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## **The Proposed Authorities of a National Intelligence Director: Issues for Congress and Side-by-Side Comparison of S. 2845, H.R. 10, and Current Law**

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# The Proposed Authorities of a Director of National Intelligence: Issues for Congress, and Side-by-Side Comparison of S. 2845, H.R. 10, and Current Law

## Summary

The 9/11 Commission, in its recent report on the attacks of September 11, 2001, criticized the U.S. Intelligence Community's (IC) fragmented management structure and questioned whether the U.S. government, and the IC, in particular, is organized adequately to direct resources and build the intelligence capabilities that the United States will need to counter terrorism, and to address the broader range of national security challenges in the decades ahead.

The Commission made a number of recommendations, one of which was to replace the current position of Director of Central Intelligence (DCI) with a National Intelligence Director (NID) who would oversee national intelligence centers on specific subjects of interest — including a National Counterterrorism Center (NCTC) — across the U.S. government, manage the national intelligence program; oversee the agencies that contribute to it; and have hiring, firing, and budgetary authority over the IC's 15 agencies. Although the Commission recommended that the director be located in the Executive Office of the President, the Commission Vice Chairman in testimony before Congress on September 7, 2004, withdrew that portion of the recommendation in light of concerns that the NID would be subject to undue influence. The Commission further recommended that a deputy NID be established to oversee the day-to-day operations of the Central Intelligence Agency (CIA). The Commission's recommendation to strengthen management authority over the IC is the latest contribution to an IC structural reform debate that dates at least to 1955, when arguments for stronger IC authority began to surface. OMB deputy director James Schlesinger in 1971 first broached the NID concept.

Congress currently is considering two principal bills, S. 2845, introduced by Senators Collins and Lieberman, and H.R. 10, introduced by Representative Hastert, that would establish the NID position. [For a comprehensive comparison of all recent NID legislative proposals, see CRS Report RL32600 and CRS Report RL32601].

Reactions to the concept of an NID have been mixed since its inception. Supporters argue that the DCI cannot manage the IC, the CIA and serve as the President's chief intelligence advisor, and do justice to any of the jobs. Other than at the CIA, the DCI also lacks hiring, firing and budget authority. They argue that the absence of strong, centralized leadership has resulted in divided management of intelligence capabilities; lack of common standards and practices across the foreign-domestic intelligence divide; structural barriers that undermine the performance of joint intelligence work; and a weak capacity to set priorities and move resources.

Opponents counter that an NID would lose day-to-day control over the CIA, a natural power base and, as a result, influence. They also contend that an NID will shift the balance of control away from DOD, risking intelligence support to the warfighter. The congressional role includes deciding whether to establish the position of the NID and its authority. This report will be updated as events warrant.

## Contents

Congressional Proposals Concerning NID Position .....	2
DCI Budget-Related Responsibilities and Authorities Under the National Security Act of 1947 Are Seen by Some as Limited .....	3
Collins/Lieberman (S. 2845) and Hastert (H.R. 10) Would Establish an NID .....	4
Arguments Offered In Favor of Establishing an NID .....	4
Arguments Offered in Opposition to Establishing an NID .....	5
History of Recommendations to Centralize and Strengthen IC Leadership .....	7
Second Hoover Commission, 1955 .....	7
The Schlesinger Report, 1971 .....	7
Murphy Commission, 1975 .....	8
Church Committee, 1976 .....	8
Pike Committee, 1976 .....	8
Clifford/Cline Proposals, 1976 .....	8
Charter Legislation, 1978 .....	8
Executive Branch Orders, 1976-1981 .....	9
Turner Proposal, 1985 .....	9
Boren-McCurdy, 1992 .....	9
Aspin-Brown Commission, 1996 .....	9
Specter/Combest, 1996 .....	10
Scowcroft Commission, 2001 .....	10
The Joint Inquiry Into September 11 Terrorist Attacks .....	10
The 9/11 Commission .....	10
Appendix 1. Selected NID Legislation Compared to Current Law .....	12

## List of Tables

Comparison of S. 2845, H.R. 10, and Current Law .....	12
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# The Proposed Authorities of a National Intelligence Director: Issues for Congress and Side-by-Side Comparison of S. 2845, H.R. 10, and Current Law

Proposals to reorganize the United States Intelligence Community began to surface almost as soon as the management structure for the Intelligence Community (IC) was statutorily established by the passage of the National Security Act of 1947. Since then, at least 19 commissions, committees and panels, created by either the executive or legislative branches, have made numerous recommendations for structural reorganization. Several of the proposals urged stronger centralized IC authority and, in some cases, the establishment of the position of National Intelligence Director (NID).

The so-called Second Hoover Commission, established by law to examine the organization of the executive branch in 1953, became the first independent panel to push for stronger centralized IC authority. [See page 7 for a historical review of efforts to centralize and strengthen IC leadership]. In examining ways to strengthen the IC, the commission recommended that an “executive officer” be named to manage the CIA so that the DCI could focus attention on the IC.

