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COMMITTEE ACTIVITIES

SPECIAL REPORT

OF THE

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

JANUARY 7, 1997 TO OCTOBER 21, 1998



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LETTER OF TRANSMITTAL

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, January 1999.

DEAR MR. PRESIDENT: As Chairman and Vice Chairman of the Select Committee on Intelligence, we submit to the Senate the Report of the Senate Select Committee on Intelligence regarding its activities during the 105th Congress from January 1997 to October 1998. The Committee is charged by the Senate with the responsibility of carrying out oversight of the intelligence activities of the United States. While the majority of its work is necessarily conducted in secrecy, the Committee believes that as much information as possible about intelligence activities should be made available to the public. This unclassified, public report to the Senate is intended to contribute to that objective.

Sincerely,

RICHARD C. SHELBY,
Chairman.
J. ROBERT KERREY,
Vice Chairman.

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COMMITTEE ACTIVITIES

FEBRUARY 3, 1999.—Ordered to be printed

Mr. SHELBY, from the Select Committee on Intelligence,
submitted the following

SPECIAL REPORT

I. INTRODUCTION

The Senate Select Committee on Intelligence was established in 1976 by Senate Resolution 400 in order to strengthen Congressional oversight of the programs and activities of U.S. intelligence agencies. Throughout its history, the Committee has attempted to carry out its oversight responsibilities in a bipartisan manner. During the 105th Congress, the Committee continued this bipartisan tradition in crafting important intelligence reform legislation, conducting major inquiries into Intelligence Community issues, and by providing funding for and oversight of a wide array of U.S. intelligence activities.

As part of its oversight responsibilities, the Committee performs an annual review of the intelligence budget and prepares legislation authorizing appropriations for the various civilian and military agencies and departments comprising the Intelligence Community. These entities include the Central Intelligence Agency, Defense Intelligence Agency, National Security Agency, National Imagery and Mapping Agency, National Reconnaissance Office, as well as the intelligence related components of the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, Department of State, Federal Bureau of Investigation, Department of the Treasury, and Department of Energy. The Committee also conducts periodic audits, investigations, and inspections of intelligence activities and programs with the goal of assuring that the appropriate departments and agencies of the United States provide informed and timely intelligence necessary for the executive and legislative branches to make sound decisions affecting the national security interests of the nation, and that U.S. military commanders have dominant awareness of any potential battle environment. More importantly, the Committee's oversight seeks to ensure that intelligence activi-

ties and programs conform with the Constitution and laws of the United States of America and serve U.S. security interests.

As the dissolution of the Soviet Union and the Warsaw Pact, and the accompanying loss of this overriding intelligence focus, the agencies and departments of the U.S. Intelligence Community have redirected their efforts to the national security issues now confronting the United States or which may develop in the coming years. The emergence and growth of transnational threats such as terrorism, narcotics trafficking, international criminal organizations, and the proliferation of weapons of mass destruction present the nation and the Intelligence Community with challenges requiring different doctrine, policy, and programs. As new challenges and threats confront the country, there is an increasing need for the oversight provided by the Committee to ensure that our leaders have the intelligence necessary to make informed national security decisions.

The Committee took a number of important steps to improve the country's ability to collect, analyze, and produce intelligence about America's adversaries. The Committee achieved strong consensus that timely intelligence is essential for sound policy and military success. Legislation reported by the Committee stressed the intelligence targets that threaten America today and tomorrow, setting guideposts toward future technologies for collecting and processing intelligence. Funds were authorized above the President's budget request because the Committee believes there are areas where additional resources are needed in this post-Cold War period of uncertainty. While the mission of U.S. intelligence gathering organizations has not changed, the areas on which they must focus have become more diverse and challenging. For that reason, the Committee concentrated additional resources in the five areas of counter-narcotics, counter-terrorism, counter-proliferation, counter-intelligence, and effective covert action.

The Committee also focused on a series of critical challenges facing the Intelligence Community, including faulty analysis that led to a failure to forecast India's nuclear tests, an aging U.S. signals intelligence (SIGINT) collection system, the requirement for more effective tools for countering terrorists and weapons of mass destruction, and the Clandestine Service's eroding technical competence.

The Intelligence Authorization Acts for Fiscal Years 1998 and 1999 took a number of important steps to address these problems. The Committee recommended significant increases in funding for high-priority projects aimed at better positioning the Intelligence Community for the threats of the 20th Century, while at the same time reducing funds for programs and activities that were poorly justified or redundant. The net result was a modest increase to the overall budget request for intelligence for both fiscal years 1998 and 1999.

Also adopted were a number of legislative provisions, such as new legislation that establishes a clear process for Intelligence Community employees to pass information about wrongdoing, including classified information, to the intelligence oversight committees, and legislation that updated and strengthened the Foreign Intelligence Surveillance Act.

In addition, the Committee focused budget authorization legislation on key areas such as:

- bolstering advanced research and development across the Intelligence Community, particularly the modernization of NSA and CIA;

- strengthening efforts in counter-proliferation, counter-terrorism, counter-narcotics, counter-intelligence, and effective covert action;

- expanding the collection and exploitation of measurements and signatures intelligence, with a specific focus on missile intelligence;

- developing reconnaissance systems based on new small satellite technologies that provide flexible, affordable collection from space with radars to detect moving targets in all-weather conditions;

- boosting education, recruiting, and technical training for Intelligence Community personnel;

- streamlining dissemination of intelligence products; and
- providing new tools for information operations.

During the 105th Congress, the Committee conducted 95 hearings and on-the-record briefings. Of these, forty-seven were oversight hearings, fifteen were legislative hearings, and fifteen were nomination hearings. There were sixteen Committee business or legislative mark-up meetings. The Committee also held two on-the-record briefings.

II. LEGISLATION

A. INTELLIGENCE BUDGET

The Committee conducted annual reviews of the fiscal year 1998 and fiscal year 1999 budget requests for the DCI's National Foreign Intelligence Program (NFIP), and the Department of Defense's Joint Military Intelligence Program (JMIP) and Tactical Intelligence and Related Activities (TIARA). These reviews included receiving testimony from senior Intelligence Community officials and evaluating detailed budget justification documents and numerous Intelligence Community responses to specific questions raised by the Committee. As a result of these reviews, the Committee made recommendations, approved by the Senate, that resulted in the authorization of funds above the President's request for fiscal year 1998. In fiscal year 1999, the Committee recommended significant increases in funding for high-priority projects aimed at better positioning the Intelligence Community for the threats of the 21st Century, due to the uncertainty of this post-Cold War period, while at the same time reducing funds for programs and activities that were poorly justified or redundant. Areas of emphasis in both bills included bolstering advanced research and development across the Community, to facilitate, among other things, the modernization of NSA and CIA; strengthening efforts in counter-proliferation, counter-terrorism, counter-narcotics, counter-intelligence, and effective covert action; expanding the collection and exploitation of measurements and signatures intelligence, especially ballistic missile intelligence; developing reconnaissance systems based on new small satellite technologies that provide flexible, affordable collec-

tion from space with radars to detect moving targets in all-weather conditions; boosting education, recruiting, and technical training for Intelligence Community personnel; enhancing analytical capabilities; streamlining dissemination of intelligence products; and providing new tools for information operations.

B. S. 858 INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1998

On June 4, 1997, the Committee reported out S. 858, the Intelligence Authorization Act for Fiscal Year 1998. In addition to providing the annual authorization for appropriations for intelligence activities, the bill, *inter alia*:

Directed the President to inform all executive branch employees that disclosing classified information to an appropriate oversight committee or to their Congressional representative is not prohibited by any law, executive order, regulation, or policy, provided, that the employee reasonably believed that the classified information evidenced a violation of any law, a false statement to Congress on an issue of material fact, gross mismanagement, or wasted of funds, an abuse of authority, or a substantial danger to public health or safety.

Designated the Secretary of State as the responsible official for providing information on violent crimes against U.S. citizens abroad to victims and their families. Expressed sense of Congress that it is in the national interest of the United States to provide information regarding the murder or kidnaping of United States persons abroad to the families of the victims.

Addressed the Committee's concern that intelligence reporting and analysis lacks standards for foreign names and places.

Authorized the President to delay imposing sanctions against countries engaged in weapons proliferation in order to protect intelligence sources and methods.

Provided clear legislative authority for the Central Intelligence Agency to enter into multi-year leases of not more than 15 years duration for the purpose of ensuring cost-efficient acquisition of Agency facilities.

Amended the CIA Act of 1949, 50 U.S.C. § 403q(e) to provide the CIA Inspector General (IG) with authority to subpoena records and other documentary information necessary in the performance of functions assigned to the IG.

The Senate passed S. 858 on a vote of ninety-eight to one.

As noted above, S. 858, contained a provision (§ 306) that directed the President to inform all Executive Branch employees that disclosing certain classified information to an appropriate oversight committee to their Congressional representative was not prohibited by any law, executive order, or regulation or otherwise contrary to public policy. This provision was intended to protect employees from adverse actions based on what was heretofore considered an unauthorized disclosure to Congress.

The Committee intended disclosure to an appropriate oversight committee to mean disclosure to a Member or cleared staff of the Committee with jurisdiction over the agency involved in the wrongdoing. Members or committee staff who received such information from an employee were presumed to have received it in their capacity as members or staff of the appropriate oversight committee. The

Committee believed that his presumption was necessary because Members and staff are responsible for ensuring that the information is protected in accordance with Committee rules and brought to the attention of the leadership of the Committee. The President, by informing Executive Branch employees as directed in section 306, would have authorized disclosure to the appropriate oversight committee or members, thereby recognizing that these Committees and members have a “need to know” the information as required by current Executive Branch restrictions on disclosure of classified information.

Shortly after the Senate passed S. 858, the Administration issued a Statement of Administration Policy (SAP) stating that section 306 was unconstitutional, and that if it remained in the bill in that form, senior advisors would recommend that the President veto the bill.

In conference, members of the House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI) agreed not to include section 306 as passed by the Senate. The Senate offered to amend section 306, thereby significantly narrowing the scope of the provision to cover only employees of agencies within the Intelligence Community (the Senate-passed version covered all executive employees). The Senate amendment further narrowed the provision by allowing provision by allowing disclosure only to committees with primary jurisdiction over the agencies involved (the original language also allowed disclosure to a Member of Congress who represented the employee).

The Chairman and Ranking Member of the House Committee expressed concern over the possible constitutional implications of such language. They were also mindful of the Administration’s veto threat as expressed in the Statement of Administration Policy. The Chairman and Vice Chairman of the Senate Select Committee on Intelligence in deference to their House colleagues’ concerns agreed to amend the provision to express a sense of the Congress that Members of Congress have equal standing with officials of the Executive Branch to receive classified information so that Congress may carry out its oversight responsibilities.

The managers’ decision not to include section 306 of the Senate bill in the conference report, however, was not intended to be interpreted as agreement with the Administration’s position on whether it is constitutional for Congress to legislate on this subject matter. The managers’ actions were also not to be interpreted as expressing agreement with the opinion of the Justice Department’s Office of Legal Counsel, which explicitly stated that only the President may determine when Executive Branch employees may disclose classified information to Members of Congress. The managers asserted in their Conference Report that members of Congressional committees have a need to know information, classified or otherwise, that directly relates to their responsibilities to conduct vigorous and comprehensive oversight of the activities of the executive departments and agencies within their committees’ jurisdiction. The President may not assert an unimpeded authority to determine otherwise.

