The 2008 Amendments to *Executive Order 12333, United States Intelligence Activities*

Stephen B. Slick

Executive 0rder 12333, which was originally issued in 1981, was significantly revised in 2008 after intense debate over complex substantive, bureaucratic, and legal issues.

Editor's Note: *During his final year in office, President George W. Bush approved significant amendments to the decades-old executive order that organized, directed, and imposed limits on US intelligence activities. The product of extensive debate and coordination within the executive branch, these amendments to Executive Order (EO) 12333 were intended to clarify ambiguous provisions in the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004.*

Passed in response to the 9/11 attacks, the IRTPA established the position of Director of National Intelligence (DNI) and granted authorities the office would require to lead a more closely integrated Intelligence Community (IC) and to institutionalize relationships and practices intended to improve counterterrorism and counterproliferation efforts.

Amendment of the order, which was originally issued in 1981, required the resolution, after intense debate within the Executive Branch, of complex substantive, bureaucratic, and legal issues. It also involved a process to build consensus for a final text within the "federated" US intelligence and national security communities.

This account, by the senior director for intelligence programs and reform on the National Security Council (NSC) staff at the time, is intended to offer insights for intelligence professionals who operate under the provisions of the order and for students of the efforts to restructure and reform US intelligence that have been underway almost continuously since the end of World War II.

A Brief History of Ronald Reagan's EO 12333

Since passage of the 1947 National Security Act establishing the Central Intelligence Agency (CIA) and the post of Director of Central Intelligence (DCI)—a single official responsible for leading CIA and providing limited management of other US intelligence agencies—presidents periodically provided written guidance to the DCI and other executive branch officials on intelligence matters.[1] This guidance was conveyed in the early years through classified National Security Council Intelligence Directives and memorandums

All statements of fact, opinion, or analysis expressed in this article are those of the author. Nothing in the article should be construed as asserting or implying US government endorsement of its factual statements and interpretations.

and later by unclassified executive orders.[2]

The first executive order on intelligence, EO 11905, was issued by President Gerald Ford in 1976. It assigned specific roles to the NSC, the DCI, and various interagency panels for directing the US intelligence effort.[3] Ford's order also more clearly defined the missions of the CIA and other intelligence agencies, imposed restrictions on intelligence activities, and established mechanisms within the executive branch for overseeing the IC's work.

Specific restrictions in Ford's order concerning intelligence activities inside the United States, the collection and handling of information on US citizens, as well as prohibitions on political assassination and human experimentation responded directly to revelations during widely-publicized congressional hearings in the mid-1970s into alleged excesses by CIA and other agencies.[4] Another aim of Ford's order was to preempt efforts by the Congress to draft a "statutory charter" for US intelligence that the administration feared would infringe on a president's broad constitutional prerogatives in the national security area.[5] The administration of President Jimmy Carter spent more than a year discussing the same issues internally, as well as with congressional committees working on a statutory charter, before replacing EO 11905 with an intelligence directive of its own in 1978—EO 12036.[6]

Fulfilling a campaign promise to revitalize America's intelligence capabilities, specifically in counterintelligence (CI) and technical collection required to assess more accurately the military strength of the Soviet Union, President Ronald Reagan revoked the Carter order and replaced it with EO 12333 in late 1981.[7] The new order directly addressed the perception that Carter's order was unduly restrictive and defensive in tone. Reagan declared in the Preamble to EO 12333 that "timely and accurate" information was essential to the nation's security and that "all reasonable and lawful means" must be used to collect such intelligence.[8] Part 1 of Reagan's order set broad aspirational goals for the IC and defined specific duties and responsibilities for executive branch officials and organizations with intelligence functions while Part 2 described protections for civil liberties and extended the existing ban on assassination and limits on human experimentation.[9]

DCI William Casey and President Ronald Reagan addressed concerns that the executive order on intelligence activities issued during the previous administration was overly restrictive.

While it would have been difficult to foresee at the time, Reagan's intelligence directive proved remarkably durable. Despite dramatic shifts in national security priorities, innumerable public controversies involving US intelligence, and multiple studies by government and private groups recommending reforms, no subsequent president made significant changes to EO 12333 during more than two decades. While it remained—and remains to this day—relatively obscure to the general public, EO 12333 hardened into a stable legal and policy foundation for the modern IC, with agencies issuing linear feet of regulations that interpret its provisions and organizations throughout the IC mandating annual refresher briefings on the order's restrictions to employees deployed around the world.

9/11, IRTPA, and the DNI

Al Qa'ida's attacks on 11 September 2001 changed instantly the public's perception and expecta-

tions of US intelligence. Charges of intelligence failure were leveled at the IC and its leaders precisely when CIA and other agencies were rapidly adapting to lead America's global response to the attacks. A bipartisan commission cochaired by former governor Thomas Kean and ex-congressman Lee Hamilton was appointed in late 2002 to investigate the causes of the tragedy and recommend measures to improve the government's ability to detect and prevent future terror attacks.