Eighteen years and several commissions, committees, and panels after former President Herbert Hoover made his recommendations, the Office of Management and Budget’s (OMB) Deputy Director James R. Schlesinger (later a DCI), after studying the IC’s management at the behest of former President Richard Nixon, blamed the absence of strong central IC leadership for “unproductively duplicative” intelligence collection systems, and the failure to coordinate the allocation of resources. Schlesinger considered the establishment of an NID, but backed away, recommending, instead, “a strong DCI who could bring intelligence to an adequate level of quality and responsiveness.”<sup>1</sup>

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<sup>1</sup> See Richard A. Best, Jr. and H. Andrew Boerstling, “Proposals for Intelligence Reorganization, 1949-1996,” in *IC21: Intelligence Community in the 21<sup>st</sup> Century*, Staff Study, House Permanent Select Committee on Intelligence, 1996. (The July, 2004 update of the CRS report is CRS Report RL32500, *Proposals for Intelligence Reorganization, 1949-2004*, by Richard A. Best.)

In one of the most recent iterations of the NID debate, the 9/11 Commission<sup>2</sup> on July 22, 2004, recommended that the position of the DCI should be replaced by a National Intelligence Director who would oversee national intelligence centers on specific subjects of interest across the U.S. government, and would manage the U.S. national intelligence program and oversee the agencies that contribute to it. The Commission recommended the establishment of the position of deputy NID for Foreign Intelligence to direct the CIA's day-to-day operations. The Commission also recommended the creation of a National Counterterrorism Center (NCTC), which would be placed in the Executive Office of the President, and be under the control of the NID. The NCTC would be a center for joint operational planning and joint intelligence.<sup>3</sup>

## **Congressional Proposals Concerning NID Position**

There have been a variety of proposals concerning the NID<sup>4</sup> position. Following the creation of the intelligence oversight committees in the Senate (1976) and in the House (1977), Congress considered charter legislation that included, among other proposals, one that would have created the position of an NID to manage the IC. A presidentially selected deputy would have managed the CIA. Confronted by strong opposition to the overall legislation, which also included language governing covert actions, the Committees did not report the respective bills.

In 1992, Senator David Boren and Representative David McCurdy, respective chairmen of the Senate Select Committee on Intelligence (SSCI) and House Permanent Select Committee on Intelligence (HPSCI), introduced legislation creating the NID position and giving the position the authority to program and reprogram funds. Their legislation also would have created a separate director of CIA. Boren and McCurdy failed to win adoption of their legislation in the face of opposition by the Department of Defense (DOD) and the congressional Armed Services Committees.

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<sup>2</sup> The 9/11 Commission, formally known as the National Commission on the Terrorist Attacks Upon the United States, was created by congressional legislation and the signature of President George W. Bush in late 2002 (P.L. 107-306, Nov. 27, 2003). It was chartered to prepare a full and complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. The Commission was also mandated to provide recommendations designed to guard against future attacks.

<sup>3</sup> See The 9/11 Commission Report, *National Commission on the Terrorist Attacks Upon the United States*, July 22, 2004, p. 403.

<sup>4</sup> The 9/11 Commission recommendations refer to a National Intelligence Director, or NID; so, too, do the two principal legislative bills — S. 2845 and H.R. 10 — being considered by Congress. Historically, however, various proposals generally have named the position Director of National Intelligence, or NID. This paper will use the “NID” nomenclature.

In December 2002, the Congressional Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001<sup>5</sup>, recommended that a new cabinet level Senate-confirmed NID position be established, and that a separate director be named to manage the CIA. The Joint Inquiry also recommended that the NID be granted the full range of management, budgetary and personnel responsibilities needed to make the entire IC operate as a coherent whole.<sup>6</sup>

## **DCI Budget-Related Responsibilities and Authorities Under the National Security Act of 1947 Are Seen by Some as Limited**

Proponents of establishing the NID position contend the current IC management structure is characterized by an incoherence they attribute to two flaws. First, because the DCI is dual-hatted, heading both the IC and the CIA, they maintain he is too busy to do either job well. Second, they argue that the DCI's hiring, firing and budget authorities are limited. From their perspective, the result is an IC management structure that lacks direction and focus.

Any discussion of the NID concept invariably leads to a debate over whether the two jobs should be split, and whether current DCI budget authorities are strong enough to permit effective management of the IC.

With regard to budget authority, the National Security Act of 1947 authorizes the DCI to facilitate the development of an annual intelligence budget [1947 National Security Act, see Sec.103.(c)(1)(A) [50 U.S.C. 403-3(c)(1)(A)]. The act also stipulates that the DCI prepare and approve all budgets for each of the IC agencies comprising the National Foreign Intelligence Program (NFIP)<sup>7</sup> [1947 National Security Act, see Sec.104.[50 U.S.C. 403-4] (b)].