While the managers recognized the Chief Executive’s constitutional authority to protect sensitive national security information,

they did not agree with the Administration that the authority is exclusive. Members of both committees agreed as well that whatever the scope of the President's authority, it may not be asserted against Congress to withhold evidence of misconduct or wrongdoing and thereby impede Congress in exercising its constitutional legislative and oversight authority. Therefore, the managers committed to hold hearings on this issue and develop appropriate legislative solutions in the second session of the 105th Congress. [See Section III.C. for a discussion of oversight hearings held on this matter.]

C. S. 1668 DISCLOSURE TO CONGRESS ACT OF 1998

On February 23, 1998, the Committee reported out S. 1668, a stand alone version of Section 306 of S. 858, based on public hearings on February 4 and 11, 1998 to examine the constitutional implications of legislation such as section 306. The Committee heard from constitutional scholars and legal experts on both sides of the issue. Mr. Randolph D. Moss, Deputy Assistant Attorney General from the Department of Justice Office of Legal Counsel, testified in support of the Administration's position that section 306 and any similar language represents an unconstitutional infringement on the President's authority as Commander in Chief and Chief Executive.

The Committee also heard Professor Peter Raven-Hansen, Glen Earl Weston Research Professor of Law from the George Washington University Law School and Dr. Louis Fisher, Senior Specialist (Separation of Powers) from the Congressional Research Service testify that the President's authority in this area is not exclusive. Hence, these experts believed that Congress already has authority to regulate the collection, retention, and dissemination of national security information. [See Section III.A.3 for a more extensive discussion of these hearings.]

The Committee found the latter argument to be persuasive and determined that the Administration's intransigence on this issue compelled the Committee to act.

Following the public hearing on February 11th, the Committee met to markup a modified version of section 306. One amendment was offered by a member of the Committee and was adopted unanimously.

The federal "Whistle Blower Protection Act" does not cover employees of the agencies within the Intelligence Community. [See 5 U.S.C. §§ 2301 et seq.] The "whistle blower" statute also expressly proscribes the disclosure of information that is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs. Therefore, employees within the Intelligence Community are not protected from adverse personnel action if they choose to disclose such information, irrespective of its classification, to Congress. In fact, an employee who discloses classified information to Congress without prior approval is specifically subject to sanctions which may include reprimand, termination of security clearance, suspension without pay, or removal. See Exec. Order No. 12, 958, 60 Fed. Reg. 19825 (1995). Some types of unauthorized disclosures are also subject to criminal sanctions. See 18 U.S.C. §§ 641, 793, 794, 798, 952 (1996); 50 U.S.C. § 783(b) (1996).

In accordance with Executive Order No. 12, 958, classified information must remain under the control of the originating agency and may not be disseminated without proper authorization. Consequently, an Executive Branch employee may not disclose classified information to Congress without prior approval. In fact, employees are advised that the agency will provide “access as is necessary for Congress to perform its legislative functions” “Information Security Oversight Office, General Services Administration, Classified Information Non-disclosure Agreement (SF-312) Briefing Booklet,” at 66. In other words, the executive agency will decide what Members of Congress may “need to know” to perform their constitutional oversight functions. The President, in effect, asserts that he has exclusive or plenary authority to oversee the regulation of national security information.

On June 4, 1997 the Committee on Intelligence reported the Intelligence Authorization Act for Fiscal Year 1998, which included a provision that specifically addressed this issue. See S. 858, 105th Cong., 1st Sess. §306 (1997). On June 9, 1997 the U.S. Senate passed the bill by a vote of ninety-eight to one.

D. S. 2052 INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1999

The Committee reported S. 2052, the Intelligence Authorization Act for Fiscal Year 1999, on May 7, 1998. In addition to providing the annual authorization for appropriations for intelligence activities, the bill *inter alia*:

Extended for one additional year the President’s authority to delay the imposition of proliferation-related sanctions when necessary to protect an intelligence source or method or an ongoing criminal investigation;

Extended for two additional years the Secretary of Defense’s authority to engage in commercial activities and security for intelligence collection activities;

Authorized the Director of Central Intelligence to designate personnel to carry firearms to protect current and former Agency personnel and their immediate families;

Modified the National Security Education Program to include counter-proliferation studies;

Authorized the Attorney General or a designated attorney for the government to apply for court orders authorizing the installation and use of a pen register or trap and trace device for investigations to gather foreign intelligence information or information concerning international terrorism;

Authorized the Director of the Federal Bureau of Investigation or a designee to apply for court orders to require common carriers, public accommodation facilities, or vehicle rental facilities to release certain records in their possession relating to a foreign intelligence or international terrorism investigation; and

Directed that employees within the Intelligence Community were made aware that they may, without prior authorization, disclose certain information to Congress, including classified information, that they reasonably believe is specific and direct evidence of a violation of law, rule, or regulation, a false statement to Congress on an issue of material fact, gross mis-

management or a gross waste of funds, a flagrant abuse of authority, or a substantial and specific danger to public health or safety.

The full Senate passed the bill on October 8, 1998.

Section 305 was included in the bill because the United States faces a qualitatively new long-term challenge to its national security interests with the proliferation of weapons of mass destruction (WMD) and their delivery systems. The Committee espouses the view that the country should utilize education as an essential non-proliferation tool in support of the training of counter-proliferation specialists equipped to address this threat.

At the present time, however, explicit program authority is not available to train American students adequately to confront the proliferation challenge. Particularly noticeable by its absence is government support for graduate training in the counter-proliferation area which includes WMD technologies and capabilities, missile and other delivery system technologies and capabilities, existing and required domestic response capabilities, motivations and techniques of state and subnational proliferations, and a careful assessment of existing counter-proliferation regimes.

The National Security Education Act (NSEA) was enacted in 1991 "to provide the necessary resources, accountability, and flexibility to meet the national security education needs of the United States, especially as such needs change over time". As drafted in 1991 the NSEA emphasized language and area studies. Since then, the national security needs of the country have in fact changed. In an effort to generate limited but sustained Federal support for counter-proliferation activities and studies, Section 305 amended the National Security Education Act of 1991 to (1) specify counter-proliferation studies as a priority area for Federal support, and (2) to require that the National Security Education Board established by the Act include the Secretary of Energy. The Committee has as a goal the allocation of not less than one-third of the amounts specified under the Act for the awarding of fellowships to graduate students and grants to institutions of higher learning in the field of counter-proliferation training and studies.

In addressing the threats posed by the proliferation of weapons of mass destruction, the Committee has not only been supportive of the funding requests of the Intelligence Community in combating this threat but has also pointed the way toward enhanced efforts by the community in newer, nontraditional areas. Committee support for funding of counter-proliferation education and training through an amended National Security Education Act is not only consistent with these efforts but can ultimately contribute to their success.

As mentioned above, the bill contained a provision (§ 501) encouraging the disclosure of certain information to Congress. The provision would have allowed disclosure of such information to any Member or staff member of a committee of Congress having primary oversight responsibility for the department, agency, or element of the Federal Government to which such information relates, and reflected a modified version of this provision proposed in the previous year's conference.

At Conference, the managers agreed instead to adopt a modified version of H.R. 3829, the “Intelligence Community Whistle Blower Protection Act of 1998.” This title established an additional process to accommodate the disclosure of classified information of interest to Congress. However, the managers agreed that H.R. 3829 was not the exclusive process by which an Intelligence Community employee may make a report to Congress. The managers agreed that the modified language furthered the goal of, and built on, the Senate language contained in S. 1668 and S. 2052, which were adopted by the Senate on three occasions. The managers also highlighted the fact that Senate action on this issue was central to the development of this provision and incorporated by reference the Senate reports on S. 1668 and S. 2052 (S. Rep. Nos. 105–165 and 105–185, respectively) to provide legislative history and the need for Congressional action on this issue. [The cited Senate reports on this issue examines the significant constitutional implications of this legislation.] The managers agreed that an Intelligence Community employee should not be subject to reprisals or threat of reprisals for making a report to appropriate Members or staff of the intelligence committees about wrongdoing within the Intelligence Community.

As also mentioned above, S. 2052 included important new authorities for the Federal Bureau of Investigation:

Section 601 amended the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. §1802, et seq. (FISA), to authorize pen registers and trap and trace devices in foreign intelligence and international terrorism investigations being conducted by the FBI under guidelines approved by the Attorney General. In particular, it authorized FISA judges to issue a pen register or a trap and trace order upon a certification that the information sought is relevant to such an ongoing investigation.

The amendment allows the use of pen registers and trap and trace devices in foreign intelligence and international terrorism investigations. Although such devices can be utilized at present, current procedures do not reflect changes in the law since FISA was enacted. Before the use of such a device today, the complete FISA predicate for actual interception of the oral or verbal contents on the communication itself must be satisfied. That predicate is designed to satisfy strict constitutional requirements or the conduct of a “search” within the meaning of the Fourth Amendment. However, and subsequent to passage of FISA in 1978, the Supreme Court held in *Smith v. Maryland*, 442 U.S. 735 (1979), that accessing numbers dialed to contact another communications facility is not a Fourth Amendment “search.” Thus, current procedures impose a standard that is more rigorous than the constitution requires. Section 501 establishes a predicate for the use of pen registers or trap and trace devices that is consistent with the opinion and is analogous to the statutory standard for the use of these devices in criminal investigations. This authority is necessary in order to permit, as is the case in criminal investigations, the use of this very valuable investigative tool at the critical early stages of foreign intelligence and international terrorism investigations.

Unlike the criminal standard, however, this section requires substantially more than mere “relevance” to an ongoing investigation,

as required in 18 U.S.C. § 3122(B)(2). In addition to relevancy, the government must also demonstrate that the telephone line involved has been, or is about to be, used in communication with an international terrorist or a person engaged in clandestine intelligence activities that may involve a violation of law.

Each application must also be approved by the Attorney General or a designated attorney for the Government, with certification by the Federal Bureau of Investigation that the underlying investigation is being conducted under guidelines approved by the Attorney General. It is the Committee's understanding that the "designated attorney" for the Government will be the Counsel for Intelligence Policy at the Department of Justice. Further delegation of this authority should occur only after the Committee is briefed on the compelling need for it.

Applications must be submitted to the Foreign Intelligence Surveillance Court established by FISA; however, the section also allows the designation of Federal magistrates to hear applications for and grant orders approving the installation and use of pen registers or trap and trace devices.

Section 602 also amended the Foreign Intelligence Surveillance Act (FISA) by giving the Federal Bureau of Investigation, in conducting foreign intelligence and international terrorism investigations, authority to apply for court orders to obtain records of common carriers, hotels, communications providers, and storage facilities.

Under existing criminal law, grand jury subpoenas may be issued, and the Attorney General has delegated authority to certain Federal agencies in narcotics investigations to issue administrative subpoenas. No analogue to these authorities exist in foreign intelligence and international terrorism investigations. When the FBI seeks common carrier records relating to the clandestine activities of an agent of a foreign power or an international terrorist, compliance is voluntary; unfortunately some entities have chosen not to cooperate. This section requires that any or all of the four entities (common carrier, hotel, communications provider, and/or storage facility) comply with a court order based on the certification by the FBI that the records are sought for foreign intelligence purposes, and that there are specific and particular facts that substantiate belief that the person to whom the records pertain is a foreign power or an agent of a foreign power.

