

# Background

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## What a Comprehensive Intelligence Bill Should Contain

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Congress is considering a plethora of recommendations to reform the U.S. intelligence community, a welter of 15 federal agencies and departments charged with getting, analyzing, and distributing information that will help get the terrorists before they get us. As the findings of the congressionally chartered 9/11 Commission make clear, few issues are more important. Yet Congress should be wary of the rush to reform.

The value of reform legislation should be measured by how well new laws prepare the intelligence services to deal with both traditional intelligence challenges and the national security challenges of the 21st century, not the speed of passing a bill and how many political points are scored in the process. In particular, Congress should not pass legislation that overburdens a National Intelligence Director with too many roles and responsibilities, misses other opportunities to improve the performance of intelligence collection (particularly for sharing information and protecting civil liberties), or neglects additional reforms that may strengthen and improve the capacity of individual agencies to do their jobs.

No single legislative package before Congress achieves all of these goals. Members of Congress will need to cherry-pick among them to put the best proposal on the table. They need to take their time and get it right.

### Talking Points

- Since the release of the 9/11 Commission report, there has been a push to implement its recommendations rapidly in the hopes of improving U.S. intelligence capabilities, but there are no quick fixes that will make this country immediately safer.
- While intelligence reform is necessary, it is also something that should be done carefully and thoughtfully.
- Congressional reforms should create an independent National Intelligence Director who, above all, must be able to shape policies, set national priorities, structure the intelligence community to meet 21st century threats, preserve civil liberties, and integrate intelligence activities all levels.
- The U.S. needs intelligence agencies that can both deal with shadowy transnational gangs and counter conventional enemies, but this does not mean that a comprehensive intelligence bill should be rushed through Congress so that intelligence reform is "accomplished" prior to the election.

This paper, in its entirety, can be found at:  
[www.heritage.org/research/nationalsecurity/bg1799.cfm](http://www.heritage.org/research/nationalsecurity/bg1799.cfm)

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## Momentum for Change: Proposals and Response

Shortly after the first anniversary of the September 11, 2001, attacks on New York and the Pentagon, Congress passed and President George W. Bush signed a law creating the National Commission on Terrorist Attacks Upon the United States, an independent bipartisan commission. The 9/11 Commission's charter required it to create a complete account of the circumstances of the 9/11 attacks and formulate recommendations for guarding against future terrorist threats.

The commission's final report, released in July 2004, highlighted the need for intelligence reform.<sup>1</sup> As the analysis in the report makes clear, many of the nation's failures in responding to the rising danger of transnational terrorism stem from long-standing structural flaws in the U.S. government that transcend the policy decisions of any one Administration.

Among its most significant proposals, the 9/11 Commission called for creating a powerful National Intelligence Director (NID) and a National Counterterrorism Center under the NID to supervise all domestic and foreign counterterrorism activities. In the months following the release of the commission's findings, Congress and the Administration put forward a number of proposals to address the shortfalls highlighted in the report.

The President's proposal, the National Security and Intelligence Act of 2004, focused primarily on establishing the NID. The 9/11 Commission Report Implementation Act, introduced in both the Senate (S. 2774) and the House of Representatives (H.R. 5040), would also create a National Intelligence Director and National Counterterrorism Center as well as adopt a number of other counterterrorism

and homeland security measures, including proposals that go beyond the recommendations of the 9/11 Commission. Another bill introduced in the House (H.R. 5024) similarly covers a range of the commission's proposals. Finally, the 9/11 National Security Protection Act, drafted by Senator Pat Roberts (R-KS), chairman of the Senate Intelligence Committee, would restructure and reorganize the intelligence agencies.<sup>2</sup>

All the legislative proposals offered in response to the 9/11 Commission report have some merit, but none accurately hits the mark. Specifically, none adequately addresses the four key tenets<sup>3</sup> that should govern all reform proposals:

- **Assure an independent National Intelligence Director.** Above all, the director must be able to shape policies, set national priorities, oversee the allocation of resources, and provide independent and authoritative advice to the President.
- **Structure the intelligence community to meet 21st century threats.** In the future, the United States will need to deal with al-Qaeda and with al-Qaeda look-alikes and "wannabees," as well as a host of other threats ranging from espionage and rogue states to transnational crime. The United States needs intelligence agencies that are well-prepared to deal with all of these dangers, not just fighting global terrorism.
- **Preserve civil liberties.** Any reform package should ensure that strengthening the capacity to gather and share intelligence is matched by equally strong safeguards that protect the constitutional rights of U.S. citizens and sustain a free and open civil society.
- **Integrate intelligence activities at all levels.** It is not enough, or even desirable, to put one

1. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, July 2004, pp. 399–418, at [www.9-11commission.gov/report/911Report\\_Ch13.pdf](http://www.9-11commission.gov/report/911Report_Ch13.pdf) (September 22, 2004).