More than 85% of the intelligence budget, however, is executed by agencies not under the DCI's control.<sup>8</sup> Although the DCI has the authority to approve all budgets for each of the IC agencies comprising the NFIP, he or she cannot transfer funds and personnel during the year of budget execution without the agreement of the agency head of the IC element that would be affected by such a transfer. Moreover, the appropriation for the NFIP agencies, including the CIA, is given directly to the

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<sup>5</sup> The Senate and House congressional oversight committees in 2002 initiated a joint inquiry into the September 11<sup>th</sup>, 2001 terrorist attacks on the United States. The inquiry issued its recommendations in December 2002, and an unclassified report of its findings in July, 2003.

<sup>6</sup> See U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence, *Joint Inquiry Into Intelligence Community Activities Before and After The Terrorist Attacks of September 11, 2001* (H.Rept. 107-792 and S.Rept. 107-351), errata print accompanying report, Recommendation No. 1, pp. 2-3.

<sup>7</sup> The National Foreign Intelligence Program is an aggregation of the budgets of the 15 agencies, including the CIA, which comprise the IC.

<sup>8</sup> See Report of the Commission on the Roles and Capabilities of the United States Intelligence Community, *Preparing for the 21<sup>st</sup> Century An Appraisal of the U.S. Intelligence*, March 1, 1996, P. xix.

Secretary of Defense, who then disburses the funds to the various agencies, including the NFIP's three largest agencies — the National Security Agency (NSA), the National Reconnaissance Office (NRO) and the National Geospatial-Intelligence Agency (NGA).<sup>9</sup> Each of those agencies, among other tasks, supports Department of Defense (DoD) combat operations, and each answers to the Secretary of Defense. The DCI is left with exclusive budget execution authority only over the CIA.<sup>10</sup> Some have asserted that, in part because of the DCI's relatively weak position with respect to the IC, DCIs historically have devoted the bulk of their time to managing the CIA and serving as the President's intelligence advisor, rather than overseeing the IC.<sup>11</sup>

## **Collins/Lieberman (S. 2845) and Hastert (H.R. 10) Would Establish an NID**

Senators Susan Collins and Joe Lieberman, and Speaker of the House of Representatives Dennis Hastert, have separately introduced legislation that would establish the NID position. Both bills would establish a presidentially-nominated, Senate-confirmed position of NID, who would serve as the head of the IC's 15 separate intelligence agencies, including the CIA. Both bills also would establish a separate Senate-confirmed Director of Central Intelligence, who would manage the CIA, and would be prohibited from serving simultaneously as the NID. See Appendix 1 for a side-by-side comparison of NID authorities in both bills.

## **Arguments Offered In Favor of Establishing an NID**

Supporters of the NID concept argue that the DCI, who manages the IC and the CIA, and serves as the principal intelligence advisor to the President, has too many jobs, and that an NID, unburdened by the need to manage the CIA, must be established if the IC is to be effectively managed.<sup>12</sup>

They also argue that an NID must be empowered with two authorities the DCI now lacks: the authority to hire and remove IC agency heads in consultation with the Defense Secretary (currently, the Secretary of Defense selects principal IC agency heads for the three combat support agencies — NSA, NRO, and NGA — with the concurrence of the DCI); and the authority to move funding and personnel within or across IC agencies at any time during the year of execution with congressional

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<sup>9</sup> The National Security Agency is responsible for electronic intercepts; the National Reconnaissance Office designs, builds and operates the nation's reconnaissance satellites; and the National Geospatial-Intelligence Agency (NGA) provides geospatial intelligence, i.e. mapping. The NGA was formerly known as the National Image and Mapping Agency.

<sup>10</sup> See Studies in Intelligence, *The Need to Reorganize the Intelligence Community*, by Larry C. Kindsvater, Vol. 47, No. 1, 2003, P. 34.

<sup>11</sup> See Report of the Commission on the Roles and Capabilities of the United States Intelligence Community, *Preparing for the 21<sup>st</sup> Century An Appraisal of the U.S. Intelligence*, March 1, 1996, P. xix.

<sup>12</sup> See the National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, July, 2004, p. 409.

approval.<sup>13</sup> Some proponents add what they characterize as a third essential authority — the power to set standards for the IC’s information infrastructure and personnel.<sup>14</sup>

From the prospective of proponents, failure to establish an empowered NID with hiring, firing and budget authority will leave the IC with divided management of intelligence capabilities; lack of common standards and practices across the foreign-domestic intelligence divide; structural barriers that undermine the performance of joint intelligence work; and a weak capacity to set priorities and move resources.

They cite DCI George Tenet’s 1998 “declaration of war”<sup>15</sup> on Osama Bin Laden and the corresponding lack of an integrated IC response as a clear indication of the need for an NID.<sup>16</sup> Senator Bob Graham, a co-chairman of the 9/11 congressional joint inquiry, stated, “The intelligence community needs a leader with the clout to set common goals, establish priorities, knock heads and ensure that the American people are protected.”<sup>17</sup> To accomplish that goal, NID supporters argue, requires an empowered NID with clear statutory end-to-end IC budget and personnel authorities, including authority over those large portions of the NFIP budget now controlled by the Secretary of Defense.