Sections 601 and 602 also include provisions for continuing Congressional oversight. The Committee felt strongly that these provisions are necessary to insure that these new authorities are carefully executed.

Section 604 amended section 2518 of title 18, United States Code, to allow federal judges to issue an order on the conversations of a specific person, rather than on the conversations that occur on a specific telephone.

Under pre-existing law, judges issued wiretap orders authorizing law enforcement officials to place a wiretap on specific telephone numbers. Terrorists and spies knew this and often were able to avoid wiretaps by using pay telephones on the street at random, or by using stolen or cloned cell telephones. As law enforcement officials could not know the numbers of these telephones in advance,

they were unable to obtain wiretap orders on these numbers from a judge in time to intercept the conversation, and the criminal was able to evade interception of his communication.

Section 604 addressed this problem by authorizing judges to issue an order authorizing the interception of all communications made by a particular person, regardless of what telephone he may use. The provision does not change the existing law that requires law enforcement officials to demonstrate that there is probable cause to believe that the suspect has committed, or may commit, a crime. With this amendment, law enforcement officials will be required to demonstrate that there is probable cause to believe that the actions of the suspect could have the effect of thwarting a wiretap on a specific telephone were the court to order the more typical method of wiretap, which targets a specific telephone number.

Sections 601 through 604 of S. 2052 were fully coordinated with the Judiciary Committee and accepted in total by the Conference on October 5, 1998.

The President signed the legislation [H.R. 3694] as Public Law 105-272 on October 21, 1998.

E. RATIFICATION OF THE CHEMICAL WEAPONS CONVENTION (CWC)

In order to assist the full Senate in its consideration of whether to grant its advice and consent to ratification of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), the Committee commenced in 1994 a thorough review of the ability of the U.S. Intelligence Community to monitor compliance by states party to the CWC.

In particular, the Committee examined issues surrounding the monitoring effectiveness of the U.S. Government's unilateral capabilities and of the CWC's onsite inspection regime; the interpretation and implementation of the CWC, including its three annexes; the counterintelligence and security implications of the CWC; and the implications of the CWC for private companies, in light of the obligations imposed on such companies to provide data declarations and to host onsite inspections.

On September 30, 1994, after extensive hearings and review, the Committee published classified and unclassified reports entitled "U.S. Capability to Monitor Compliance with the Chemical Weapons Convention." The report noted the Intelligence Community's determination that the CWC will provide another tool in the U.S. Government's inventory for monitoring and limiting the spread of chemical weapons worldwide. However, the Committee further noted that "[i]n general, the Intelligence Community has poor confidence in its ability to detect prohibited activities [i.e. production or acquisition of chemical weapons agents or precursors]." The Committee "largely accept[ed] the Intelligence Community's pessimistic assessment of U.S. capability to detect and identify a sophisticated and determined violation of the Convention, especially on a small scale."

The Committee's public report to the Senate (S. Rep. No. 103-390) was approved by a vote of sixteen members in favor and none opposed. The Committee's Report was provided to the Senate in anticipation of immediate action on the CWC. However, no Senate ac-

tion was taken with regard to the CWC until the first session of the 105th Congress.

In the interim, a number of Members of the Committee continued to raise concerns about the verifiability of the treaty, and the Committee staff reviewed developments to determine whether any changes or updating of the Committee's 1994 report were in order. They determined that its original findings and recommendations with respect to the ability of U.S. intelligence to monitor compliance by states party to the CWC remained substantially valid. Prior to ratification, then-Acting CIA Director Tenet and other administration officials reconfirmed the Intelligence Community's earlier judgments.

In order to address these concerns, the Committee Report to the Senate contained fourteen recommendations. In recommendations 1, 6 and 7, the Committee proposed that certain conditions and declarations be incorporated in the resolution of ratification and the CWC implementing legislation. Recommendations 2, 3 and 10 were put forward as the basis for additional declarations in the resolution of ratification. The great majority of the recommendations were incorporated in the resolution of ratification reported favorably by the Committee on Foreign Relations to the full Senate.

Prior to final disposition of the Convention and the resolution of ratification by the full Senate in the Spring of 1997, the Senate held a rare closed session of the body in the old Senate Chamber to discuss the shortcomings in the Intelligence Community's monitoring capabilities that had been identified by the Intelligence Community and the SSCI report. Following debate in both open and closed sessions of the body and after having disposed of five major amendments to the proposed resolution of ratification, the Senate agreed on April 24, 1997, by a vote of 74 to 26, to provide its advice and consent to ratification of the Chemical Weapons Convention.

III. OVERSIGHT ACTIVITIES

A. HEARINGS

1. National security threats to the United States

For several years, the Committee has begun each new session of the Congress with an open hearing reviewing the Intelligence Community's assessment of the current and projected national security threats to the United States. The Intelligence Community's assessment of the national security threat to the U.S. plays a critical role in defining our country's foreign policy—and forms the foundation for our military planning. It is therefore essential that the Intelligence Community provide our nation's policymakers with the most accurate and timely assessment of these threats as possible. The hearings on the national security threats—which cover a wide range of issues—are held in open session not only to inform the Committee, but to enlighten the American public about the threats facing their country.

On February 5, 1997, the SSCI held an open hearing on the current and projected national security threats to the U.S. Testifying before the Committee were Acting Director of Central Intelligence George J. Tenet, Lt. General Patrick M. Hughes, USA, Director of

the Defense Intelligence Agency (DIA) and Toby Gati, Assistant Secretary of State for Intelligence and Research (INR). On January 28, 1998, the SSCI held a similar hearing, and testifying before the Committee were Director of Central Intelligence (DCI) George J. Tenet, Lt. General Patrick M. Hughes, USA, Director of the Defense Intelligence Agency (DIA), and Phyllis E. Oakley, Assistant Secretary of State for Intelligence and Research (INR). For the first time, the Federal Bureau of Investigation, represented by Deputy Director Robert Bryant, participated in the threat hearing to address counterintelligence, terrorist and information warfare threats to our national security. On October 8, 1998, Committee Members met in closed session to receive a classified update briefing on threats to U.S. interests from Intelligence Community representatives.

The transcript of the Committee's February 5, 1997 hearing, "Current and Projected National Security Threats to the United States, [S. Hrg. 105-201] and the Committee's January 28, 1998 hearing, "Current and Projected National Security Threats to the United States" [S. Hrg. 105-587], which includes the responses to a large number of questions-for-the-record (QFRs) covering a broad spectrum of national security issues, were printed and made available to the public.

2. Zona Rosa

In June 1985, at a sidewalk cafe in the Zona Rosa district of San Salvador, four U.S. Marine embassy guards, two American citizens, and six other people were brutally murdered by members of a Marxist guerrilla group. During the 105th Congress, the Committee continued its Zona Rosa inquiry that began in mid-1995 after the television show "60 Minutes" claimed that the mastermind behind the murder of Americans went unpunished and was living in the United States. Mrs. Betty Malone's 12-year search for the truth about her son's death brought the issue to the attention of the Committee.

The Committee was appalled to learn that Pedro Antonio Andrade, the alleged planner of the Zona Rosa attack, was paroled for three years into the United States—by the United States Government and with CIA funding—in June 1990. Andrade was paroled even after the U.S. Government—or at least some parts of the U.S. Government—had concluded that, though there was not enough evidence to successfully prosecute him in the United States, Andrade was probably responsible for the Zona Rosa murders.

In early 1996, the Committee asked the President of the United States to conduct an investigation of the Zona Rosa affair, the actions of U.S. Government agencies with respect to the political and military response to the massacre, the subsequent investigations and prosecutions, and the relationship of U.S. Government agencies with the participants and alleged participants in the massacre. In the Fall of 1997, the Inspectors General of the CIA, State Department, Defense Department, and Justice Department issued reports on the matter that provided the basic factual information which the Committee used in its deliberations during the 105th Congress.

As a direct result of the actions of the Committee, Andrade was arrested in September 1996 in the United States, where he had lived, undisturbed, for six years. And although Andrade applied for political asylum in the United States, asylum was denied in March of 1997 based largely on the evidence brought to light by the Committee. The U.S. Federal judge's decision was based on a preponderance of evidence indicating that Andrade was involved in the Zona Rosa killings. Andrade's appeal was also denied and he was returned to El Salvador in September 1997.

The Committee held hearings in mid-1997 to consider the views of families and friends of the victims regarding their dealings with the U.S. Government. The Committee was dismayed to learn that at no time during the events, despite several requests for information, did the United States Government contact the families to provide further details of their sons' deaths, or the pursuit of their killers, or of Andrade's parole into the United States. In addition, the Committee heard the views of U.S. Government officials with respect to the entry of Pedro Andrade into the United States. The Committee hearings reviewed the information available to the decision-makers at the time, and the conditions under which they had to make their decisions, to establish the facts, determine appropriate accountability, and develop procedures to ensure that the mistakes of the past 12 years would not be repeated.

During its hearings, Committee Members examined the balance between intelligence gathering and law enforcement concerns—an issue that continues to pose problems in counterterrorism, counter-narcotics, and other operations today. The Committee explored questions such as why Pedro Andrade was admitted to the United States, despite all the evidence linking him to the killings of six Americans. Did the decision-makers have before them all of the information available at that time within the U.S. Government, and if not, why not? Why was information not shared between agencies? Witnesses included family members of the slain Marines: Mrs. Betty Malone from Northport, Alabama; Mrs. Brenda Whitt, Mrs. Beth Hildebrandt, and Mr. Patrick Kwiatkowski from Wisconsin; and Mr. John Weber from Cincinnati, Ohio. U.S. Government witnesses included: Mr. Richard Chidester, the Embassy Legal Officer from March 1989 to June 1991; "Bob" (last name not revealed for security reasons), the CIA Chief of Station in El Salvador from June 1989 to June 1991; Mr. Ron Ward, an FBI agent who, in July and August 1989, participated in the interrogation of Andrade after his arrest in El Salvador; Ambassador William Walker, Ambassador to El Salvador from August 1988 to March 1992, who approved the parole request; Mr. Richard Cinquegrana, CIA Deputy Inspector General for Investigations; Mr. Floyd Justice, Director of Support Programs for the Department of State Inspector General; and Mr. Glenn Fine, Special Investigative Counsel with the Justice Department's Inspector General.

Following the hearings, the Committee produced legislation designed to ensure that the U.S. Government would provide information on violent crimes against U.S. citizens abroad to victims and their families. Section 307 of the Intelligence Authorization Act for 1998 (S. 858) designated the Secretary of State as the responsible individual for providing information on violent crimes against U.S.

citizens abroad to victims and their families. This section included a sense of Congress that it would be in the national interest of the U.S. to provide information regarding the killing or other serious mistreatment of U.S. citizens abroad to the victims of such crimes, or the families of victims of such crimes if they are United States citizens.