2. Associated Press, "GOP Senators Propose Sweeping Intelligence Reform," *CNN.com*, August 23, 2004, at [www.cnn.com/2004/ALLPOLITICS/08/23/intelligence.reform.ap](http://www.cnn.com/2004/ALLPOLITICS/08/23/intelligence.reform.ap) (September 22, 2004), and press release, "Senator Roberts Calls for Real Intelligence Reform with 9/11 National Security Protection Act," Senator Pat Roberts, August 23, 2004, at [roberts.senate.gov/08-23-2004.htm](http://roberts.senate.gov/08-23-2004.htm) (September 22, 2004).

3. Edwin Meese III and James Jay Carafano, "Avoiding a Rush to Failure," *Heritage Foundation Commentary* September 2, 2004, at [www.heritage.org/Press/Commentary/ed090204a.cfm](http://www.heritage.org/Press/Commentary/ed090204a.cfm). Distributed nationally on the Knight–Ridder Tribune wire.

person in charge of all intelligence collection, analysis, counterintelligence, and covert operations. Even more critical is ensuring the effective sharing of information and coordinating action at all levels in the intelligence community.

Months before the release of the 9/11 report and the flurry of proposed legislation for implementing its findings, scholars at the Heritage Foundation made the case for restructuring the U.S. intelligence community along the lines noted above. The major proposals are summarized in “An Agenda for Responsible Intelligence Reform.”<sup>4</sup> More recently, through congressional testimony, they have continued to make the case for more thorough reforms.<sup>5</sup> In light of these recommendations, and after reviewing the current legislative proposals, the following areas particularly require Congress’s attention.

### The Role of the National Intelligence Director

A key recommendation by the 9/11 Commission is to establish a National Intelligence Director to oversee the intelligence community—a patchwork of organizations scattered throughout the government that have never worked well together. Ever since the CIA was created, the CIA director has worn two hats, serving as both the head of the CIA and the Director of Central Intelligence (DCI). The DCI is the nominal leader of the intelligence community. In practice, though, the DCI has had limited influence and divided loyalties, since he also has had to worry about morale and management of a major agency that by design competes with other parts of the intelligence community.

Splitting the position into two full-time jobs makes sense. An independent National Intelligence Director should have the authority to prioritize goals and objectives and to allocate resources in support of them. The NID would oversee the entire intelligence community, make recommendations on resources

and priorities, and provide independent assessments as the President’s principal intelligence adviser.

Legislative proposals that would give the NID vast bureaucratic responsibilities—oversight of day-to-day operations; the job of integrating, analyzing, and disbursing terrorist information; supervision of all national intelligence priorities; and the mission of serving as the primary adviser to the President—will create more problems than they solve. Saddling the NID with too many powers and responsibilities will create an enormous new bureaucracy and another unnecessary layer of management, overburden the director, and hamstring leaders in the intelligence agencies who are trying to command their own organizations and make them as efficient and effective as possible. Additionally, if the director is intimately involved in counterterrorism activities, the director will lose the capacity to provide truly independent assessments unprejudiced by the conduct of current operations and lose focus on other intelligence and counterintelligence challenges.

One useful model for the National Intelligence Director would be the Chairman of the Joint Chiefs of Staff (CJCS). Although the CJCS commands nothing directly, the position has enormous authority and capacity to guide defense activities. Likewise, where the Pentagon has achieved great strides in coordinating and integrating activities, it has been through unifying operations in the field and through better coordination and planning by the Joint Staff in the Pentagon. An NID working in a similar manner could bring about a similar cohesion in the intelligence community.

Among the proposed bills, President Bush’s National Security and Intelligence Act of 2004 probably makes the best compromise between consolidating authority in the new director (particularly with respect to budget-making and appointing senior intelligence officers) and giving department secretaries and agency directors the

4. James Jay Carafano, “An Agenda for Responsible Intelligence Reform,” Heritage Foundation *Executive Memorandum* No. 931, May 13, 2004, at [www.heritage.org/Research/HomelandDefense/em931.cfm](http://www.heritage.org/Research/HomelandDefense/em931.cfm).
5. Edwin Meese III, testimony before the Permanent Select Committee on Intelligence, U.S. House of Representatives, August 11, 2004, at [www.heritage.org/Research/HomelandDefense/tst081204a.cfm](http://www.heritage.org/Research/HomelandDefense/tst081204a.cfm), and James Jay Carafano, testimony before the Permanent Select Committee on Intelligence, U.S. House of Representatives, August 10, 2004, at [www.heritage.org/Research/HomelandDefense/tst081004a.cfm](http://www.heritage.org/Research/HomelandDefense/tst081004a.cfm).

capacity to run their agencies and confer with the director on budgetary, policy, and operational priorities.