## **Arguments Offered in Opposition to Establishing an NID**

Some opponents counter that although perhaps a good idea, establishing the position of NID will have only a marginal impact, and assert that had this change

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<sup>13</sup> See Studies in Intelligence, *The Need to Reorganize the Intelligence Community*, by Larry C. Kindsvater, Vol. 47, No. 1, 2003, Ibid. P. 36. With regard to the selection of agency heads, Sec. 106 (a) of the National Security Act [50 U.S.C. 403-6 (a) stipulates that if the DCI does not concur in the personnel recommendation by the Secretary of Defense, the Defense Secretary still may present his recommendation to the President without the DCI’s concurrence, but include in the recommendation that the DCI does not agree with the recommendation.

<sup>14</sup> See the National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, July 2004, p. 410.

<sup>15</sup> In December 1998, following the August bombings earlier that year of two American embassies in East Africa, Director of Central Intelligence George Tenet gave the following direction to his deputies: “We must now enter a new phase in our effort against Bin Ladin... We are at war ... I want no resources or people spared in this effort, either inside the CIA or the Community.” See congressional *Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001*, pp 5-6.

<sup>16</sup> See U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence, *Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001* (H.Rept. 107-792 and S.Rept. 107-351), errata print accompanying report, Recommendation No. 1, pp. 230-234.

<sup>17</sup> See Davies, Frank, “Graham, 2 Allies Introduce Overhaul of U.S. Intelligence,” *The Miami Herald*, August 1, 2003.



been made prior to the September 11 attacks, it would not have significantly altered the way the U.S. dealt with Al Qaeda, and certainly would not have prevented the 9/11 attacks. They suggest that a more important step would be to hire more capable people throughout the IC.<sup>18</sup>

Other opponents contend that rather than strengthening control over the IC, the establishment of an NDI would actually weaken IC management. They assert an NID would lose day-to-day control over the CIA, a natural power base. Without it, the NID will lose influence, according to opponents. Admiral Bobby Inman, Former Deputy DCI and NSA director, said that DCIs rely on the CIA for their effectiveness and that an NID “would be like the Drug Czar,”<sup>19</sup> a position that critics have argued has little management control over U.S. government agencies engaged in counternarcotics.

Other skeptics assert that establishing the position of NID will only add another layer of bureaucracy, and risks disruption at a time when terrorists continue to threaten to attack the United States.

Critics are likely to also assert that centralized management control will be further weakened if the NID is not granted meaningful hiring, firing and budget authority. They may argue that the DCI’s relatively robust authorities to approve IC budgets and control budget reprogramming historically have gone largely unused in the face of DOD opposition. In other words, critics say, the DCIs have had the authority, but simply have chosen not to exercise it.

Some critics have voiced concern about the 9/11 Commission’s recommendations to locate the office of the NID in the executive office of the President. They contend that doing so risks the politicization of intelligence, would give the White House more direct control over covert operations, and would blur the line between foreign and domestic covert operations.<sup>20</sup> They also express concern that Congress will experience greater difficulty in conducting oversight of the IC because the proximity of the NID to the White House will more frequently raise the issue of executive privilege.

Some critics contend that the 9/11 Commission’s concept of the NDI would shift too much influence over the IC to the Defense Department, because DOD would retain most of its roles under the commission’s proposal and, they say, stand to gain influence. In contrast, other critics of the NID concept oppose it because they believe

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<sup>18</sup> See Richard A. Clarke, “Now For the Punches the 9/11 Commission Pulled,” *Houston Chronicle*, July 28, 2004.

<sup>19</sup> See Staff Study, Permanent Select Committee on Intelligence, *IC21: Intelligence Community in the 21<sup>st</sup> Century*, 1996, P. 335, which includes an out-of-print CRS report, *Proposals for Intelligence Reorganization, 1949-1996*, by Richard A. Best and Herbert Andrew Boerstling. See page 35 of that Best/Boerstling CRS report. (The update of the report is CRS Report RL32500, *Proposals for Intelligence Reorganization, 1949-2004*, by Richard A. Best.)

<sup>20</sup> See Walter Pincus, “9/11 Panel’s Plan Would Reduce Influence of CIA,” *Washington Post*, July 29, 2004, p. 6.