The commission report, released in July 2004, provided an authoritative account of the growth of al Qa'ida and the execution of the plot.[10] The report concluded with specific findings and recommendations for reform of the government's national security structures. Among other recommendations, the 9/11 Commission proposed establishing a national counterterrorism center to monitor, assess, and coordinate responses to terror-threat reports, improving the sharing of intelligence within the government (particularly between organizations principally focused on either foreign or domestic collection), and creating a new post of national intelligence director to lead a more unified IC. Unlike the DCI, the national intelligence director proposed by the 9/11 Commission would not also serve as the head of the CIA.[11]

In August 2004, the president issued four new executive orders intended to implement the 9/11 Commission's recommendations.

After intensive review and interagency deliberations in late summer 2004 and in a political climate charged by a close election campaign centered on national security, President Bush endorsed the 9/11 Commission's principal recommendations, including the call for a more unified IC under the leadership of a "strong" national intelligence director.[12] In August 2004, the president issued four new executive orders intended to implement the 9/11 Commission's recommendations regarding a national counterterrorism center, information sharing, protection of civil liberties, and strengthened central leadership of the IC.[13]

One of those, EO 13355, implicitly acknowledged that legislative action would be required to create and empower a new national intelligence director. It amended provisions of Reagan's EO 12333 to direct the DCI—then Acting DCI John McLaughlin—to exercise specific authorities to ensure an "enhanced joint, unified national intelligence effort."[a14]

The NSC-led process to advise President Bush on intelligence reform also produced a draft bill that was conveyed informally to the administration's congressional allies, who were by then deeply involved in the legislative process that led to the passage of the IRTPA on 17 December 2004.[15] Significantly, neither the Bush administration nor the congressional sponsors of the IRTPA endorsed full centralization of US intelligence resources under a single leader or "secretary of intelligence." Instead, the IC's new head was expected to build a more integrated and effective intelligence enterprise using budgetary and limited directive authorities transferred from other cabinet officers and by unburdening him from daily management of the CIA.[b16] The IRTPA established the post of director of national intelligence (DNI) to lead an IC comprising 15 different elements housed within other cabinet departments and the CIA.[c]

With passage of comprehensive intelligence legislation, the appointment and confirmation of Ambassador John Negroponte as the first DNI, and the establishment of the Office of the DNI (ODNI), major elements of Reagan's EO 12333 had become obsolete by spring 2005.

a. During a media background briefing, a senior administration official was more explicit on the need for legislative action to establish a national intelligence director and described the August 2004 executive orders as a "down payment" on future engagement with Congress regarding intelligence reform legislation. From "White House Conference Call on President's Orders," 27 August 2004 (see footnote 14).
b. A publicly released memorandum prepared for a meeting of the NSC's Principal's Committee discussed making the NID a de facto "Secretary of Intelligence." It noted, "Principals agreed the approach, while certainly empowering the NID, would be too disruptive particularly during a time of war, undermine existing chains of command, and potentially weaken intelligence support to key government departments and missions." (See footnote 15.)
c. In his book, *Blinking Red* (132), Michael Allen wrote that the title of national intelligence director or NID, which had been employed in the 9/11 Commission's report, the administration's proposed legislation, and many previous intelligence reform studies was abandoned by congressional leaders in favor of the more resonant director of national intelligence or DNI. (See footnote 15.)

2007: Updating EO 12333, "Why" and "Why Now"

With institutional roots in a still-fresh national tragedy, an incomplete set of authorities assembled through legislative compromise, and facing deep skepticism in more traditional quarters of the IC, the ODNI's early performance was subjected to intense scrutiny. As DNI Negroponte set about forging new relationships and business practices, cataloging ODNI's statutory and other responsibilities, and pursuing the resources to meet them, critics charged that the ODNI was little more than a "bloated bureaucracy" standing between policymakers and the important work of the intelligence agencies.[17]

White House photo of President Bush meeting with PIAB Chairman Steve Friedman, member Jack Morrison, PIAB Executive Secretary Stefanie Osburn, and Homeland Security Advisor .Fran Townsend. (Photo courtesy of author.)

To augment impressions from his daily interactions with the DNI and other IC leaders, President Bush solicited outside perspectives on intelligence reform, including from the President's Intelligence Advisory Board (PIAB). Board members would express concerns about what appeared to them to be a discrepancy between the IRTPA's ambitious goal of building a unified intelligence enterprise and the weak management tools provided the DNI in the statute.[18]

In spring 2007, the NSC staff formally recommended to National Security Advisor Steve Hadley and Homeland Security Advisor Fran Townsend that EO 12333 be amended to strengthen the DNI's hand in managing the IC, synchronize executive branch guidance with the IRTPA as well as multiple other intelligence directives, and cement as a positive administration legacy the most significant changes to US intelligence undertaken since 1947.[19] Broad goals for the proposed rewrite included:

- defining "national intelligence," a term coined in the IRTPA to encompass both foreign and domestic intelligence and expand the DNI's substantive reach beyond that of the DCI who, as CIA director, was largely proscribed from collection in the United States;
- removing persistent obstacles to information sharing; and
- reshaping the DNI's relationship with the heads of executive branch departments.[20]

The NSC staff recommended against making changes to privacy rights and civil liberties protections in Part 2 of EO 12333 unless opportunities could be identified to strengthen them. Hadley approved the staff recommendation and ordered addit ional White House consultations (for example, with the Office of the Vice President and the White House counsel) to support a future presidential decision on the proposal.[21]

Ambassador Negroponte returned to the State Department in early 2007 and former National Security Agency (NSA) director and businessman Mike McConnell was appointed to serve as the second DNI. Shortly after taking office, McConnell asked his senior staff to explore the merit and feasibility of amending EO 12333.[22] McConnell too recognized that EO 12333 was badly out-of-date after the IRTPA, and also that an amended order could prove a powerful vehicle for conveying presidential support for intelligence reforms that were, in McConnell's view, being implemented too slowly.[23]

During a meeting with President Bush in fall 2007, PIAB Chairman Steve Friedman addressed intelligence reform and delivered formal

findings and recommendations.[a24] The PIAB found little merit in the criticism that the DNI's staff was too large, but concluded that further progress toward the IRTPA's objectives would require clarification and strengthening of the DNI's authorities. The PIAB suggested the president approve and actively participate in a process to amend EO 12333 to allow the DNI to:

- "hire and fire" key IC leaders;
- set uniform personnel policies (including those requiring senior intelligence officers to serve "joint duty" assignments outside their home agency as a prerequisite to promotion);
- exercise milestone decision authority (MDA) over IC-funded acquisitions;
- designate functional and mission managers; and
- control access (including through classification and declassification) to intelligence information.[25]

President Bush accepted the PIAB's recommendation and agreed to set the tone for a "disciplined and accelerated" process to amend EO 12333.[26]

The decision to undertake a complex and foreseeably controversial project to enhance the DNI's authorities in the last year of the president's second term was not lightly taken. In late 2007, the Bush administration was generally disinclined to launch major new policy initiatives and, unsurprisingly, was focused on executing ongoing programs and cementing its accomplishments. In the national security area, the administration's top priorities included completing the "troop surge" to stem violence in Iraq and preserving important counterterrorism tools like the statutory authority to conduct electronic surveillance under the amended Foreign Intelligence Surveillance Act (FISA).

The PIAB suggested the president approve and actively participate in a process to amend EO 12333.

In addition to the PIAB's persuasive appeal, President Bush's decision to amend EO 12333 was also influenced by a high degree of confidence in the key participants in the process.[27] Secretary of Defense Robert Gates was a former DCI who had, in fact, previously declined an offer to serve as DNI because of his concerns about the sufficiency of the position's authorities. Gates was supported and advised by Undersecretary of Defense for Intelligence (USD/I) James Clapper, a well respected intelligence leader who had previously headed both the Defense Intelligence Agency and National Geospatial-Intelligence Agency (NGA)—President Barack Obama would later appoint him the fourth DNI. CIA Director Michael Hayden had previously headed NSA and also served as the first principal deputy DNI under Ambassador Negroponte, while DNI McConnell enjoyed longstanding, constructive relationships with his counterparts.

There was a strong expectation that the cumulative intelligence experience and trust among these officials would improve prospects for overcoming entrenched bureaucratic interests and enable compromises that would improve the DNI's ability to lead the IC within the IRTPA's imperfect construct. It was also recognized that if the Bush administration failed to update EO 12333 or completed the amendment process too late in its final year, a new and inevitably less experienced national security team (of either party) would likely tackle the project and possibly even accept advice to pursue new intelligence legislation, with unpredictable results.

2008: A "Disciplined and Accelerated" Process

National Security Advisor Hadley convened the NSC Principals Committee (PC) in January 2008 to begin formal interagency coordination of proposed changes to EO 12333. Honoring his commitment to set the tone for these discussions and signal his interest in the process, President Bush opened the PC meeting to stress the need to improve US intelligence through better integration. Bush cited the ambiguous nature of the IRTPA's provisions and fixed 1 May as his target date for approving revisions to EO 12333 that would reflect the new structures and accelerate needed

a. The PIAB remained engaged with the president, NSC and ODNI throughout the process of drafting and coordinating amendments to EO 12333. For example, the PIAB Chairman Steve Friedman and Member Jack Morrison updated President Bush on the EO revisions during Oval Office meetings in March and July, in each case expressing support for Hadley's efforts to achieve consensus on priority changes requested by the DNI.

Over the ensuing months, Hadley skillfully managed a process that delivered fully coordinated EO amendments to the president, albeit not before his 1 May deadline.