In the President's bill, the National Intelligence Director would be an independent adviser accountable to both the President and Congress. The director would be the principal adviser to the President, the National Security Council, and the Homeland Security Council on intelligence matters, but would not be a part of the Executive Office of the President and would not serve as a Cabinet member. The director would be confirmed by the Senate and could be required to testify before Congress. As recommended by the 9/11 Commission, the director would approve annual budgets for the intelligence community (related to the National Foreign Intelligence Program; i.e., only the budgets for agency activities related to intelligence) and, with the advice of the heads of the agencies, would develop the intelligence budget request for the President's approval. The director would also have some authority to transfer or reprogram funds.

### Rethinking the Structure of the National Intelligence Community

Any proposal that Congress considers should not just stop at the top. It should address how to make the entire intelligence community more effective in dealing with all the great national security challenges of the 21st century. The U.S. needs a streamlined and more efficient, flexible, and adaptable intelligence community that can do many things well. Any legislative solution should improve the exchange of information within the government and consolidate intelligence collection and analysis centers within the department in which they are most useful and relevant. It is important not to create more walls or bureaucratic stovepipes.

Of the bills currently before Congress, only Senator Roberts's draft, the 9/11 National Security Protection Act, comprehensively addresses the need for restructuring intelligence agencies. It should, however, be seen as a starting point for debate, not a blueprint for reform.

Senator Roberts's proposal suggests reforming the intelligence structure by removing most of the intelligence-gathering operations from the CIA and creating four separate intelligence directorates for collection, analysis, science and technology, and military support—all working under the National Intelligence Director. While the bill's notion of realigning functions and responsibilities to better support all the national critical intelligence needs has merit, it is probably not necessary to completely disrupt and restructure existing intelligence agencies to achieve these ends. Nor is it wise to overburden the National Intelligence Director with the management of multiple directorates while also requiring the director to continue to supervise the entire intelligence community. These goals might be better achieved by consolidating some existing organizations under the CIA.<sup>6</sup>

### Safeguarding Civil Liberties

The 9/11 Commission's proposed National Intelligence Director would direct both foreign and domestic intelligence operations. However, Americans should think twice about concentrating such broad power—including collecting intelligence—in the hands of one person. No individual below the level of the President should have direct authority over all foreign and domestic intelligence collection. To ensure the protection of civil liberties, the foreign and domestic spheres of intelligence collection should be kept separate. More important, the traditional role of protecting civil liberties as a responsibility of the Attorney General and the Department of Justice dictates that even the National Intelligence Director not be too powerful.

The temptation to overcentralize operations should be resisted. While the director should set priorities, the power to conduct activities rightfully belongs with other agencies. Domestic intelligence collection should remain the responsibility of the Justice Department to assure that operations at home remain bound by the legal safeguards gov-

6. Peter Brookes, "Spook Shakeup," *Heritage Foundation Commentary*, April 19, 2004, at [www.heritage.org/Press/Commentary/ed041904c.cfm](http://www.heritage.org/Press/Commentary/ed041904c.cfm). First published in the *New York Post*.



erning law enforcement. The Department of Homeland Security should coordinate the analysis of information and its distribution to federal, state, and local agencies and the private sector. The FBI should retain the primary responsibility for domestic counterterrorism operations. The CIA should serve as the lead agency for overseas gathering of counterterrorism intelligence.

Additionally, a new law should give the National Intelligence Director tools that would actually improve protection of civil liberties as well as security. For starters, legislation could add an Office of Privacy and Civil Liberties (under the director's authority), which would provide policy guidance for all intelligence agencies. The director should also have an inspector general with authority to investigate any alleged infringement of civil liberties committed anywhere in the intelligence community.

Currently, only the 9/11 Commission Report Implementation Act (S. 2774 and H.R. 5040) addresses the need for an inspector general. None of the proposed laws gives the director an office or the resources and authority needed to assist adequately in addressing civil liberty issues.

### **The Relationship Between the Director and National Counterterrorism Center**

The 9/11 Commission also recommended the creation of a National Counterterrorism Center. This makes sense. A national center charged specifically with synchronizing the nation's disparate counterterrorism analysis efforts would address the valid criticisms about the intelligence community's failure to "connect the dots" and the need to "take down the wall" that prevents information sharing. A national center would also be the next logical step to the innovations implemented by the Bush Administration after 9/11, which include establishing the Terrorism Threat Integration Center to coordinate information sharing and the Ter-

rorist Screening Center to integrate information on various federal terrorist watch lists.<sup>7</sup>

However, placing the National Counterterrorism Center directly under the National Intelligence Director—a requirement in all the proposed laws—would be a mistake. Putting the center directly under the director places an undue emphasis on counterterrorism at the expense of other forms of intelligence and counterintelligence.