NID authorities could be so strengthened that DOD interests might suffer, if an empowered NID were to favor providing more intelligence to policy makers rather than the warfighter. They argue the IC's three largest agencies — NSA, NRO and NGA — are combat support agencies that collect and disseminate intelligence affecting tactical military operations. It, therefore, is entirely appropriate, they argue, that the Secretary of Defense, rather than the DCI, control these agencies and the dollars that fund them, given that the needs of military commanders often differ from those of policymakers who generally are more interested in strategic intelligence.<sup>21</sup>

## **History of Recommendations to Centralize and Strengthen IC Leadership**

The issue of centralized IC leadership was first addressed by the Second Hoover Commission in 1955. The following lists those Commissions, reports, individuals, executive orders and legislation that have addressed the issue of centralizing and strengthening IC leadership.<sup>22</sup>

### **Second Hoover Commission, 1955**

The Commission on Organization of the Executive Branch of the Government, also known as the second Hoover Commission and chaired by former President Herbert Hoover, recommended that management of the CIA be turned over to an “executive officer,” so that the DCI could focus attention on the IC.

### **The Schlesinger Report, 1971**

President Nixon tasked the Office of Budget and Management to recommend changes in the IC's organization. Deputy OMB Director James R. Schlesinger, a future DCI, headed the effort and in his report considered the creation of an NID, but in the end recommended that “a strong DCI who could bring intelligence costs under control and intelligence production to an adequate level of quality and responsiveness.” Schlesinger criticized the IC's failure to coordinate resources, blaming the deficiency on the lack of a strong, central IC leadership that could “consider the relationship between cost and substantive output from a national perspective.”

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<sup>21</sup> See Pincus, Walter “Intelligence Shakeup Would Boost CIA; Panel Urges Transfer of NSA, Satellites, Imagery From Pentagon,” *Washington Post*, November 8, 2001, P. A-1.

<sup>22</sup> For a more comprehensive treatment of IC reforms 1949-1996, see Staff Study, Permanent Select Committee on Intelligence, *IC21: Intelligence Community in the 21<sup>st</sup> Century*, 1996, P. 335, which included an out-of-print CRS report, *Proposals for Intelligence Reorganization, 1949-1996*, by Richard A. Best and Herbert Andrew Boerstling. (An update to the CRS report is available in CRS Report RL32500, *Proposals for Intelligence Reorganization, 1949-2004*, by Richard A. Best.)

## **Murphy Commission, 1975**

The Commission on the Organization of the Government for the Conduct of Foreign Policy, chaired by former Deputy Secretary of State Robert D. Murphy, noted that the DCI exercised direct control over the CIA but had only limited influence over the IC as a whole. But rather than recommending a structural change, the Commission said it was neither possible nor desirable to extend the DCI's control to the large part of the intelligence community that lies outside the CIA.

## **Church Committee, 1976**

The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, known as the Church Committee and headed by Senator Frank Church, did not recommend establishing an NID but urged that DCI authorities be strengthened by appropriating intelligence dollars directly to the DCI and by defining in statute DCI reprogramming authorities. The Committee also recommended that consideration be given to enhancing the DCI's management of the IC by relieving him of day-to-day management of the CIA.

## **Pike Committee, 1976**

The House Select Committee on Intelligence, chaired by Congressman Otis G. Pike, recommended that the DCI should manage the IC as a whole and not exclusively the CIA. The Commission said the DCI should receive budget proposals from intelligence agencies comprising the community but did not indicate whether the DCI should have budget authority.

## **Clifford/Cline Proposals, 1976**

Clark Clifford, a former Secretary of Defense under President Lyndon B. Johnson who had earlier participated in drafting legislation establishing the CIA, recommended that a new position of Director of General Intelligence be established and that a separate CIA director be responsible for managing the CIA.

Ray Cline, a former Deputy Director of the CIA, recommended that the DCI be given cabinet rank and broad supervisory authorities over the IC.

## **Charter Legislation, 1978**

Following the establishment of the intelligence oversight committees in the Senate (1976) and in the House (1977), Congress considered charter legislation that, among other things, would have created an NID to manage the IC. A presidentially selected deputy would manage CIA. In the face of strong opposition to the overall legislation, which also included language governing covert actions, the Committees did not report the respective bills.

## **Executive Branch Orders, 1976-1981**

In an effort to head off further congressional action, President Gerald Ford in 1976 issued Executive Order (E.O.) 11905 naming the DCI as the President's primary intelligence advisor responsible for developing the NFIP.

President Jimmy Carter in 1978 issued E.O. 12036 (superseding E.O. 11905) more clearly defining the DCI's community-wide authority in areas relating to the budget, tasking, intelligence review, coordination, intelligence dissemination and foreign liaison.

President Ronald Reagan in 1981 continued the expansion of the DCI's community responsibilities and authorities, issuing E.O. 12333 (superseding E.O. 12036), which detailed the roles, responsibilities, missions, and activities of the IC. Executive Order 12333, which remains in effect today, granted the DCI more explicit authority over the development, implementation, and evaluation of the NFIP.

## **Turner Proposal, 1985**

Admiral Stansfield Turner, former DCI under President Carter, recommended establishing an NID to oversee the IC, and leaving responsibility for CIA day-to-day operations to a separate director of CIA.