"cultural change" within the IC. The president asked principals personally to lead the process within their agencies, and to act in the best interests of the government as a whole rather than defend parochial interests of their respective departments.[28]

After the president's instruction, DNI McConnell summarized a briefing he had given many of the same officials at a meeting of the Joint Intelligence Community Council (JICC) three days earlier. McConnell described his vision for a collaborative IC and listed major amendments he sought to EO 12333, stressing that he proposed no changes to the civil liberties protections in the existing order. Hadley reinforced the president's intent that the entire amendment process should be "privacy neutral."[29]

Secretary Gates, who was regarded as the department head with the most to lose in a more centralized IC and therefore the critical figure in the effort to update EO 12333, spoke in favor of the initiative and a stronger DNI. Citing the distrustful political environment in the capital, Gates echoed Hadley's prescription for a "top-down" coordination process that would involve principals directly and, if necessary, the president to resolve differences. Gates encouraged the DNI and his fellow principals to use the EO amendments to address only major structural issues and to deal with more dynamic topics through IC Directives (ICDs) or side agreements. Both Gates and Homeland Security Secretary Michael Chertoff cautioned against amendments to the EO that could provoke a legislative response.[30]

Over the ensuing months, Hadley skillfully managed a process that delivered fully coordinated EO amendments to the president, albeit not before the 1 May deadline. After the January meeting, Hadley chaired five more PC meetings, directed two meetings of the NSC Deputies Committee on related media roll-out and communication issues, and spent dozens of hours in private meetings and conference calls with selected principals while keeping the PIAB, vice president, and president closely informed of progress or impediments to progress when they arose. To address dozens of more minor substantive, technical, and legal questions that surfaced between PC meetings and to craft language reflecting compromises reached by the principals, Hadley asked each department and agency head to designate a single "trusted agent" to participate in working-level meetings led by the NSC intelligence and legal staffs.

While the principals and their trusted agents argued forcefully for preferred outcomes on contentious issues, the character of the coordination process was uniformly civil, constructive, and consistent with the president's guidance. A rare degree of personal chemistry and trust between senior officials, shared practical experiences gained over two years operating with the IRTPA model, and the specter of prompt dispute resolution by the president all contributed to an effective interagency process. At key junctures in the process, it was also apparent that certain principals, in particular, Secretary of Defense Gates and CIA Director Hayden, were pursuing creative compromises to achieve the president's goals while simultaneously managing less conciliatory, even strident, forces within their respective buildings.[31]

Opening Salvos and Early Progress

McConnell secured Hadley's concurrence for the ODNI staff to "take the pen" and prepare the initial draft of an amended EO 12333 consistent with the DNI's goals, the discussion at the January PC meeting, and an appreciation for the main concerns of other agencies. In late February, McConnell transmitted draft amendments to the White House with a memo that described his strategic goal of a unified IC that would offer "decision advantage" to the president and other US policymakers.[32]

Substantive amendments were ultimately made to dozens of EO 12333's provisions, but McConnell highlighted at the outset of the process his interest in 10 major changes:

- Interpret the IRTPA's controversial Section 1018 in a manner that presumed actions taken by the DNI did not "abrogate" the statutory authority of department heads;
- Assign the DNI a larger role in selecting and removing the heads of IC elements, and the USD/I;
- Require shared MDA by the DNI and secretary of defense for major acquisitions funded principally

through the National Intelligence Program (NIP);

- Allow the DNI to determine when information was of interest to more than one agency and, as such, constituted "national intelligence" that must be shared under the IRTPA;
- Clarify the DNI's authority to declassify intelligence information;
- Establish clear coordination mechanisms for foreign and domestic intelligence collection through the CIA and FBI, respectively, consistent with the DNI's policies;
- Reinforce the DNI's role in setting policies for foreign intelligence relationships, which CIA would coordinate;
- Confirm the DNI's authority to designate functional and mission managers within the IC;
- Grant the DNI a role in the secretary of defense's execution of his statutory authority as the "executive agent" for collection of signals intelligence (SIGINT); and
- Define a direct role for the DNI in CIA's implementation of covert action programs.[33]

Even before the DNI's draft amendments were distributed for comment, agencies were already documenting objections to his proposals. For example, Secretary Gates submitted memos on behalf of the Department of Defense (DoD) and the Joint Chiefs of Staff (JCS) arguing against increased DNI influence in "hire-fire" decisions regarding USD/I and other DoD intelligence officials, expanded DNI authority over major acquisitions, and any automatic presumption that the DNI's actions respected the statutory authorities of the secretary and JCS chairman.[34] The Justice Department and FBI strongly opposed a DNI role in selecting or removing the FBI's senior intelligence official and also sought a blanket declaration that the DNI would exercise no operational authority over domestic law enforcement resources.[35]

As the coordination process advanced, proposed amendments were discussed and debated in person by principals, through exchanges of written memos, and among staff members at meetings of the trusted-agents group.