Counterterrorism is just one of the nation's strategic intelligence priorities. In order to serve the President adequately, the director would have to be concerned about transnational terrorism as well as monitoring events in Asia, global weapons proliferation, and other vital issues—in addition to pondering what challenges may emerge in the future. If the director has chief operational responsibility for overseeing the global war on terrorism, that mission will consume all of the director's time and energy.

Additionally, giving the national director day-to-day responsibilities for the National Counterterrorism Center would re-create the current problem with the DCI—giving the director two day jobs. The center should not work directly for the director.

Putting the National Counterterrorism Center under the National Intelligence Director would also further undercut the intelligence analysis and integration functions of the Department of Homeland Security. A more effective solution would be to establish a National Counterterrorism Center responsible solely for coordinating the integration and distribution of the terrorist-related intelligence under the Department of Homeland Security.<sup>8</sup> Because the Department of Homeland Security is a member of the intelligence community, the National Intelligence Director would still oversee and influence the operations of the National Counterterrorism Center in the same manner as the other components in the community.

7. James Jay Carafano, "Terrorist Intelligence Centers Need Reform Now," Heritage Foundation *Executive Memorandum* No. 930, May 10, 2004, at [www.heritage.org/Research/HomelandDefense/em930.cfm](http://www.heritage.org/Research/HomelandDefense/em930.cfm).

8. James Jay Carafano and Paul Rosenzweig, "What the 9/11 Commission's Report Should Contain: Four Recommendations for Making America Safer," Heritage Foundation *Background* No. 1778, July 13, 2004, at [www.heritage.org/Research/HomelandDefense/bg1778.cfm](http://www.heritage.org/Research/HomelandDefense/bg1778.cfm).

## Striking a Balance Between Counterterrorism and Counterintelligence

One issue has been left largely unaddressed, both by the 9/11 Commission and in subsequent legislative reform proposals. The United States needs to strengthen its counterintelligence programs—finding enemy spies within the ranks of U.S. law enforcement and intelligence services is a critical task. The simple fact is that, as information is shared more effectively among federal, state, and local agencies, there will be more opportunities to steal, sell, trade, or give away America's secrets. Intelligence reform will have to think through better ways to protect what the government knows.

Currently, there too many questions left unanswered by the intelligence community. What is the plan for national counterintelligence operations, and who is in charge? Who is ensuring that best practices and lessons learned are being shared? Who is looking at the gaps and vulnerabilities across the web of systems used to exchange information?

Providing the right answers will require an organized national effort, not just a part-time job for a few agents at the FBI. Furthermore, it is a job that requires meeting the highest standards and respecting the legitimate privacy and liberties of American citizens. Any comprehensive reform measure would have to establish within the National Intelligence Director's staff the responsibility and authority to develop the policies and programs that will ensure effective counterintelligence operations.

### Conclusion

Since the release of the 9/11 Commission report, there has been a push to implement its recommendations rapidly in the hopes of improving U.S. intelligence capabilities, but there are no quick fixes that will make this country immediately safer. It is unlikely that even the most significant of the proposed reforms would help much in preventing the next attack. It would take years to reap the full benefits of many of them, even if Congress enacted the laws today.

While intelligence reform is necessary, it is also something that should be done carefully and

thoughtfully. The country needs the right instruments to fight the long war against terrorism. The United States will need to deal with both its intelligence reform mistakes and successes for a very long time. It is critical that Congress takes the time to make sure that the right changes are made.

Immediate action is not a measure of success in this situation. Instead, victory must be measured by the implementation of the best reforms. Specifically, Congress should examine the following issues carefully when crafting a comprehensive intelligence bill:

- The role of a National Intelligence Director,
- The relationship of the National Intelligence Director to the National Counterterrorism Center,
- Comprehensive restructuring of the intelligence community,
- The need to strengthen the Homeland Security Department's intelligence analysis capabilities, and
- The necessity of improving national counterintelligence efforts.

Intelligence is America's first line of defense in the war on terrorism, but the current intelligence network is not the right instrument for dealing with the challenges of the 21st century. The U.S. needs intelligence agencies that are as capable of dealing with shadowy transnational gangs as they are capable of countering conventional enemies.

However, this does not mean that a comprehensive intelligence bill should be rushed through Congress so that intelligence reform is "accomplished" prior to the election. Congress should act with all deliberate speed, but also with wisdom and careful judgment.

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