3. *Disclosures Act*

The Committee held public hearings on February 4 and 11, 1998 to examine the constitutional implications of legislation such as Section 306—Encouragement of disclosures of certain information to Congress of the Intelligence Authorization Act for FY 1998, S. 858. [See Section II.B. for a discussion of this legislation.] The Committee heard from constitutional scholars and legal experts on both sides of the issue. Mr. Randolph D. Moss, Deputy Assistant Attorney General from the Department of Justice Office of Legal Counsel, testified in support of the Administration's position that section 306 and any similar language represents an unconstitutional infringement on the President's authority as Commander-in-Chief and Chief Executive. Mr. Moss asserted the following:

(a) The President, as Commander-in-Chief, Chief Executive, and sole organ of the Nation in its external relations has ultimate and unimpeded authority over the collection, retention, and dissemination of intelligence and other national security information.

(b) Any Congressional enactment that may be interpreted to divest the president of his ultimate control over national security information is an unconstitutional usurpation of the exclusive authority of the Executive.

(c) The Senate's language vests lower-ranking personnel in the Executive Branch with a "right" to furnish such information to a Member of Congress without prior official authorization from the President or his delegee. Therefore, section 306 and any similar provision is unconstitutional.

The Committee also received testimony that the President's authority in this area is not exclusive from Professor Peter Raven-Hansen, Glen Earl Weston Research Professor of Law from the George Washington University Law School, and Dr. Louis Fisher, Senior Specialist (Separation of Powers) from the Congressional Research Service. These experts believed that Congress already has the authority to regulate the collection, retention, and dissemination of national security information. Professor Raven-Hansen and Dr. Fisher asserted the following:

(a) A claim of exclusive authority must be substantiated by an explicit textual grant of such authority by the Constitution.

(b) There is no express constitutional language regarding the regulation of national security information as it pertains to the President.

(c) The President's authority to regulate national security information is an implied authority flowing from his responsibilities as Commander-in-Chief and Chief Executive.

(d) As the regulation of national security information is implicit in the command authority of the President, it is equally implicit in the broad array of national security and foreign affairs authorities vested in the Congress by the Constitution. In fact, Congress has

legislated extensively over a long period of time to require the President to provide information to Congress.

(e) Congress may legislate in the area because the Executive and Legislative Branches share constitutional authority to regulate national security information.

(f) The Supreme Court has never decided a case that specifically addressed this issue.

(g) The provision is constitutional because it does not prevent the President from accomplishing his constitutionally assigned functions, and because any intrusion upon his authority is justified by an overriding need to promote objectives within the Constitutional authority of Congress.

The Committee found the last argument to be persuasive and determined that the Administration's intransigence on this issue compelled the Committee to act.

Following the public hearing on February 11th, the Committee met to mark-up a modified version of section 306. One amendment was offered by a member of the Committee and was adopted unanimously. The bill was favorably reported from the Committee on February 23, 1998. The Senate considered the bill (S. 1668) on March 9, 1998 and passed it on a roll call vote of 93 to one. [See Section II.C.] This bill, as passed by the Senate was also contained in Title V of S. 2052 which was approved by the Committee on May 7, 1998 and ordered to be favorably reported. [See Section II.D. for a discussion of the final disposition of this legislation.]

4. Mexico and counter-narcotics

The Committee held a closed, classified hearing on Feb. 26, 1998 in conjunction with the Administration's release of the 1998 U.S. International Narcotics Control Strategy Report, in which the President certified Mexico and certain other countries as being fully cooperative with the United States, or having taken adequate steps on its own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Narcotics Drugs and Psychotropic Substances. The Committee called witnesses from not only the Intelligence Community, but also from the diplomatic and federal law enforcement communities. These witnesses, in a closed setting, were able to provide information to Members, that would not otherwise have been available, describing in detail the facts leading to the President's decision to certify Mexico. This information included the most recent narcotics trafficking trends and patterns via Mexico into the United States. The significant problems associated with the resultant illicit financial flows were also described, showing the rapidly growing role of drug monies on the Mexican economy and institutions. This information allowed Members of the Senate to more accurately analyze the Administration's decision in considering a measure that would have decertified Mexico as being fully cooperative and/or adequate in its counter-narcotics efforts.

5. The biological and chemical weapons threat

In the wake of the 1993 World Trade Center bombing, the 1995 Aum Shinrikyo attack in the Tokyo subway, and most recently, the 1998 arrests in Las Vegas of persons suspected of possessing dead-

ly anthrax agent, the Committee has been concerned by the proliferation of biological and chemical weapons, and the growing prospect of terrorist attack against the United States using biological or chemical agents.

In March and April 1998, the Committee held a series of joint hearings with the Judiciary Subcommittee on Technology, Terrorism and Government Information to receive both unclassified and classified testimony on the biological and chemical threats to the United States and on the United States Government's strategy and capabilities to prevent or respond to such an attack. Witnesses included the Attorney General, the Director of the FBI, senior Intelligence Community officials, medical experts from the U.S. Army and the Centers for Disease Control, and expert private witnesses. In addition, Committee staff met with and debriefed a defector who until 1992 served as a senior scientist in the Soviet/Russian offensive biological weapons program.

The Committee has initiated or supported a number of programs to enhance the Intelligence Community's capabilities to monitor this threat, including new legislative authorities in the Intelligence Authorization Act of Fiscal Year 1999 to collect certain kinds of critical preliminary information of relevance to FBI investigations into international terrorism, and to provide policymakers with the information and tools needed to support U.S. counter-proliferation and counter-terrorism policies. The Classified Annex to the Intelligence Authorization Act for Fiscal Year 1999 describes in detail the Committee's efforts in this regard.

The threat of biological or chemical attack poses extraordinary and, in some cases, unique challenges, ranging from the difficulty of detecting the production of such agents and providing timely warning of a potential attack, to the consequences of a biological event, which could under certain circumstances be more lethal than a nuclear explosion. Of particular concern, from the Committee's viewpoint, are the ready availability and dual use nature of the materials and equipment used to prepare biological and chemical agents; the relative ease with which a small group of terrorists could produce such substances (compared, for example, with nuclear weapons); the possibility of genetic engineering to defeat countermeasures and increase the virulence and infectivity of biological agents; the threats posed by the Iraqi and Iranian biological weapons programs; and concerns over Russia's remaining offensive biological warfare program, which according to published reports could include biological warheads on ICBMs, as well as the potential for transfer of scientific expertise, or actual biological agents, from the Russian program to rogue states or terrorist groups.

Many of the challenges cited above are intrinsic to the nature of biological and chemical weapons, or otherwise largely beyond the capacity of the U.S. Government to influence. The Committee is disturbed, however, by public reports of widespread problems and deficiencies in the U.S. Government's counter-terrorism strategy and capabilities, including intelligence programs and activities under the Committee's jurisdiction.

6. *Covert action quarterly reviews*

Covert action funding continued to comprise only a small proportion of the intelligence budget throughout the 105th Congress. Nevertheless, the Committee continued to conduct rigorous oversight of covert action programs, helping to ensure that such programs serve an agreed foreign policy objective and are conducted in accordance with American laws and values.

7. *China*

On September 18, 1997, the Committee undertook a series of periodic hearings on major regional intelligence issues with open and closed sessions on "Chinese Political Developments, Threats to U.S. National Security, and Intelligence Challenges." In the open hearing, the Committee heard from a panel of distinguished experts on Chinese foreign policy and military strategy in the wake of the Cold War and the resulting threats to U.S. interests, Chinese military pursuit of the "Revolution in Military Affairs," Chinese proliferation of weapons of mass destruction and related technologies (as well as advanced conventional weapons), and current and future political and economic developments in China.

Witnesses for the open hearing were noted democracy activist Harry Wu, a research fellow at the Hoover Institute; Ambassador James R. Lilley, former U.S. envoy to Beijing and Director of Asian Studies at the American Enterprise Institute; Peter W. Rodman, a former senior NSC and State Department official who is currently Director of National Security Programs at the Nixon Center for Peace and Freedom; Dr. Michael Pillsbury, an associate fellow at the National Defense University and senior fellow at the Atlantic Council; and Professor Gary Milhollin, director of the Wisconsin Project on Nuclear Arms Control.

In an afternoon closed session, the Committee heard detailed classified testimony from CIA, FBI, and DIA witnesses on intelligence collection issues, Chinese denial and deception operations, and Chinese intelligence activities directed at the United States, as well as classified Intelligence Community perspectives on Chinese foreign policy and military strategy, Chinese proliferation behavior, and Chinese political and economic developments.

The Committee continues to closely monitor developments in China, in particular intelligence collection and analysis on Chinese military programs, activities, capabilities, and intentions, and on Chinese weapons proliferation activities.

8. *Russia*

The precipitous deterioration in the political, economic and military fabric of the Russian state made that country's future an issue of utmost concern to the Committee in 1998. In addition to holding a number of closed briefings focusing on the fast-paced developments within Russia, the Committee held a hearing on September 16th during which the full panoply of national security and intelligence issues associated with these changes were thoroughly examined. Of chief concern to the Committee is Russia's export of nuclear and missile technology, particularly technology transfers to Iran. Related to this proliferation activity is the issue of nuclear security and surety within the Russian Federation and the vulner-

ability of the increasingly desperate military-industrial workforce to the influences of organized crime and the lure of employment with foreign states interested in obtaining weapons of mass destruction. The Committee also examined possible Russian nuclear test activities and the implication for monitoring a Comprehensive Test Ban Treaty; the future size and force structure of Russia's strategic nuclear triad vis-a-vis the limitations of START II and the prospective START III; the sharp decline in military readiness and force modernization funding; the efficacy of U.S. and allied intelligence collection against Russia and subsequent intelligence assessments; the causes of the Russian economic crisis; and the state of democratic reforms during times of social and economic tumult. Given the growing uncertainty within Russia, the Committee believes that intelligence collection and analysis regarding Russia will require considerable oversight in the upcoming year.

9. Iraq

At a time when Iraq remained the most vexing foreign policy issue facing the United States, the Committee continued its extensive oversight of intelligence collection and analysis in support of U.S. policy toward that country. Iraq figured prominently in the Committee's global threat hearings, and Committee members and staff received numerous closed briefings throughout the 105th Congress, including extensive briefings on the intelligence on Iraq missile, chemical, biological and nuclear programs, and on the prospects for Saddam Hussein's regime. In particular, a February 1998 briefing by the Director for Intelligence (J-2) for the Joint Chiefs of Staff, Major General James C. King, highlighted issues associated with intelligence on Iraqi weapons of mass destruction sites needed to support effective U.S. military action—a problem that still has not been resolved. The Committee is monitoring the intelligence support prior to and in the wake of Operation Desert Fox.

Reflecting broad bipartisan concern with the conduct of U.S. policy toward Iraq since the end of the 1991 Gulf War, the Committee, including Chairman Shelby and Vice Chairman Kerrey, played a role in Senate consideration of the Iraq Liberation Act of 1998 (or "ILA"), which was signed into law by the President on October 31, 1998 (Public Law 105-338). The Iraq Liberation Act, inter alia, declared that it should be the policy of the United States to remove the regime headed by Saddam Hussein and promote the emergence of a democratic Iraq. To that end, the legislation authorized the drawdown of U.S. military stocks to provide military assistance to designated Iraqi democratic resistance groups. Consistent with the ILA, the Administration has modified its Iraq policy and stated that it seeks the replacement of the Saddam Hussein regime. The Administration has also announced its intention to designate seven Iraqi democratic resistance groups for U.S. assistance. The Committee will closely monitor the continued implementation of the ILA, in particular the drawdown of U.S. military stocks to provide aid to the designated groups.