## **Boren-McCurdy, 1992**

Senator David Boren and Congressman David McCurdy, respective chairmen of the Senate Select Committee on Intelligence (SSCI) and House Permanent Select on Intelligence (HPSCI), introduced legislation creating the position of an NID with authority to program and reprogram funds, and creating a separate director of CIA. Boren and McCurdy failed to win adoption of their legislation in the face of opposition from DOD and the congressional Armed Services Committees.

## **Aspin-Brown Commission, 1996**

The Commission on the Roles and Capabilities of the United States Intelligence Community (known as the Aspin-Brown Commission, after its respective chairmen Les Aspin and Harold Brown) concluded that the relationship between the DCI and Secretary of Defense should not be altered, but that the DCI should be given more time to manage the IC. The Commission recommended the creation of two deputies, one to help manage the IC and the other to manage the CIA.<sup>23</sup>

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<sup>23</sup> See Report of the Commission on the Roles and Capabilities of the United States Intelligence Community, *Preparing for the 21<sup>st</sup> Century An Appraisal of the U.S. Intelligence*, March 1, 1996, pp. xix-xx.

## **Specter/Combest, 1996**

In the wake of the Aspin-Brown Commission report, Senator Arlen Specter and Congressman Larry Combest, respective chairmen of the SSCI and the HPSCI, sought to increase the clout of the DCI by giving him more control over the appointments of chiefs of defense-related agencies and the budgets of those agencies. But faced with intense opposition from the Pentagon and its congressional allies, they settled for more modest reform, agreeing to establish a new position of deputy DCI for community management and three assistant directors to oversee collection, analysis, and administration.<sup>24</sup> Although each were to be Senate confirmed, only the deputy intelligence director for community management and the assistant director for administration have been confirmed. Neither the Clinton nor George W. Bush Administration has chosen to submit to the Senate for confirmation the names of individuals now serving as assistant directors for collection and analysis and production respectively.

## **Scowcroft Commission, 2001**

A presidential commission chaired by retired Lt. Gen. Brent Scowcroft, the Chairman of President George W. Bush's Foreign Intelligence Advisory Board, reportedly recommended that the Pentagon should cede to the DCI control over DOD's three largest intelligence operations — NSA, NRO, and NGA. Although never made public, the report, according to media reports, was strongly opposed by Secretary of Defense Donald Rumsfeld.<sup>25</sup> The report never was formally presented to the President.

## **The Joint Inquiry Into September 11 Terrorist Attacks**

The Congressional Joint Inquiry Into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001, recommended that a new cabinet level Senate-confirmed NID position be established and that a separate director be named to manage the CIA. The Joint Inquiry further recommended that the NID be granted full IC budget execution and personnel programming authorities.<sup>26</sup>

## **The 9/11 Commission**

The 9/11 Commission, in a report issued in July, 2004, recommended the establishment of a presidentially appointed, Senate-confirmed National Intelligence

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<sup>24</sup> See *Congressional Quarterly Weekly*, "Defense & Intelligence Policy: Intelligence Reorganization," November 2, 1996.

<sup>25</sup> See Pincus, Walter "Intelligence Shakeup Would Boost CIA; Panel Urges Transfer of NSA, Satellites, Imagery From Pentagon", *Washington Post*, November 8, 2001, P. A-1.

<sup>26</sup> See U.S. Senate Select Committee on Intelligence and U.S. House Permanent Select Committee on Intelligence, *Joint Inquiry Into Intelligence Community Activities Before and After The Terrorist Attacks of September 11, 2001* (H.Rept. 107-792 and S.Rept. 107-351), errata print accompanying report, Recommendation No. 1, pp. 2-3.

Director who would oversee national intelligence centers on specific subjects of interest across the U.S. government, manage the national intelligence program, oversee the agencies that contribute to it, and have hiring, firing and budgetary authority over the IC's 15 agencies. The Commission recommended that the director be located in the Executive Office of the President and that a deputy NID be established to oversee the day-to-day operations of the Central Intelligence Agency (CIA).

