorization Bill and have already been discussed.

As a general matter, while I support the intent behind many of the proposals in S. 2996, I have some concerns that legislating in some areas may limit my flexibility to organize and manage the DNI, and limit the flexibility of future DNIs who may face unique challenges. I am also concerned that the creation of additional Senate-confirmed positions could leave important leadership positions within the Intelligence Community empty for extended periods of time. I believe, however, that working together, the Congress and the Administration can pass an authorization bill that everyone can support.

While there is not time to discuss each provision in S. 2996, I would like to focus my comments today on those provisions that enhance the oversight of the Intelligence Community and Acquisition Policy.

As we have discussed over the past few months, I believe that oversight by the intelligence committees is critical in making sure that the Intelligence Community keeps our Nation safe while protecting privacy and civil liberties. In addition to the intelligence

committees, there are other mechanisms for oversight to help me “ensure compliance with the Constitution and laws of the United States” by elements of the Intelligence Community. In my long career of government service, I have developed a great respect for the role of Inspectors General. The ODNI IG and IGs throughout the Intelligence Community provide important and valuable oversight and recommendations. In addition, General Counsels in the Intelligence Community, and Civil Liberties and Privacy Officers are instrumental in making sure that the activities of the Community follow the law and insure that Congressional intent is respected.

This Committee considered several proposals in the 110th Congress that would enhance Congress’ oversight responsibilities, and also those of the DNI and the Inspector General. In general, I support measures to improve Intelligence oversight, and I want to work with you to ensure that any additional oversight is effective and efficient. I support, in theory, the creation of a Presidentially-appointed, Senate confirmed Inspector General for the Intelligence Community, and we look forward to working with the Committee to ensure that the current IG proposal further enhances and clarifies the roles and responsibilities of the IG of the Intelligence Community while avoiding potential conflicts and duplicative efforts with existing departmental and agency IGs whose jurisdictions already extend to various IC elements.

I want to commend the Committee on its efforts to improve the oversight of Intelligence Community acquisitions ensure responsible cost accounting for major systems, and reform business system transformation. Indeed, the Intelligence Community has been undertaking a comprehensive reform of the Intelligence Community acquisition process and moving forward on business system transformation. I would like to work with the Committee to ensure that any legislation in these areas builds on the progress we have made and sets forth operating and reporting requirements that will provide needful oversight and information to the Committee without undue delay of the transformation process or burden to the IC workforce.

Finally, the Committee has also suggested altering the Congressional notification requirements. As you know, I believe that congressional notification must be timely to be effective and I hope you will agree that I have practiced what I preach. I believe that the National Security Act, which provides me with a degree of latitude in deciding how I will bring extremely sensitive matters to the Committees’ attention, does not change the requirement that I bring the information to the Committees’ attention. While I believe that, in certain rare circumstances, it is appropriate to brief the Chairman and Vice Chairman of the intelligence committee on particularly sensitive matters, you have my commitment that such briefings will include a discussion regarding how and when the full committee membership should be briefed on the matter. I do not think it is prudent to alter the fundamental compact between Congress and the President regarding reporting of sensitive intelligence matters. As I have said before, if you ever feel that information you need is not being provided to you, you should reach out to me directly.

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I look forward to working directly with the Committee to develop a legislative product that promotes the goals of both the Congress and the Executive Branch and serves the interests of the American public. Thank you, and I look forward to answering any questions you might have.