10. Intelligence sharing with the United Nations Special Commission on Iraq (UNSCOM)

Following the successful conclusion of Operation Desert Storm, the United Nations Security Council established the United Nations Special Commission on Iraq (UNSCOM) in order to implement relevant Security Council resolutions regarding the elimination of Iraq's weapons of mass destruction. After having served for several years as one of UNSCOM's principal inspectors, Scott Ritter resigned in August 1998. Mr. Ritter subsequently testified before various Congressional committees regarding his concerns about evolving U.S. policy toward Iraq. Mr. Ritter, in other fora, also expressed concerns about certain aspects of intelligence sharing between U.S. intelligence agencies and UNSCOM. In addition, various press reports in October described some of the inner workings of UNSCOM, including information-sharing arrangements with certain foreign governments. In 1998, the Committee staff initiated a review of intelligence sharing between U.S. intelligence agencies and UNSCOM officials. That review is continuing.

11. Khobar Towers

The Committee continues to monitor the investigation of the June 25, 1996 terrorist bombing of the U.S. military housing facility at Khobar Towers, Saudi Arabia, which killed 19 military service personnel, and at least one Saudi civilian, wounded more than 200 Americans, and injured hundreds of other civilians. At the time, the Khobar Towers complex was home for the airmen of the U.S. Air Force's 4404th Fighter Wing (Provisional), under the operational command of U.S. Central Command, who were participating in the United Nations effort to enforce the "no-fly" zone in southern Iraq. The Committee held hearings focusing on the investigation of and follow up to the Khobar Towers bombing, including possible state sponsorship, on terrorism generally, and on intelligence support to law enforcement.

12. Roger E. Tamraz

During the consideration of the nomination of Anthony Lake to be the Director of Central Intelligence, the Committee became aware of Roger E. Tamraz and his involvement with the White House and the Central Intelligence Agency. Mr. Tamraz, a Lebanese native turned U.S. citizen, was, at the time, attempting to negotiate an agreement to construct a multibillion-dollar oil pipeline from the Caspian Sea to Turkey. On June 2, 1995, Mr. Tamraz met with NSC officials in an attempt to secure the administration's endorsement, or at least assurances that the Clinton administration wouldn't oppose his plan. He received neither. In fact, NSC staff recommended to senior White House officials that Mr. Tamraz be granted no further meetings or access to the White House.

Notwithstanding NSC staff warnings, Mr. Tamraz attended four additional White House events with President Clinton following pleas by Democratic National Committee Chairman Donald Fowler to White House officials to ignore NSC staff recommendations regarding Mr. Tamraz. Mr. Tamraz and his company Tamoil, Inc. contributed at least \$177,000 to the national and state Democratic parties in 1995 and 1996.

Of particular interest to the Committee, however, was Mr. Fowler's contact with CIA personnel in pursuit of a favorable report on Tamraz, which was subsequently provided to NSC staff in hopes of winning NSC support for Tamraz. Apparently, Tamraz told Mr. Fowler that he had cooperated with the CIA in the past and that the CIA would vouch for him. The Committee was extremely concerned that a political official could reach into a highly secret federal government agency and extract information to help a generous contributor. The Committee was also concerned that the CIA was distributing information to the NSC on an American citizen.

On March 13, 1997, then-Acting Director of Central Intelligence George J. Tenet directed an Inspector General investigation into what appeared to be improper contacts between Democratic National Committee and CIA officials and contacts with Roger E. Tamraz. The CIA IG conducted what the Committee considers to be a thorough investigation. The Committee has endorsed its conclusions and recommendations. On April 2, 1998, the chairman and Vice Chairman asked the DCI to advise the Committee of the actions he had taken or planned to take to address the IG's recommendations.

On December 16, 1998, the Executive Director of the CIA responded to the Chairman's and Vice Chairman's request. The Executive Director stated that, in early 1998, the DCI established a Special Accountability Board to review the actions and performance of the agency personnel identified in the IG report and to make recommendations regarding individual employees. The DCI reviewed the Board's report and concurred with their conclusions and recommendations. The Committee continues to examine the DCI's actions in accordance with the Board's review and the IG's report. The Committee will respond to the DCI upon completion of that review.

B. INVESTIGATIONS

1. *China investigation, part 1*

On June 2, 1998, the Committee unanimously approved Terms of Reference for two investigations into the impacts to U.S. national security stemming from the transfer of advanced U.S. satellite and related technology to the People's Republic of China, and reports of a covert Chinese Government program to influence the political process in the United States during the 1996 election cycle.¹

With respect to satellite technology, the Committee voted to determine the facts and recommend policies and possible changes to law regarding the following questions:

1. To what extent, from 1988 to the present, have U.S. export control policies regarding the launch of U.S. manufactured communications satellites on Chinese launch vehicles affected U.S. national security?

- a. Which specific Chinese launches of U.S. manufactured satellites, if any, facilitated the transmittal of technical knowledge to the Chinese launch industry?

¹The investigation into Chinese efforts to influence the U.S. political process is described in the next China sub-section of this report.

b. Did such information enable China to develop more effective ballistic missiles? If so, what were the resulting Chinese improvements?

c. Was national security information available prior to export policy decisions that indicated that the exports could pose a threat to U.S. national security?

d. If so, what steps were taken to disseminate such information to appropriate Executive Branch officials and Congressional oversight Committees?

e. Are sufficient intelligence resources dedicated to obtaining information on Chinese ballistic missile developments, including the potential impact of U.S. technology exports?

f. What are the gaps in the Intelligence Community's ability to obtain such information?

g. What is the history of U.S. Government security procedures for protecting national security when U.S. manufactured satellites are launched from China and are current procedures adequate?

h. Were these procedures followed during each Chinese launch of a U.S. satellite?

i. What are the national security advantages and disadvantages of launching U.S. manufactured satellites on Chinese launch vehicles?

In the course of its investigation, the Committee held 10 hearings, and heard from expert witnesses from the CIA, the Defense Department's Defense Technology Security Administration (DTSA), the Department of State, the National Air Intelligence Center (NAIC), the National Security Agency, and the General Accounting Office. Committee staff also conducted numerous interviews, and reviewed tens of thousands of documents provided by Executive Branch agencies and U.S. satellite manufacturers.

The investigation of the transfer of satellite and related technology was prompted by press reports of a Justice Department criminal probe into whether Loral Space and Communications Ltd. and Hughes Electronics Corp. violated export control laws by providing to the Chinese their analysis of the cause of the failed launch of a Loral-built Intelsat satellite on a Chinese Long March rocket in February 1996. There was also reports that the White House had approved a waiver of Tiananmen Square sanctions for a subsequent Loral satellite launch despite Justice Department concerns of the possible effect of such approval on its ongoing criminal investigation.²

Following the Loral-Hughes revelations, press reports have identified additional events of serious concern, including Hughes' transfer to China of a failure analysis of the 1995 launch of the Hughes Apstar 2 satellite, and the absence of U.S. Government monitors at Chinese launches of three Hughes satellites in 1995–1996. Press reports also raised concerns that China may have developed technology applicable to Multiple Independently Retargetable Vehicles (MIRVs) through its development, to U.S. specifications, of a mul-

²The Justice Department investigation continues today. The Committee's investigation is focused on the national security impact of technology transfer; it is not intended to duplicate the Justice Department's criminal investigation.

tiple-satellite “Smart Dispenser” to place Motorola “Iridium” communications satellites in orbit.

The export of commercial satellites for launch in China was first approved by the Reagan Administration in 1988, in the wake of the Challenger disaster, and the first launch took place in 1990. A number of launches took place during the Bush administration and during the Clinton administration.

The Chinese rockets used as space launch vehicles to place satellites in orbit are virtually identical to Chinese ballistic missiles used to deliver nuclear warheads and other military payloads. There have been longstanding concerns that by helping the Chinese launch U.S. satellites, U.S. companies might—either advertently or inadvertently—provide sensitive know-how, information, or technology that would improve China’s space launch systems, and that any resulting improvements could be transferred to Chinese military missile’s systems.

Reflecting the above concerns, export control laws were developed to manage the risk of technology transfer, and commercial satellite exports are subject to extensive security and monitoring requirements. These procedures do not eliminate the risk of some transfer of information and are not always followed. Moreover, concerns have been raised that changes in export controls, including shifting jurisdiction over such exports from the Department of State to the Department of Commerce, have resulted in increased risk of technology transfer. Jurisdiction over commercial satellites lacking certain “militarily significant” characteristics was first transferred from the State Department to the Commerce Department in 1992; jurisdiction over the remaining satellites was transferred to Commerce in 1996. Following hearings by the SSCI and other committees, the fiscal year 1999 Defense Authorization Act returned all such satellites to State Department jurisdiction.

The Committee’s investigations are continuing, and are expected to be completed in February 1999.

2. China investigation, part 2

On June 2, 1998 the Committee authorized an investigation into the allegations that the People’s Republic of China (PRC) Government had covertly influenced the 1996 U.S. election cycle. The investigation was in part prompted by press reports of PRC influence in the 1996 election cycle and in part by earlier closed hearings held by the Committee into whether and how information about these activities had been collected and reported in the executive branch. Specifically, the Committee adopted the following language as its “Terms of Reference” for the investigation:

Is there intelligence information that substantiates the allegation that the Chinese Government undertook a covert program to influence the political process in the United States through political donations, and other means, during the 1996 election cycle?

a. When was any such information obtained, and what steps were taken to disseminate it to appropriate Executive Branch officials and Congressional oversight Committees?

- b. Does information exist that indicates the Chinese covert effort is continuing today?
- c. Does a covert effort to influence the U.S. political process represent a threat to U.S. national security?
- d. In what ways does a covert effort to influence the U.S. political process differ from other types of international influences on elections?
- e. Are sufficient intelligence resources dedicated to obtaining information on Chinese, or other foreign, covert influences on the U.S. political process?
- f. What are the gaps in the Intelligence Community's ability to obtain such information?

As of the date of this report, the investigation is continuing. The Committee has held formal hearings and taken the testimony of key witnesses from the CIA, FBI and other intelligence agencies. In addition, Committee staff have interviewed witnesses and read hundreds of documents that are relevant to the investigation.

C. COMMUNITY ISSUES

1. Indian nuclear tests and the Jeremiah Panel

On May 11 and 13, 1998, the Intelligence Community was taken by surprise when India conducted a number of nuclear tests. In response to concerns expressed by the Chairman and Vice Chairman, the Director of Central Intelligence (DCI) reported in testimony before the SSCI on May 14, 1998 that he had asked Retired Admiral David Jeremiah to examine the quality and quantity of intelligence reporting and analysis on the Indian nuclear tests. Admiral Jeremiah sought to evaluate the Intelligence Community's performance, to examine the decisions the Intelligence Community made, and to suggest whether and how improvements should be implemented.

On June 2, 1998, the Committee held a closed hearing to review the findings of the Jeremiah Panel, which identified numerous analytical and collection failures, and DCI Tenet's response to those findings. At the request of the Committee, the DCI provided an unclassified summary of the recommendations of the Jeremiah Report on June 22, 1998. The recommendations fall under the following categories: Analytic Assumptions and Tradecraft; Collection Management and Tasking; Manning and Training; and, Organizing and Integrating the Intelligence Community.