Throughout this period, CIA Director Hayden argued that the CIA's unique history and position at the center of US intelligence was codified in statute and should not be diminished by granting the DNI intrusive supervisory authority over CIA's activities. The CIA director proposed EO amendments acknowledging CIA's statutory authorities, requiring the DNI to consult with the CIA director in the same manner as a department head, and preserving the CIA's direct relationship with the president and NSC on covert action.[36] Reflecting on the process in a journal article in 2010, Hayden expressed his concern this way:

> *1. As CIA director, I argued strongly for the provision* [protecting the authorities of department heads]. *I wasn't totally altruistic (I was the only agency head not "protected by a cabinet official's prerogatives), but I did point out that, absent that kind of presumption, the DNI and especially his staff would focus more and more on the CIA for the worst of all reasons—because they could.*[37]

As the coordination process advanced, proposed amendments were discussed and debated in person by principals, through exchanges of written memos, and among staff members at meetings of the trusted-agents group. A small number of issues ultimately emerged as principled disagreements that were resolved at senior levels through "win-lose" decisions (…always accompanied by the right of appeal to the president). But for most of the DNI-proposed changes, consensus was reached early on.

DNI Acquisition Authorities—"Shared MDA"

The IRTPA required the DNI and secretary of defense to exercise joint responsibility for major technical systems being developed by DoD's intelligence elements when the program was wholly funded in the NIP and, therefore, subject to the DNI's considerable budget authorities.[38] DNI McConnell proposed amending EO 12333 to extend the same authority to the DNI when the *majority* of a program's funds came from the NIP.

Consistent with Secretary Gates's admonition to address only structural issues by presidential directive, he and McConnell negotiated a side agreement that extended this new acquisition authority to the DNI.[39] McConnell, nonetheless, suggested memorializing the terms of their agreement in EO 12333 but Gates countered that the congressional armed services committees might focus closely on acquisition provisions in the amended EO and take

The IRTPA expressly granted CIA responsibility for coordinating intelligence relationships between US agencies and foreign security services, albeit under the overall direction of the DNI.

legislative action to restore to the secretary of defense the rights he had voluntarily relinquished.

The final EO text generically directed the DNI to develop jointly with department heads procedures governing acquisitions wholly or partially funded by the NIP, and made no direct reference to the DoD-ODNI side agreement.[40]

Defining National Intelligence, Promoting Intelligence Sharing, and Declassification

To signal the need for greater sharing and integration of intelligence collected overseas and domestically, the IRTPA coined a new term, "national intelligence," that it defined as *information of interest to more than one US government agency*—thereby excluding most "battlefield" or tactical military intelligence or routine law enforcement data.[41] The IRTPA required the DNI to be given access to all national intelligence and be allowed to determine how it should be shared between agencies.[42] The DNI proposed an amendment to EO 12333 that delegated to him the president's authority to determine when information was of interest to multiple agencies and to issue guidelines for intelligence sharing.

DOJ, the FBI, and DHS noted that certain information in their holdings could not be shared with the DNI because of privacy or judicial considerations. Principals approved the DNI's proposed amendments concerning national intelligence and intelligence sharing while imposing a requirement that any guidelines the DNI issued on sharing must be approved by the attorney general.[43]

No objection was posed at senior levels to an amendment clarifying the DNI's authority to declassify intelligence information after he had consulted with the department or agency that had originally classified the material and any other affected department head.

Designation of Functional and Mission Managers and a DNI Role in Managing US SIGINT

DNI McConnell sought authority to designate functional (*e.g.*, SIGINT, human intelligence or HUMINT) and mission (*e.g.*, counterterrorism, counterproliferation, Iran) managers who would be responsible for integrating the IC's effort within an intelligence discipline or on a given topic. Intelligence officials so designated by the DNI would report directly to him in their capacity as functional or mission managers.

At staff levels, DoD and other agencies argued that the DNI's designation of a uniformed officer or non-ODNI staff member as a functional or mission manager would infringe upon the chain of command. These concerns, however, were never elevated to the level of principals, and the DNI's proposed amendments were approved without PC discussion, including more specific provisions designating the NSA director as the national SIGINT manager, the CIA director as the national HUMINT manager, and NGA's director as the national GEOINT manager.

CIA Director Hayden correctly observed that the CIA director had already been designated as the national HUMINT manager in statute as well as in a 2005 presidential directive implementing a recommendation by the WMD Commission that investigated the flawed intelligence assessments of Saddam Hussein's weapons programs in the lead-up to the 2003 Iraq war.[44]

As a former NSA director, McConnell was well acquainted with the statutory designation of the secretary of defense as the executive agent for US SIGINT. This designation was a valuable tool wielded by NSA over the years to protect its core mission from perceived encroachments by the CIA, FBI, and other agencies. McConnell proposed a new EO provision that would compel the secretary of defense to "coordinate" with the DNI in exercising the secretary's authority over the US SIGINT enterprise. Secretary Gates originally agreed only to "consult" with the DNI on SIGINT matters, but ultimately acceded to McConnell's request for a full coordination role.[45]

DNI's Role in Foreign Intelligence Relationships

The IRTPA expressly granted CIA responsibility for coordinating intelligence relationships between US agencies and foreign security services, albeit under the overall direction of the DNI.[46] Reagan's EO 12333 had assigned the DCI the responsibility to formulate policies governing foreign relationships and also to coordinate all such activities undertaken by US agencies.[47]

The amended EO transferred to the DNI the former DCI's policy-setting role regarding foreign liaison relationships and also authorized him to enter into formal agreements with foreign partners and international organizations.[48] CIA was authorized in the order not only to conduct such relationships in pursuit of its own mission but also, consistent with the DNI's policies, to coordinate the dealings of other IC elements with foreign security services.[49] This common-sense division of labor acknowledged the CIA's extensive overseas presence and deep experience working with foreign partners. Agreement on these provisions was reached at the working level and required no attention by principals.

