

The Honorable Timothy Roemer
Reforming Congressional Oversight of Intelligence
Testimony Before the Senate Select Committee on Intelligence
13 November 2007

Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need.

-The 9/11 Commission Report

Mr. Chairman, Senator Bond, Members of the Committee, I am honored to be here today. The honor is particularly great given the presence of my former colleague and fellow Hoosier, Lee Hamilton.

The 9/11 attacks revealed a great many flaws in the conduct of America's defense, many of which stemmed from a lack of unity across the institutions designed to protect us. Terrorism, we learned, thrives on division: turf wars between foreign and domestic intelligence agencies hampered information sharing; the Central Intelligence Agency and Department of Defense sparred over control of the intelligence budget; at the state and local level, first responders lacked compatible equipment and a sufficiently unified incident command system.

Recognizing these flaws, Congress responded by attempting to enforce unity of effort throughout the government. It created the Directorate of National Intelligence and the National Counterterrorism Center to centralize control of the intelligence community and the nation's counterterrorism efforts. Domestically, it created the Department of Homeland Security to coordinate infrastructure protection and ensure a seamless transition between federal and local security programs.

I commend Congress for taking these important steps, as outlined by the 9/11 Commission, towards unity in the executive branch. Now it is time for Congress to focus on itself and on what the Commission labeled as one of its most important recommendations: a unified intelligence oversight structure in the Congress.

The 9/11 Commission recommended a more coordinated—and therefore more robust—Congressional oversight structure because we recognized the critical role that the legislative branch plays in the conduct of America's national security. We acknowledged that countering the threat of terrorism necessitated a shift of authority to the government. The intelligence capabilities behind such enhanced authorities are more powerful and penetrating than at any time in American history. And yet, for the government to sustain the powers necessary to win the war on terrorism, it must maintain the public's trust that it will wield them appropriately.

To do that, Americans must be reasonably assured that the Congress is fulfilling its constitutionally mandated role as a check on the executive. Reforming the structure and nature

of Congressional oversight remains the best way to ensure Congress does so in the most effective manner possible.

I applaud this committee for its willingness to examine such a difficult and complex issue.

The Case for More and Better Oversight

I would contend that the Commission's suggestions on oversight reform stand on their own merits apart from current events. But a growing intelligence budget, a more dangerous world and a growing reliance on intelligence for important policy choices have made reform all the more imperative.

A Growing Budget

Last month, the Director of National Intelligence revealed that the budget for the United States National Intelligence Program stood at \$43.5 billion dollars. Hidden within those billions of dollars are the paychecks for a growing number of talented personnel and the price tags for some of the most sophisticated collection technologies and most sensitive programs in American history. With wars in Iraq and Afghanistan, a global fight against al-Qaeda and the need to maintain and improve our traditional collection activities, the prospect of either declining or stalled growth in the intelligence budget seems remote in the near term.

The sharp growth in the intelligence budget also strains the existing and already taxed oversight structures in Congress. In addition to overseeing a growing intelligence budget, the Defense Appropriations Subcommittees in both the House and Senate—the bodies responsible for appropriating the intelligence budget—have to contend with the responsibility to oversee an even faster growing defense budget. Put simply, we need more oversight of intelligence because there is so much more intelligence to oversee.

The World Has Changed

Congress cannot remedy all of the problems of oversight by simply doing more of the same in part because the intelligence community of today little resembles the one which Congress first designed its oversight structures to monitor. In years past, no single official enjoyed central command of the many intelligence agencies. The intelligence budget represented the priorities of agencies more than the community as a whole.

Much work still remains to be done to ensure the intelligence community moves in unison. Today it is nonetheless more of a unified entity than before. The 2004 Intelligence Reform and Terrorism Prevention Act, as well as subsequent legislation, have placed broad authority over the community's budget and personnel into the hands of a single official. Faced with an intelligence community more unified in asserting its own priorities, the voice of Congress remains splintered across four committees in two chambers.

The world that the intelligence community is charged with providing information on has changed drastically, as well. The end of the Cold War brought with it rogue states and non state actors

willing to challenge the world's remaining superpower. The most critical information no longer resides exclusively in military bases or in European embassies, but also in remote villages, on the internet and in the world's forgotten corners. It is of the utmost importance that the intelligence committees seek to do more long term planning to better match resources with changes in the global security environment. Unfortunately, the twin pressures of authorizing each year's multibillion dollar intelligence budget and attending to the numerous foreign policy "hotspots" consume most of Congressional overseers' time. This leaves precious little time to devote to the development of a strategic outlook.