Subsequent to the Jeremiah Report's recommendations, the DCI complied with the Intelligence Authorization Act of 1997 and filled the positions of Assistant Director of Central Intelligence (ADCI) for both Collection, and Analysis and Production. The DCI appointed John Gannon, Chairman of the National Intelligence Council, as the ADCI for Analysis and Production, and Charlie Allen, Chairman of the National Intelligence Collection Board, as the ADCI for Collection. The DCI further directed specific steps to be taken to address the other recommendations of the Jeremiah Panel. The Committee believes that these positions will have a significant impact on the overall organization and effectiveness of the Intelligence Community and its ability to redress several of the serious shortfalls and weaknesses in the Intelligence Community consistent with the recommendations made by the Jeremiah Panel.

The Committee looks forward to Presidential appointment and Senate confirmation of these ADCI positions in full compliance with the provisions of the law.

2. The ballistic missile threat and the Rumsfeld Commission

On July 29, 1998, the Committee met to hear the testimony of the Rumsfeld Commission chaired by former Secretary of Defense Donald Rumsfeld. The bipartisan Rumsfeld Commission was established by Congress in the wake of a controversial National Intelligence Estimate on Ballistic Missile Threats that was completed in November 1995. That estimate concluded “that in the next 15 years, no country other than the declared major nuclear powers will develop a ballistic missile that could threaten the contiguous 48 states or Canada.”

Subsequently, that estimate was criticized by many observers. For example, the General Accounting Office concluded that the estimate overstated the certainty of its conclusions, contained analytical shortcomings, and did not explicitly identify its critical assumptions. In addition, a panel headed by former DCI Robert Gates reported that the estimate, although not politicized, was politically naive and that its failure to include Alaska and Hawaii was foolish from every possible perspective.

A new estimate in the form of an annual report to Congress on foreign missile developments likewise addresses the emerging missile threat. The Committee received that report in March 1998. However, while this estimate was viewed as an improvement over NIE-95-19, the conclusions contained in that report and the Rumsfeld Commission’s current assessment differ.

The Rumsfeld Commission, in addition to its review of “the potential of existing and emerging powers to pose a ballistic missile threat to the United States and to arm ballistic missiles with weapons of mass destruction”, reviewed U.S. collection and analysis capabilities to assess the ability of the Intelligence Community to warn of the ballistic missile threat.

The Commission unanimously concluded that first, the threat to the U.S. posed by emerging capabilities is broader, more mature and evolving more rapidly than has been reported in estimates and reports by the Intelligence Community and secondly, that the Intelligence Community’s ability to provide timely and accurate estimates of ballistic missile threats to the U.S. is eroding and that this erosion has roots both within and outside the intelligence process itself.

The Committee supports the report’s central conclusion that the ability of U.S. intelligence to provide timely warning of missile threats is eroding and believes that the Commission’s exhaustive report represents a valuable input to the on-going debate on the threat posed by ballistic missiles to U.S. national security interests and the proper structure and direction of the U.S. Intelligence Community for the 21st Century. The Committee has sought to direct the Community’s efforts in ways that may enable it to minimize the type of proliferation surprise that may come more frequently in the future if the Community is unable to assess the threats facing the United States in the coming decade.

3. Proliferation threats

The proliferation of nuclear, biological, and chemical weapons and their means of delivery remains a central threat to U.S. national security. The Committee undertook a significant effort to better understand the scope and direction of proliferation trends, to enhance dialogue with the Intelligence Community on proliferation topics, to assess and strengthen the Intelligence Community's ability to monitor and respond to proliferation threats, and to inform the rest of the Senate on key proliferation topics.

The Committee held hearings on a number of proliferation topics in addition to the world threats hearings, which also addressed proliferation concerns. These included hearings on the Indian nuclear tests and the North Korean launch of the Taepo Dong I, a launch vehicle that displayed some of the capabilities of an intercontinental range ballistic missile. The Committee received numerous briefings and reviewed numerous Intelligence Community products addressing proliferation from both the supply and demand sites of the proliferation equation, and established a regular monthly series of briefings on proliferation topics in addition to frequent special briefings on topics of concern. These briefings have provided a valuable channel for regular communication with the Intelligence Community on topics of concern, and because appropriately cleared staff from other committees are regularly invited, have also offered an opportunity to increase the overall level of awareness of proliferation topics.

4. Arms control

In May 1997, the Senate approved the ratification of the Chemical Weapons Convention (CWC). As part of Senate consideration, Chairman Shelby and Vice Chairman Kerrey managed a historic closed debate of the Senate on verification and compliance aspects of the CWC treaty. The Senate relied on findings contained in SSCI classified and unclassified reports which were prepared in the 103rd Congress.

The Committee also held staff briefings on possible Russian nuclear test activities, and the implications for monitoring a Comprehensive Test Ban Treaty (CTBT).

On other arms control issues, during the 105th Congress, the Chairman and Vice Chairman joined together in a letter to the Secretary of State to highlight the importance they attach to the verifiability and monitoring of arms control agreements. They urged the Secretary of State to ensure that the verifiability and compliance reports be completed by a Senate confirmed individual. The Committee will follow with interest the merger of the U.S. Arms Control and Disarmament Agency into the State Department to ensure that the Committee's concerns are addressed.

The Committee also sought to increase its oversight into the implementation of existing arms control agreements, including the START and INF Treaties.

5. Embassy bombings in Africa and the U.S. response

On August 7, terrorists bombed the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania. On August 20, retaliatory and preemptive missile strikes were launched against training

bases in Afghanistan used by groups affiliated with radical extremist and terrorist financier Usama Bin Ladin, identified by U.S. and foreign intelligence services as responsible for the bombings. A pharmaceutical company in Sudan, identified by U.S. intelligence as a chemical weapons facility in which Bin Ladin is reported to have a financial interests, was also struck. President Clinton also signed an executive order freezing assets owned by Bin Ladin, specific associates, and their self-proclaimed Islamic Army Organization, and prohibiting U.S. individuals and firms from doing business with them.

In addition to numerous staff briefings, on September 2, 1998, the Committee held a closed hearing to review the intelligence aspects of the U.S. Embassy bombings in Africa and the U.S. response. The Committee is continuing its review of the Intelligence Community's performance, including intelligence warnings of the terrorist bombings, and the intelligence supporting the U.S. military response.

6. Intelligence implications of NATO enlargement

In 1998, the full Senate considered modifications to the North Atlantic Treaty in order to accommodate the membership of Poland, the Czech Republic and Hungary. A resolution of ratification to accompany the new Protocols of that treaty was reported out of the Committee on Foreign Relations on March 3, 1998.

At the direction of the Chairman and Vice Chairman, the staff of the Senate Select Committee on Intelligence prepared a report in classified and unclassified form to support the ratification process by providing the Committee on Foreign Relations and the full Senate its assessment of the intelligence and counterintelligence implications of the admission of these former Warsaw Pact adversaries into the NATO intelligence structure.

In preparation for the Senate vote on advice and consent to ratification of a modified North Atlantic Treaty, committee staff held numerous briefings with U.S. and NATO intelligence officials and reviewed documents prepared by the intelligence Community on the intelligence and counterintelligence implications of NATO enlargement. Finally, the Committee required the Executive Branch to provide a formal report on the intelligence and counterintelligence ramifications of NATO expansion. Committee staff also met with members of the Alliance's Interagency Working Group on NATO Enlargement to discuss integration efforts in the intelligence field. Finally, Committee members and staff traveled to the national capitals of the three aspiring members and a more detailed knowledge of how the civilian and military services of those countries operate, and whether adequate procedures were in place for the sharing of sensitive information with current NATO members.

The Committee identified certain counterintelligence risks arising from the admission of the new members, but concluded that the intelligence relationships with Poland, Hungary, and the Czech Republic will be, on balance, a net plus for U.S. and NATO interests.

Consistent with and as a consequence of its findings, the Committee proposed a condition to the resolution of ratification of the Protocols to the North Atlantic Treaty. The purpose of the condi-

tion was to chart the progress that the three aspiring members were making in adopting NATO practices and regulations as standard operating procedures in their own intelligence services as well as to encourage all NATO members to enhance their measures for protecting intelligence sources and methods. To that end, the condition required the President or the Director of Central Intelligence to provide the appropriate committees of Congress with various reports on these efforts, two before and one after formal accession of these countries to the Alliance. That proposed condition was accepted unanimously by the full Senate.

7. Assistant Directors of Central Intelligence

The Committee continued its efforts to develop more effective management of Intelligence Community. During the second session of the 105th Congress, the Director of Central Intelligence appointed an interim Assistant Director of Central Intelligence for Analysis and Production. During the short period in which the two positions have been filled, the Committee has found both appointments to have fulfilled a much-needed function in assisting the DCI in the management of the Intelligence Community. There are now clear lines of responsibility for intelligence collection and for intelligence production providing expertise and insights for both the Committee and to the Intelligence Community. Just prior to adjournment of the 105th Congress, the President submitted to the Senate his nomination for the Assistant Director of Central Intelligence for Administration. The Senate adjourned before the Committee could conduct hearings and provide a recommendation to the Senate on this latter nomination. The Committee looks forward to Presidential appointment and Senate confirmation of all ADCI's in full compliance with the law.

8. Oversight of Intelligence Community Inspectors General

During the 105th Congress, the Committee continued to closely monitor the activities of the Inspectors General (IGs) of the Intelligence Community. This oversight included: review of over a hundred IG products, to include audit reports, inspection reports, reports of investigation, and semi-annual reports of IG activities; numerous visits to IG offices for updates on plans and procedures; and attendance at several IG conferences and NSA IG Day. In addition to a variety of hearings focused on issues reviewed by the Intelligence Community IGs, the Committee arranged a number of briefings with community program and IG personnel in order to follow up on the status of IG recommendations. Examples include NRO financial practices, employee grievances, lease and sale of real property, contracting procedures, employee recruitment and security processing, and effective use of resources on new technology.

During the 105th Congress, the Committee also continued its efforts to monitor the operations of the Intelligence Community Offices of Inspector General. The most significant product in this area was a formal review of the operations of CIA's Office of Inspector General. The objective of the SSCI's review was to gain further details on the operations of the three IG staffs (Audit, Inspection, and Investigation). Particular emphasis was placed on the Investigations Staff because it had changed the most since the IG was statu-

torily authorized in 1990. The review focused on both the policies and procedures of the IG office as a whole and those of the individual staffs.

The review found that CIA IG had taken many steps toward improvement in the years since Congress made it statutory. Examples noted included: better training for inspectors and investigators; improved follow up on IG recommendations; strengthened quality controls; additional staff to meet an increased work load; and creation of an IG Counsel team.

These changes resulted in CIA IG reports being widely viewed as quality products that address the issues at hand with the proper amount of analysis, criticism, and independence. In addition, the office has increased the level of trust and respect from within the Agency, the oversight committees, and the Intelligence Community. During the review, several areas were noted where improvements could be made to further increase the effectiveness and stature of the office. These included better definition of the auditable/inspectable universe, and formalizing a number of IG policies. These matters have already been addressed by CIA IG.