The amended EO transferred to the DNI the former DCI's policy-setting role regarding foreign liaison relationships and also authorized him to enter into formal agreements with foreign partners and international organizations.

The End Game and Hard Choices

As President Bush's deadline for approving amendments to EO 12333 approached in the late spring of 2008, agency positions perceptibly stiffened, and the space available for compromise narrowed on the DNI's remaining priorities.

Abrogation of Authorities—Giving the DNI the "Benefit of the Doubt"

DNI McConnell was sensitive to the criticism that progress toward greater IC integration had been too slow. McConnell shared the view of the IRTPA's drafters and many commentators that a culture where collaboration replaced competition would never develop in the IC until information "stovepipes" were broken down, strong agency identities weakened, and a new generation of IC leaders emerged who understood and valued the contributions of different disciplines and agencies.[50] An analogy was frequently drawn to the personnel management reforms in the 1986 Goldwater-Nichols legislation that required military officers to satisfy "joint" education and assignment requirements before being promoted to flag rank.[51]

McConnell's views on jointness and cultural change were strongly shaped by his early career as a US Navy officer and later service as the J-2 during Operation Desert Storm. McConnell and others credited Goldwater-Nichols and related joint war-fighting doctrines for the overwhelming military victory in the first Gulf War. McConnell set as a priority for his tenure as DNI the promulgation of IC-wide personnel policies and strict enforcement of joint duty requirements. He frequently cited the year-long process of drafting and coordinating a relatively weak ICD on joint duty as evidence of the DNI's inadequate authorities.[52] The IRTPA's Section 1018 was identified as the principal impediment to the DNI's exercise of his personnel and other authorities within IC elements housed in other departments.

IRTPA Section 1018 requires the president to issue guidelines to ensure that the DNI, when exercising his authorities, "respects and does not abrogate" the statutory responsibilities of relevant department heads.[53] This provision was added to the bill to address concerns raised by the chairman of the House Armed Services Committee and to prevent the collapse of efforts by a House-Senate conference committee to craft legislation implementing the 9/11 Commission's recommendations.[a] Precisely as its sponsors intended, Section 1018 proved to be a powerful tool in the hands of staff at all levels within DoD and other agencies to resist DNI directives that would have affected departmental intelligence elements.

McConnell offered an elegant solution to the conundrum of Section 1018 that he credited to ODNI General Counsel Ben Powell: President Bush would issue the guidelines called for in the IRTPA by amending EO 12333 to declare that DNI decisions would be presumed to respect departmental responsibilities, and further that only a department head (…and not subordinates or staff members) had standing to challenge a DNI action on the grounds that it abrogated a department's statutory authority.[54] McConnell argued that this change would add speed and agility to the process of integrating the IC while protecting the legitimate rights of cabinet officers.

Secretary Gates and the joint chiefs persistently objected to this proposed change, claiming that it violated not only the letter but also the spirit of the IRTPA and, moreover, that it would likely provoke a negative reaction in Congress.[55] CIA Director Hayden, who fully supported the DNI's proposal on non-abrogation, asked that this new EO provision also recognize the CIA director's statutory authorities and grant him the same right as a department head

McConnell proposed amendments to EO 12333 that would enhance the DNI's role in selecting IC leaders and also grant him new rights to dismiss key IC figures.

to appeal DNI directives to the JICC, NSC, and, ultimately, the president.[56] Despite being nominally approved at a March PC meeting, DoD continued to object in writing to the proposed Section 1018 guidelines.[57]

Representing the Department of Treasury, Deputy Secretary Robert Kimmitt—a veteran of the Reagan White House and original EO 12333 drafting exercise—suggested adding a general requirement that the DNI "consult" with department heads in exercising his authorities under the amended order. Kimmitt feared that, when viewed in aggregate, the updated EO might appear to describe an intelligence head who planned on acting alone and who would not engage department heads on decisions impacting their missions.[58]

The amendments finally approved by President Bush acknowledged the need to protect the statutory authorities of department heads and DCIA, but directed department and agency heads to implement the DNI's directives, offering department heads (but not the CIA director) the right to appeal any DNI decision to the NSC or president. The order also included the general provision proposed by Kimmitt, but it was weakened to require the DNI only to "take into account" the views of department heads and the CIA director (as the DNI was already required to do by the IRTPA), rather than to "consult" with them in exercising his authorities.[59]