The Critical Nature of Intelligence

Intelligence, as a supplement to American foreign and national security policy, has always concerned matters of life and death. It can win wars, lose wars or prevent them altogether. In today's increasingly uncertain world—particularly one in which preemption features prominently in America's defense policy—it is especially crucial. We are not simply collecting more intelligence, but asking more of it, as well. In 2003, our decision to use military force in Iraq hinged on it. Both today and tomorrow, intelligence will play a crucial if not deciding role in the important decisions we must make about our policy towards Iran. Given the great numbers of lives at stake, in a scenario of either military action or inaction against Iran, Congressional oversight to ensure the accuracy of Iranian WMD intelligence—or intelligence on any other nation's WMD capability for that matter—will in no small way influence the course of American history.

It is also undeniable, regardless of one's views on the many controversial intelligence programs undertaken since 9/11, that the intelligence community is using more aggressive tools to collect information than ever before. The assault on America and its allies from a swift and ruthless enemy has understandably created a climate of fear both inside and outside of government. The mixture of threats, fear and enhanced executive power can prompt the intelligence community to push right up to the line of legal and ethical acceptability. This climate can just as easily push it far across. Congress' increased attention is required to ensure that the latter does not happen

Options

In the face of such challenges, Congress has undertaken some reforms to address past difficulties and to address the fluid national and international environment.

- The House has taken a constructive step forward in the creation of the House Appropriations Select Intelligence Oversight Panel.
- The Senate reduced the number of spaces on the Intelligence authorization committee from 17 to 15.
- The Senate Select Committee on Intelligence has signed a memorandum of understanding with the Senate's Defense Appropriations Subcommittee pledging to share information more freely and coordinate better on budget priorities.

These changes are praiseworthy. But the revolutionary changes in the world and in government demand a solution from Congress that is more than the sum of a few individual reforms. The

9/11 Commission recommended two options that would reform oversight in proportion to the different world in which it must now operate.

Combine Authorization and Appropriations Powers in Each Chamber

First, Congress could grant joint authorization and appropriation authority to a single committee in each chamber.

The necessarily secret nature of intelligence denies intelligence committees the ability to oversee the community in ways that are routine for other committees. Classification means only a small number of outside experts, nongovernmental organizations or members of the private sector are able to help Congress independently evaluate the intelligence community's management and activities. Similarly, it prevents Congress from leveraging public pressure against executive branch actions of which it disapproves.

In the realm of intelligence, Congress is forced to check and balance the executive with one hand tied behind its back. Devoid of the full range of tools available to other authorizers, the intelligence committees must rely heavily on the power of the purse to assert their will. By combining authorization and appropriation powers into a single committee in each chamber, Congress could speak to the executive branch on intelligence matters in a more unified voice using the language that most commands its attention.

A Joint Committee on Intelligence

A second option would be to combine the authorizing bodies from each chamber into a single committee modeled on the Joint Committee on Atomic Energy. The Joint Atomic Energy Committee serves as a particularly apt framework because its consolidated jurisdiction over authorization in the House and Senate allowed Congress to oversee a powerful new capability, with speed, secrecy and the confidence of the executive branch.

Either new structure would require a range of other powers and changes, codified by resolution, in order to function as intended. It should reduce the number of seats available, both to encourage greater accountability in the legislative branch and greater trust from the executive branch. Membership should be drawn from the Defense Appropriations Subcommittee, as well as the Judiciary, Foreign Affairs and Armed Services Committees, in order to reflect the views of intelligence's many constituencies. Membership should also not be constrained by term limits to allow Members to develop the expertise necessary to oversee a dense and complex collection of agencies.

Critics note that both of the Commission's proposed reforms represent an exception to the general practice of Congressional oversight. We feel that the exceptional nature of intelligence warrants an exceptional approach from Congress.

Conclusion

Woodrow Wilson, as many of you may recall from your government classes, wrote a classic book in 1885 called *Congressional Government*. He made two particularly perceptive insights regarding oversight. First, he stated that “quite as important as lawmaking is vigilant oversight of administration.” His second observation was that the “informing function of Congress is to be preferred even to its legislative function.” Absent vigilant oversight, the informing function is weakened and, as Wilson concluded, both Congress and “the country remain in embarrassing, crippling ignorance of the very affairs which it should understand and direct.”

If Congress is to be the “First Branch” of government, then focusing on greater efficiency and accountability in the intelligence community is worth doing the right way.

I thank you for the opportunity to speak on this important matter and look forward to your questions.