Another significant Committee accomplishment during the 105th Congress was the confirmation of the second statutory Inspector General at the Central Intelligence Agency on July 14, 1998. Also during this Congress, the Committee included language within the 1998 Authorization Act that provided CIA IG with subpoena powers held by all other statutory IGs.

Finally, the 1998 Intelligence Authorization Act included language that doubled the size of the NRO IG in order to allow that office to more effectively oversee NRO programs and activities. The Committee also closely monitored the progress of the joint CIA and DOD IG review of the NRO IG office. While the review has remained in the draft stage for some time, the NRO has already acted on the majority of the review's findings, and a new NRO IG has been named. DOD IG is currently conducting a similar evaluation of DIA IG, and the results of that review will be assessed by the Committee's Audit Team.

9. Release of JFK documents

Public Law 102-526, the "President John F. Kennedy Assassination Records Collection Act of 1992," mandated the disclosure of records relevant to the assassination of President John F. Kennedy.

In the spring of 1993, the Senate Select Committee on Intelligence inventoried the original records of the Church Committee (some 450 boxes) and identified 175 archived boxes of material as having possible relevance to the assassination. A page by page review by Committee staff was conducted and resulted in the identification of over 34,000 pages of relevant material.

Coincident with the document identification and cataloging process, agencies with equities in these documents were invited by the Committee to conduct a security review of the 34,000 pages. Most of the documents were declassified and are available to the public through the National Archives and Records Administration (NARA). The Committee transmitted all declassified and redacted documents directly to the NARA. In addition, twelve volumes of

classified documents were transmitted to the President's Review Board on November 25, 1997, for final disposition.

Moreover, in 1997 the Review Board wrote to the Committee and identified additional missing testimony directly relevant to the Church Committee's investigation of the assassination of President John F. Kennedy, as well as testimony regarding alleged CIA assassination plots against foreign leaders. The Committee staff forwarded the specific transcripts that had been identified by the Review Board and the NARA throughout 1997-98. The Committee staff further identified and produced scores of microfilmed copies of the requested transcripts. This testimony was processed and placed into the JFK Collection.

To ensure that the Committee was in total compliance with the JFK Act, the entire collection of Church Committee records were made available to the Review Board staff to verify that the Church Committee files did not contain any additional documents relative to their inquiry. On August 5, 1998, the Review Board staff completed their review of the Church Committee's files. The Review Board determined that there were no additional records relating to the assassination of President John F. Kennedy and that the Review Board was satisfied that the Committee had completed its obligation under the Act. In conclusion, the Senate Select Committee on Intelligence turned over more than 60,000 records relating to the assassination of President John F. Kennedy that are now available to the public through the National Archives and Records Administration.

10. Security automation

The Committee replaced its expensive, decade-old local area network (LAN) and is creating a fully automated LAN to provide Members and appropriately cleared Committee staff access to the Nation's most sensitive intelligence information. Because multi-level security is an unrealized goal in the field of automation, the Committee has taken unusual and creative steps to provide unprecedented access to information while at the same time compartmenting information based on an absolute "need-to-know." Both the Senate Rules Committee and the Senate Computer Center have been especially helpful in ensuring the Committee's unique and extremely sensitive requirements are being fully met. The project should be completed early in the 106th Congress.

11. PolicyNet update

In the Fiscal Year 1995 Intelligence Authorization Act, funds were set aside for the establishment of a secure computer network, referred to as PolicyNet, with CIA designated as the executive agent, to connect the Intelligence Community with the Legislative Branch to provide timely notification and access to intelligence products generated by the Executive Branch.

Since its inception, the Committee staff have worked closely with representatives of the Intelligence Community to enhance and fine tune the capabilities of this computer network and to provide the Legislative Branch with "on-line" access to Intelligence Community products.

PolicyNet is the CIA's Automated Information System that provides classified intelligence products, maps, charts, video, imagery, etc. to the Congress and selected Executive Branch agencies involved with intelligence collection, analysis, and dissemination. In addition, the network's secure video conferencing feature provides the DCI, as well as other senior intelligence officials, with the ability to communicate "face-to-face" with members of the Intelligence Committee on extremely sensitive issues of national importance. This feature also provides for timely briefings of sensitive late breaking events in areas of importance.

PolicyNet provides the Intelligence Committee members and staff with a vehicle that greatly assists the Committee's oversight responsibilities by providing timely intelligence in "near real-time" rather than requiring them to wade through thousands of pages of paper documents. The secure video conferencing benefits the Congressional oversight committees, as well as the Intelligence Community, by providing a capability to brief both the House and Senate on sensitive intelligence matters rather than briefing each Committee separately.

The Committee has greatly benefitted from the resources that the Intelligence Community has made available on PolicyNet through direct "on-line" access. The most precious resource of any organization is information and the ability to retrieve it quickly. PolicyNet's around the clock accessibility is key to providing members and staff with timely notification and access to intelligence products.

Moreover, the funds authorized also provided connectivity to the Office of Senate Security for non-Committee members and their appropriately cleared staff to have greater access to intelligence related material on a variety of issues.

12. SSCI web page [www.senate.gov/committee/intelligence.html]

The Senate Select Committee on Intelligence (SSCI) web site [www.senate.gov/committee/intelligence.html] was established in 1998 in response to increased constituent and Intelligence Community demand for information regarding scheduled Committee hearings, press releases, Committee publications, and legislation.

The SSCI web site serves as a means to publicize information derived from unclassified proceedings, pursuant to the restrictions of S. Res. 400 and Committee rules for dissemination of certain categories of information. The site also serves as a means by which our current leadership and membership is displayed.

Visitors to the SSCI web site will find an array of images, graphics, and animation, as well as an outline as follows: The Home Page; Committee Members Page; Jurisdiction Page; Legislation Page; Hearings Page; Press Releases Page; Publications Page; Intelligence Laws Page; and the Other Links Page.

The Home Page.—Displays welcome information, the address and telephone number for the Committee, photos of current Committee Chairman and Vice Chairman, with links to their perspective U.S. Senate personal office web site.

Committee Members Page.—Displays a list of current Committee members, including the Committee Chairman and Vice Chairman, as well as the Ex-Officio members, Senator Trent Lott (R—Mis-

issippi), and Senator Thomas A. Daschle (D—South Dakota). There is a link to the U.S. Senate personal office web site of each respective member listed.

Jurisdiction Page.—This page contains S. Res. 400 and the Rules of Procedure by which the Committee Members and staff must comply.

Legislation Page.—All Committee-sponsored legislation is posted here, including the Intelligence Authorization Act for Fiscal Year 1999.

Hearings Page.—Lists all open hearings of the SSCI, beginning in the 105th Congress through the current date, posted individually and listed in reverse chronological order. Upon clicking a posted hearing link, the visitor goes to a separate web page that list the names of the witnesses in attendance at the respective hearing. If the witness(s) provides a statement, it will be posted. Transcripts for the respective hearings will be available either as an attachment or via a link to another source.

Press Releases Page.—All SSCI press releases commencing in the 105th Congress through to the current date, posted in reverse chronological order.

Publications Page.—All SSCI publications commencing in the 105th Congress through to the current date, posted in reverse chronological order.

Intelligence Laws Page.—This page lists all of the intelligence-related laws, statutes, and executive orders that are under the jurisdiction of the SSCI or that are of interest to the Intelligence Committee.

Other Links Page.—This page provides a link to other web sites external to the SSCI web site, that pertain to intelligence-related matters.

D. AUDITS

The Committee's Audit Staff was created in 1988 to provide "a credible independent arm for Committee review of covert action programs and other specific Intelligence Community functions and issues." During the 105th Congress the Audit Team consisted of three full-time auditors, with support provided by other staff on an as needed basis. The team led or provided significant support to the Committee's review of a number of administrative and operational issues relating to the agencies of the Intelligence Community. In addition, the Audit Staff completed four in-depth reviews of specific intelligence programs or issues. These reviews included the following:

1. *Major Systems Acquisition Program of the National Reconnaissance Office (NRO)*

The audit team conducted a thorough review of the NRO's financial management, contract administration, and program oversight practices for a major satellite system. The final report noted both strengths and weaknesses in the financial management of the program and contained recommendations to improve the NRO's acquisition management practices.

2. *The Intelligence Community's use of cover to protect operations*

Cover became a significant concern in February 1995, when the Committee received notification from the Central Intelligence Agency that the French Interior Minister had delivered a demarche to the U.S. Ambassador to France regarding U.S. intelligence activities in France. The audit was conducted to determine whether cover problems, such as those which occurred in Paris, were unique or represented a systemic weakness within the Intelligence Community. The audit uncovered a number of significant issues, and the report included short term recommendations to correct immediate problems, as well as long-term solutions. Long-term solutions require more operational planning, and investment in research and development of new intelligence collection methods to be successfully deployed in the technically challenging environment of the future.

3. *Foreign Intelligence Surveillance Act (FISA)*

1998 marked the 20th anniversary of the Foreign Intelligence Surveillance Act (FISA). FISA established comprehensive legal standards and procedures for the use of electronic surveillance to collect foreign intelligence and counterintelligence within the United States. In 1994, FISA was expanded to include physical search authority. The objective of the SSCI staff audit was to follow up on preliminary work initiated during the 104th Congress by conducting the Committee's first comprehensive review of the FISA process since 1984. The audit covered each of the categories of FISA collection identified in the Act, but focused most closely on policies for approving, implementing, and managing FISA operations. In addition, the procedures of the Department of Justice's Office of Intelligence Policy Review and the Foreign Intelligence Surveillance Court were considered. The audit found that FISA legal review and approval procedures are appropriately rigorous, effective, and consistent with the law. The report makes recommendations to enhance certain FISA procedures, ensure the continued utility of FISA authorities, and standardize Committee oversight.

In addition to these efforts, the Audit Team initiated a review of CIA's contracting procedures and participated in the Committee's China investigation by conducting a review of the Intelligence Community's collection and analysis capabilities against this target.

E. TECHNICAL ADVISORY GROUP (TAG) REPORTS

1. *The future of signals intelligence (SIGINT)*

The Committee appointed a panel of experts knowledgeable in a wide range of technologies to advise the Committee on challenging and compelling technical issues that face the Intelligence Community. This group, the Technical Advisory Group (TAG), was formed into two Panels—one to focus on Human Intelligence (HUMINT) issues and challenges, and the second to address Signals Intelligence (SIGINT).

The Committee asked the SIGINT Panel to provide an assessment of the "Future of SIGINT", looking toward the 21st Century where global communications networks will dominate. The Panel

began by reviewing a “cryptologic architecture” which was the product of a Community-wide effort to create a framework for the future, and was led by NSA. From this document the Panel identified a number of issues to research in greater depth. Based on their research, the SIGINT Panel made many recommendations, both evolutionary and revolutionary, to the Committee. Some of the Panel’s key findings:

NSA’s core mission is an essential national capability, and must be dramatically rejuvenated. NSA must move aggressively in a number of areas (e.g., modernization) to preserve their key role in the Intelligence Community.

Declining budgets and obsolete equipment are impeding NSA’s ability to maintain their technical edge.

Advanced research and development must receive greater emphasis and more funding. The Panel suggested that significant investment should be made in basic research projects—high risk but potentially extraordinary payoff.

NSA must revitalize and modernize recruiting and hiring techniques.