Appointment and Removal of IC Managers—"Two to Hire, One to Fire"

Influenced by his experience in the private sector and encouraged by the PIAB, McConnell proposed amendments to EO 12333 that would enhance the DNI's role in selecting IC leaders and also grant him new rights to dismiss key IC figures—including the USD/I. Unsurprisingly, principals other than the CIA director (whose appointment, and presumably dismissal, was already based on a DNI recommendation to the president under the IRTPA) objected strongly to the proposal, claiming it was possibly unlawful and, in any case, would infringe on departmental and military chains of command.[60] In the case of USD/I, DoD argued that the undersecretary's was merely a staff position within the Office of the Secretary of Defense notwithstanding that the USD/I had been formally delegated the secretary's "authority, direction and control" over NSA, NGA, and NRO, "dual-hatted" as the Director of Defense Intelligence (D/DI) and regularly participated in meetings of the DNI's Executive Committee.[61]

Extensive discussion—combined with several concessions by the DNI on his proposed role in dismissing IC officials—resulted in an agreement that covered the IC element heads. However, agreement on appropriate roles for the secretary of defense and DNI in selecting and dismissing the USD/I remained elusive. A compromise regarding the USD/I was ultimately forged by Hadley in a private meeting with Gates and McConnell.[62] The final order required the secretary of defense only to "consult" the DNI regarding the USD/I and stated clearly that the secretary alone would provide a recommendation to the president on the appointment and dismissal of a USD/I.[63]

While the EO amendments regarding the DNI's role in appointing and dismissing senior IC officials attracted notice in some quarters, participants in these often confusing discussions questioned the real significance of the changes because of the practical role played by a modern White House in selecting and vetting senior administration officials and the scant prospect that any cabinet officer would retain a senior intelligence official in whom the DNI did not have confidence, notwithstanding artfully-crafted provisions in an executive order.

The DNI's Role in Covert Action—Limited by Design

By 2008, a discernible level of frustration had developed within the senior ranks at ODNI regarding the DNI's constrained role in covert action. While the IRTPA, EO 12333 and all other executive branch guidance assigned the CIA responsibility for conducting covert action, the

a. In *Blinking Red* (59–147), Michael Allen describes in suspenseful detail the development of language in the intelligence reform legislation designed to protect the military chain of command from interference by the head of the IC. The direct involvement of the president, vice-president, and their senior advisors on this provision was required to avoid the collapse of the conference committee's effort to draft intelligence reform legislation.

statute also designated the DNI as the president's principal intelligence advisor, stipulated that the CIA director "reported to" the DNI, and made the DNI responsible for the lawfulness of all activities undertaken by CIA. The ODNI staff argued that, in view of these significant statutory responsibilities, the DNI should be provided with more and more timely information from CIA regarding covert action operations and play a more active oversight role.

DNI McConnell proposed amending EO 12333 to require the DNI to "oversee all ongoing and proposed covert action programs and activities, including evaluating program effectiveness [and] responsiveness to the policy objectives of the president and NSC."[64] CIA Director Hayden resisted, arguing that the DNI would be usurping roles historically played by the NSC in overseeing and directing covert action and that the DNI and ODNI would be, or at least may appear to be, an added layer of bureaucracy and obstacle to agile covert action operations.[65] Hayden acknowledged that the DNI was in any case entitled to full transparency into CIA's covert action operations and timely information required to affirm their legality.[66]

The covert action issue was removed from a PC agenda in March and addressed separately by the DNI, the CIA director, and the national security advisor. In this instance, the final resolution was informed directly by presidential guidance. President Bush had on multiple occasions during his administration acted to preserve a direct chain of command for covert action—in particular, counterterrorism—operations running from him to the CIA director through the NSC. In the final, presidentially-approved EO 12333 text, language describing the responsibilities of the NSC and CIA in covert action was largely carried over from the 1981 order, while the DNI was assigned to "oversee and provide advice to the president and NSC with respect to all ongoing and proposed covert action programs" without further specification.[67]

The covert action issue was . . . addressed separately by the DNI, the DCIA, and the national security advisor.

Coordination of Intelligence Activities—a Preview of Future Conflict

The final outstanding issue in the process of updating EO 12333 concerned appropriate roles for the DNI and CIA director in coordinating overseas intelligence collection. The ODNI's proposed order made the DNI responsible for setting policies and procedures for coordinating all intelligence activities, and assigned lead roles to the FBI domestically and to the CIA for collection undertaken outside the United States.

The IRTPA only partially addressed this issue. The new law authorized CIA to direct and coordinate collection through "human sources" outside the United States while Reagan's EO 12333 had assigned the CIA to coordinate "the collection of information not otherwise obtainable" outside the United States by other IC agencies. The Reagan order authorized the FBI to conduct CI activities and also to coordinate the CI activities of other agencies within the United States.[68]

The FBI was anxious to ensure the amended EO recognized its expanded intelligence mission by assigning to the Bureau the coordination of clandestine collection of both CI and foreign intelligence information in the United States. The PC agreed, and expressed interest in creating to the extent possible symmetry between the coordination roles of the FBI inside the United States and the CIA overseas.