## Appendix 1. Selected NID Legislation Compared to Current Law

### Comparison of S. 2845, H.R. 10, and Current Law

Collins/Lieberman (S. 2845, approved, as amended, by the Senate Government Affs. Committee on 9/22/04.)	Hastert (H.R. 10)	Current Law
<b>National Intelligence Director (NID)</b>		
Establishes within the Executive Branch the National Intelligence Authority, which would be headed by a Presidentially appointed, Senate-confirmed NID.	Establishes within the executive branch a presidentially appointed, Senate confirmed NID.	Stipulates that there is a <b>Director of Central Intelligence</b> who heads both the Intelligence Community (IC) and the CIA.
<b>NID Cabinet Membership</b>		
No provision.	No provision.	No provision.
<b>General NID Responsibilities</b>		
<ul style="list-style-type: none"> <li>— Head IC.</li> <li>— President’s principal intelligence advisor.</li> <li>— Prohibited from serving simultaneously as CIA Director.</li> <li>— Direct and oversee the National Intelligence Program (NIP).</li> </ul>	<ul style="list-style-type: none"> <li>— Head IC.</li> <li>— President’s principal intelligence advisor.</li> <li>— Prohibited from serving simultaneously as CIA director.</li> <li>— Manage and oversee the NIP.</li> <li>— Individual serving as CIA Director preceding bill’s enactment may be named NID.</li> </ul>	<ul style="list-style-type: none"> <li>— Head IC.</li> <li>— President’s principal intelligence advisor.</li> <li>— Head CIA.</li> </ul>
<b>Internal Security Responsibilities — CIA Director</b>		
Retains current statutory provision — CIA Director shall have no police, subpoena, or law enforcement powers or internal security functions.	Retains current statutory provision — CIA Director shall have no police, subpoena, or law enforcement powers or internal security functions.	CIA Director shall have no police, subpoena, or law enforcement powers or internal security functions.
<b>NID Budget Responsibilities</b>		
<b>Budget Submission</b>		
NID shall <b>determine</b> the annual budget for intelligence and intelligence-related activities.	NID shall <b>develop</b> an annual budget for intelligence and intelligence-related activities.	DCI shall <b>facilitate the development</b> of an annual budget for intelligence and intelligence-related activities.

Collins/Lieberman (S. 2845, approved, as amended, by the Senate Government Affs. Committee on 9/22/04.)	Hastert (H.R. 10)	Current Law
<b>Budget Development</b>		
NID shall provide budget guidance to intelligence elements that receive NIP funding and to those IC elements that do not and shall participate in the development by the SecDef of annual budgets for military intelligence programs not included in the NIP (Joint Military Intelligence and Tactical Intelligence (JMIP) and Related Activities (TIARA)).	NID shall provide budget guidance to intelligence elements that receive NIP funding, and to those IC elements that do not and shall participate in the development by the SecDef of JMIP and TIARA budgets.	DCI shall participate in the development by the SecDef of annual JMIP and TIARA budgets.
<b>NID Specific Authority For Budget Execution</b>		
NID shall manage and oversee NIP budget execution, reprogramming, and funds and personnel transfers.	NID shall <b>ensure</b> effective execution of the budget for intelligence and intelligence-related activities. NID shall <b>facilitate</b> management and execution of NIP funding.	No provision.
<b>NID Budget Authorities</b>		
<b>Budget Approval</b>		
NID shall approve any portion of the budget for an IC element within the NIP. The budget of agency with a portion of NIP may not be provided President unless NID has approved budget. NID shall provide budget guidance for each IC agency not within the NIP. NID would participate in the development by the SecDef of the annual budget for military intelligence programs.	NID shall provide budget guidance to heads of departments containing IC elements and to the heads of the IC elements that comprise components of the NIP. NID shall provide budget guidance to those IC components not within the NIP. NID shall participate in the development by the SecDef of annual budgets for the JMIP and TIARA.	DCI approves all National Foreign Intelligence Program (NFIP) budgets before their incorporation into the NFIP.
<b>Budget Reprogramming</b>		
No NIP funds may be reprogrammed or transferred without NID prior approval, except in accordance with NID-issued procedures.	No NIP funds may be reprogrammed without NID prior approval, except in accordance with NID-issued procedures. SecDef shall consult with NID before transferring or reprogramming JMIP funds.	No NFIP funds may be reprogrammed without DCI prior approval, except in accordance with DCI-issued procedures.



Collins/Lieberman (S. 2845, approved, as amended, by the Senate Government Affs. Committee on 9/22/04.)	Hastert (H.R. 10)	Current Law
<b>Funds and Personnel Transfers</b>		
<p>With OMB approval, NID may transfer or reprogram NIP funds between NIP programs; approve or disapprove the transfer or reprogramming of non-NIP funds to the NIP; in accordance with NID-developed procedures, transfer NIP-funded personnel from one IC element to another; and, in accordance with mutually agreed upon procedures between NID and affected agency heads, transfer non-NIP funded personnel from one IC element to another IC element. Such a transfer may be made only if activity to which transfer being made is higher intelligence priority; does not involve funds transferred to Reserve for Contingencies of the CIA; and does not exceed applicable ceilings established in law for such transfers.</p>	<p>With OMB approval, NID may transfer NIP funds within the NIP; in accordance with procedures developed with department heads, NID may transfer IC personnel <b>for up to a year</b>, and subject to appropriations act provisions. Fund/personnel transfer must be to a higher priority intelligence activity, based on unforeseen circumstances and not involve a transfer of funds to Reserve for Contingencies of the CIA; be less than \$1 million; less than 5% of amounts available to agency; and not terminate program.</p>	<p>With OMB approval, DCI can transfer funds within the NFIP and transfer personnel within the NFIP <b>for periods up to a year</b>, in accordance with procedures developed by the DCI and heads of affected agencies. Such a transfer may be made only if activity to which transfer is occurring is higher intelligence priority; based on unforeseen requirements; does not involve funds transferred to the DCI's Reserve for Contingencies; does not involve a transfer of FBI funds or personnel.</p>
<b>Agency Heads Objections to Fund and Personnel Transfers</b>		
<p>No provision.</p>	<p>Transfer may be made without regard to \$1 million and 5% limitations provided NID has concurrence of agency head.</p>	<p>Permits agency heads to stop DCI-initiated fund and personnel transfers, provided they state objection in writing to the DCI.</p>
<b>Personnel Transfer Procedures</b>		
<p>For personnel transfers taking place within NIP-funded programs, the NID would develop transfer procedures; for personnel transfers involving non-NIP funded programs, the NID and affected agency heads would develop procedures.</p>	<p>NID required to develop with agency heads personnel transfer procedures governing IC personnel transfers.</p>	<p>Requires the DCI to develop transfer procedures with affected agency heads.</p>