NSA’s general organizational structure is not maximized to meet today’s challenges. More administrative and support tasks should be contracted, as well as many information services. The TAG suggested distributing budget and authority to those with the problems being worked, and developing more effective metrics.

NSA has initiated several actions in response to the recommendations of the TAG. Many of these actions require a significant infusion of funds, some of which were provided by Congress in fiscal year 1999. Many of the projects, particularly the Information Technology modernization efforts, will require sustained effort before the goals can be accomplished. The Committee will continue to closely monitor NSA’s efforts to modernize.

2. The future of human intelligence (HUMINT)

In 1997, as part of its efforts to gain a better understanding of the technology issues facing the Intelligence Community, the Committee also established a Technical Advisory Group (TAG) to examine human intelligence (HUMINT) gathering capabilities and plans of the CIA’s Directorate of Operations (DO). Comprised of prominent scientists and former high-ranking intelligence community officials with extensive expertise in technical matters, the TAG examined how the Directorate of Operations could effectively leverage the explosion in information technologies.

The HUMINT TAG made several observations and recommendations. Among them:

Clandestine operations are an absolutely essential element of national security and will play an increasingly important role in a complex future world posing significant new threats to our national security;

A HUMINT vision and plan must recognize and place proper emphasis on the threats as well as the opportunities brought about by the accelerating pace of technological innovation in a world dominated by information technology;

Of paramount concern are threats from both national and transnational groups populated by a diverse collection of cultures and armed with high technology; and

Future U.S. clandestine operations can yield the required quantity and quality of foreign intelligence only with a well-constructed vision of the future and an executable, affordable plan for meeting these future challenges.

In response to the TAG's recommendations, the CIA made key changes in an effort to more effectively take advantage of opportunities provided by technological innovation. As in the case of NSA, the committee will closely monitor the DO's efforts to make better use of technological innovations.

IV. CONFIRMATIONS

A. GEORGE J. TENET

On December 15, 1996, John M. Deutch resigned as Director of Central Intelligence (DCI). Twenty-four days later the President of the United States nominated William Anthony Kirsopp Lake to replace Dr. Deutch. The Committee held public hearings on March 11–13, 1997 to consider Mr. Lake's nomination. Before the Committee had an opportunity to vote on Mr. Lake's nomination, however the President withdrew Mr. Lake's nomination and in the alternative nominated George J. Tenet.

On May 6, 1997, the Committee held a public hearing on Mr. Tenet's nomination. Mr. Tenet had served as Deputy Director of Central Intelligence for approximately one year at the time of his nomination to be DCI. He had previously served as Special Assistant to the President and Senior Director for Intelligence Programs at the National Security Council. He also served on President Clinton's national security transition team following almost four years as Staff Director for the Senate Select Committee on Intelligence. Mr. Tenet holds a BSFS from the School of Foreign Service at Georgetown University and an MIA from the School of International Affairs at Columbia University.

On July 10, 1997, the Committee favorably reported Mr. Tenet's nomination to the Senate by a vote of 19–0. The Senate approved his nomination in executive session on July 10, 1997.

B. LIEUTENANT GENERAL JOHN A. GORDON, USAF

On October 1, 1997, the Committee held a public hearing on the nomination of Lieutenant General John A. Gordon, USAF to be the Deputy Director of Central Intelligence. General Gordon was serving as Associate Director of Central Intelligence for Military Support at the time of his nomination. General Gordon previously served as Special Assistant to the Air Force Chief of Staff for Long Range Planning and also served as the Director of Operations for the Air Force Space Command after having worked on the National Security Council staff specializing in defense and arms control, including the START II negotiations. General Gordon holds a BS with honors in physics from the University of Missouri, an MS from the Naval Postgraduate School, and an MA in business administration from the Highlands University.

On October 8, 1997, the Committee favorably reported Lt. General Gordon's nomination to the Senate by a vote of 19-0. The Senate approved his nomination in executive session on October 27, 1997.

C. JOAN A. DEMPSEY

On May 21, 1998, the Committee held a public hearing on the nomination of Joan A. Dempsey to be the first Deputy Director of Central Intelligence for Community management (DDCI/CM). The DDCI/CM position was created by the Intelligence Authorization Act for Fiscal Year 1997 as a part of the Committee's ongoing Intelligence Community reform efforts. The DDCI/CM is intended to be the principal manager of the various components of the Intelligence Community.

Ms. Dempsey was serving as Chief of Staff for the Director of Central Intelligence at the time of her nomination. Ms. Dempsey previously served as Deputy Assistant Secretary of Defense for Intelligence and Security and Acting Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. She also served as the Director of the National Military Intelligence Production Center, Director of the Military Intelligence Staff, and the Deputy Director of the General Defense Intelligence Program Staff. Ms. Dempsey holds a BA from Southern Arkansas University and an MPA from the University of Arkansas.

On May 22, 1998, the Committee favorably reported Ms. Dempsey's nomination to the Senate by a vote of 19-0. The Senate approved her nomination in executive session on that same day.

D. ROBERT M. MC NAMARA, JR.

The Committee attempted to create a confirmable General Counsel position in the Fiscal Year 1994 and 1995 Intelligence Authorization Bills, but was unable to reach agreement in conference with the Permanent Select Committee on Intelligence of the House of Representatives. In 1996, however, a consensus was reached and on October 11, 1996, the President signed into law the Intelligence Authorization Act for Fiscal Year 1997 (P.L. 104-293). Section 813 of that Act established the statutory position of General Counsel for the Central Intelligence Agency. Until the enactment of P.L. 104-293, all elements of the Intelligence Community, save for the CIA, were within departments served by a statutory General Counsel appointed by the President and confirmed by the Senate. The Committee firmly believed and still believes that the confirmation process enhances accountability to Congress while raising the prestige of the individual occupying the position.

On October 31, 1997, the President nominated Robert M. McNamara, Jr. to be the first General Counsel of the Central Intelligence Agency confirmed by the Senate. Mr. McNamara was serving as Assistant General Counsel for Enforcement at the U.S. Department of the Treasury at the time of his nomination. Mr. McNamara previously served as General Counsel of the Peace Corps, Assistant Director of Enforcement at the Commodity Futures Trading Commission, Assistant Majority Counsel of the U.S. Senate Watergate Committee, and as an Assistant United States Attorney. Mr.

McNamara holds a BA from Mount Carmel College, an AB from John Carroll University, and a JD from Georgetown University.

On November 7, 1997, the Committee favorably reported by Mr. McNamara's nomination to the Senate by a vote of 19-0. The Senate approved his nomination in executive session on November 8, 1997.

E. L. BRITT SNIDER

On July 8, 1998, the Committee held a public hearing on the nomination of L. Britt Snider to be Inspector General of the Central Intelligence Agency. Mr. Snider was serving as Special Counsel to the Director of Central Intelligence at the time of his nomination. He previously served as Staff Director for the Commission on the Roles and Capabilities of the Intelligence Community, General Counsel for the Senate Select Committee on Intelligence, Assistant Deputy Under Secretary of Defense for Policy (Counterintelligence and Security), Counsel of the Select Committee on Intelligence (the Church Committee), and Counsel to the Subcommittee on Constitutional Rights, Committee on the Judiciary of the U.S. Senate. Mr. Snider holds a BA from Davidson College and a JD from the University of Virginia School of Law.

On July 14, 1998, the Committee favorably reported Mr. Snider's nomination to the Senate by a vote of 19-0. The Senate approved his nomination in executive session on July 30, 1998.

F. NEW STANDARD FOR BACKGROUND INVESTIGATION REVIEW

In accordance with Rule 5.6 of the Committee's Rules of Procedure, a nomination may not be reported to the Senate unless the nominee has filed a background statement with the Committee. Nowhere in the rules of procedure, however, is the term "background statement" defined. During the consideration of Mr. Anthony Lake to be the Director of Central Intelligence, the nature and extent of background information that should be made available to the Committee and the Senate became an issue.

At a business meeting of the Committee on April 23, 1997 to discuss the matter, the following resolution was adopted:

Be it resolved, That no confirmation hearing in connection with the nomination of the Director of Central Intelligence referred to this Committee, shall be held sooner than seven days after the nominee's financial disclosure statement is filed with the Committee and the background investigation is made available for review by the Chairman and Vice-Chairman. At the request of members only of the Committee, the Chairman or Vice Chairman shall authorize them to review the background investigation file. The background investigation file shall contain materials that are equivalent to those routinely made available to the Senate Judiciary Committee in connection with judicial nominations, i.e., the full Federal Bureau of Investigation field office investigative reports (including Form 302s and investigative inserts) and a letterhead memorandum reflecting the results of indices checks and other inquiries.

There was debate on whether the resolution should also be extended to other nominees. After some discussion, the Committee agreed that the Chairman and Vice Chairman could extend this standard to any nominee at their discretion.

V. APPENDIX

A. SUMMARY OF COMMITTEE'S ACTIVITIES

1. *Number of meetings*

During the 105th Congress, the Committee held a total of 95 hearings or on-the-record briefings. Of these, forty-seven were oversight hearings, fifteen were legislative hearings, and fifteen were nomination hearings. There were sixteen Committee business or legislative mark-up meetings. Also, the Committee held two on-the-record briefings.

2. *Bills and resolutions originated by the committee*

S. Res. 30—An original resolution authorizing expenditures by the Senate Select Committee on Intelligence.

S. 858—An original bill to authorize appropriations for fiscal year 1998 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

S. 1668—An original bill to encourage the disclosure to Congress of certain classified and related information.

S. 2052—An original bill to authorize appropriations for fiscal year 1999 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Retirement and Disability System, and for other purposes.

3. *Bills referred to the committee*

S. 1751—A bill to extend the deadline for submission of a report by the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction.

4. *Committee publications*

Senate Report 105-1—Special Report—Committee Activities January 4, 1995–October 3, 1996.

Senate Report 105-24—SSCI Report to accompany FY 98 Intelligence Authorization Bill (June 9, 1997).

Senate Hearing 105-201—Hearing before the Senate Select Committee on Intelligence—Current and Projected National Security Threats to the United States (February 5, 1997).

Senate Hearing 105-234—Nomination of Lieutenant General John Gordon, USAF, to be Deputy Director of Central Intelligence (October 1, 1997).

Senate Hearing 105-276—Hearing before the Senate Select Committee on Intelligence—People's Republic of China (September 18, 1997).

Senate Hearing 105-290—Hearing before the Senate Select Committee on Intelligence—1985 Zona Rosa Terrorist Attack in San Salvador, El Salvador (May 20, July 30, 1997).

Senate Hearing 105-314—Nomination of George J. Tenet to be Director of Central Intelligence (May 6, 1997).

Senate Hearing 105-424—Hearing on Nomination of Anthony Lake to be Director Central Intelligence (March 11, 12, 13, 1997).

Senate Report 105-165—Report to accompany S. 1668—The Disclosure to Congress Act of 1998 (February 23, 1998).

Senate Report 105-185—Senate Select Committee on Intelligence report to accompany the FY 1999 Intelligence Authorization Bill (S. 2052) filed May 7, 1998.

Senate Hearing 105-587—Senate Select Committee on Intelligence hearing on Current and Projected National Security Threats to the United States (January 28, 1998).

Senate Hearing 105-729—Disclosure of Classified Information to Congress (February 4, 11, 1998).