<p><b>Collins/Lieberman (S. 2845, approved, as amended, by the Senate Government Affs. Committee on 9/22/04.)</b></p>	<p><b>Hastert (H.R. 10)</b></p>	<p><b>Current Law</b></p>
<p><b>FBI Funds &amp; Personnel Transfers</b></p>		
<p>NID authorized to transfer funds/personnel to and from the FBI's Office of Intelligence.</p>	<p>NID authorized to transfer funds/personnel to and from the FBI's Office of Intelligence.</p>	<p>DCI is <b>not</b> authorized to transfer FBI funds/personnel.</p>
<p><b>Direct Appropriation</b></p>		
<p>NIP funds would be appropriated to the National Intelligence Authority and be under the NID's direct jurisdiction.</p>	<p>Office of Management and Budget shall apportion all NIP funding to the NID.</p>	<p>SecDef receives appropriations for the CIA and the national intelligence agencies — NSA, NGA, and NRO. The Attorney General receives the funding for the FBI's national security components.</p>
<p><b>Hire and Fire Authority</b></p>		
<p><i>Recommendation CIA Director</i></p> <p>NID shall recommend to the President an individual for nomination to serve as CIA Director.</p> <p><i>DoD Concurrence/NSA, NRO and NGA</i></p> <p>NID shall obtain concurrence of SecDef in recommending nominees for NSA, NRO and NGA. NID may make the recommendation without SecDef concurrence but must note non-concurrence.</p>	<p><i>Recommendation/Deputy NID and CIA Director</i></p> <p>NID shall recommend to the President individuals for nomination to serve as Deputy NID and CIA Director.</p> <p><i>NID Concurrence/NSA, NRO, and NGA</i></p> <p>Head of department or agency having jurisdiction over the position shall obtain NID concurrence in appointing or recommending nominees for NSA, NRO and NGA. If NID does not concur, the vacancy may not be filled or recommendation made to President (as the case may be).</p> <p><i>Consultation/Other Agencies</i> Agency heads shall consult with the NID with regard to appointments to certain intelligence positions at the departments of Defense, State, Energy, Treasury, FBI, Homeland Security and Coast Guard.</p>	<p>No provision.</p> <p><i>DCI Concurrence/NSA, NRO and NGA</i></p> <p>SecDef shall obtain DCI concurrence on heads of NSA, NRO and NGA, but SecDef may proceed, but must note DCI non-concurrence.</p>

<p><b>Collins/Lieberman (S. 2845, approved, as amended, by the Senate Government Affs. Committee on 9/22/04.)</b></p>	<p><b>Hastert (H.R. 10)</b></p>	<p><b>Current Law</b></p>
<p><i>Concurrence/Other Agencies</i></p> <p>Other agency heads shall obtain NID concurrence before appointing or recommending for appointment to individuals to fill the positions of Under Secretary of Defense for Intelligence; Asst. Sec. Homeland Security for Information Analysis; Director, DIA; and the FBI's Exec. Asst. Dir. Agency head may proceed without NID concurrence, but must note to the President the NID's non-concurrence.</p> <p><i>Termination</i></p> <p>NID may recommend to the President the termination of any individual covered in this section of the draft bill, but must seek concurrence of department head and report non-concurrence to the President.</p>	<p><i>Termination</i> No provision.</p>	<p><i>Consultation/Other Agencies</i></p> <p>Agency heads shall consult DCI on directors of DIA, INR, and DOE intelligence units, but agency head decides. FBI shall timely notice DCI of the FBI Director's recommendation to fill the position of Asst. Dir. of the FBI's National Security Division.</p> <p><i>Termination</i></p> <p>No provision.</p>
<p><b>NID Analysis and Collection Tasking</b></p>		
<p>NID shall issue and manage collection and analysis tasking.</p>	<p>NID shall manage and direct the tasking of, collection, analysis, production, and dissemination of national intelligence.</p>	<p>DCI establishes requirements and priorities to govern the collection of national intelligence by IC elements. Approve collection requirements, determine collection priorities, and resolve conflicts in collected priorities levied on national collection assets, except as otherwise agreed with the SecDef pursuant to the direction of the President.</p>