CIA Director Hayden argued that restricting CIA's overseas coordination role to HUMINT and "human-enabled" collection, as reflected in both the law and draft EO, was a mistake that would invite confusion within the US IC as well as with foreign security services. Hayden explained that a single operational element must have cognizance of all intelligence activities underway in a foreign country in order to keep the chief of the US diplomatic mission appropriately informed and that CIA's chiefs of station (COS) already served as the senior intelligence advisors to ambassadors worldwide.

Specifically, the CIA director proposed the COS should be "kept apprised of all intelligence and intelligence-related activities" underway in their country of assignment.[69] DoD objected to granting such a broad coordination role to CIA because it might implicate service collection under DoD's authorities or NSA's operations. The DNI preferred to defer the issue, offering to clarify overseas coordination roles in subsequent policies that he would set.[70]

Implicit in the DNI's position on overseas coordination was the belief that a DNI should have the prerogative of appointing an official other than a CIA station chief to represent

In late April 2008, Hadley distributed a final draft order and invited principals to concur or identify issues they wished to address as a group or take up directly with the president.

him and the IC abroad and that this official would be informed of and coordinate all intelligence activities involving that state.

Hadley attempted to craft compromise language that would address the designation of a "DNI Representative" overseas, but the gulf between the CIA and ODNI positions proved too great to bridge and the effort was abandoned. In the final EO text, the DNI was assigned a role in setting coordination policies and procedures while the FBI and CIA were assigned roughly symmetrical roles in the United States and abroad coordinating intelligence collected through human sources or through human-enabled means. The DNI was also required to secure the attorney general's approval for any policies governing clandestine collection in the United States to avoid creating a perception that the nation's chief intelligence officer enjoyed unconstrained freedom of action within the United States.[71]

Approval, Roll-out, and Reactions

In late April, Hadley distributed a final draft order and invited principals to concur or identify issues they wished to address as a group or take up directly with the president. However, more time for discussion and coordination became available when White House political advisors elected to delay announcement of changes to EO 12333 until Congress passed legislation to amend FISA and renew the expired authorization to intercept electronic communications between foreigners that transited the United States and to immunize telephone companies from civil liability for cooperating in government surveillance programs.

DNI McConnell and the White House team involved directly in the effort to preserve this important counterterrorism tool believed releasing the amended EO, even without making substantive changes to the privacy rights and civil liberties protections in the existing order, might further complicate an already acrimonious legislative debate. The FISA Amendments Act was passed in early July, opening a window to roll-out the amendments to EO 12333 before the attorney general published new and potentially controversial guidelines for domestic investigations (including intelligence gathering) in early fall.[72]

NSC principals and senior White House staff discussed different options for engaging key members and committees of Congress, with special attention on the armed services, judiciary, and intelligence oversight committees, which knew a process was underway to update EO 12333. It was decided that these committees would be provided "notice and explanation" of key provisions in the amended EO, but they would not be consulted more extensively out of concern that the committees would seek to modify provisions that already reflected delicate balances reached within the executive branch.[73] Overview briefings were offered to committee staff and members in the week before the amended EO was formally approved, but requests for copies of the draft text were declined.

On 30 July, President Bush formally approved EO 13470, a nearly incomprehensible list of hundreds of substantive, technical, and conforming amendments to the original text of EO 12333. The president was asked to approve only amendments to the existing order to preserve the familiar format and shorthand for the IC's principal organizing document.

The following day, the White House press secretary released a statement and fact sheet characterizing the amended order as a "lasting framework for United States Intelligence Activities."[74] During a background briefing, White House officials described to journalists the central provisions of the amended order, the "constructive and collaborative" coordination process and fielded questions, principally, on civil liberties protections and rumored disagreements between ODNI and CIA over their respective responsibilities in coordinating overseas intelligence collection and supervising covert action.[75]

Media coverage of the amended EO was balanced and factual with most outlets highlighting, even exaggerating, the extent of new authorities provided to the DNI.[76] The press also widely reported complaints by lawmakers that they had been wrongly excluded from the drafting process. The chairman of the House intelligence committee led fellow Republicans in walking out of a briefing

EXECUTIVE ORDER

- - - - - - -

FURTHER AMENDMENTS TO EXECUTIVE ORDER 12333,
UNITED STATES INTELLIGENCE ACTIVITIES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108 458), and in order to update and clarify Executive Order 13355 of August 27, 2004, Executive Order 12333 of December 4, 1981, as amended, is hereby further amended as follows:

Section 1. The Preamble to Executive Order 12333, as amended, is further amended by:

(a) Striking "and" and inserting in lieu thereof a comma before the word "accurate", and inserting ", and insightful" after the word "accurate" in the first sentence;

(b) Striking "statutes" and inserting in lieu thereof "the laws" before "of the United States of America" in the third sentence; and

(c) Striking "the" before "United States intelligence activities" in the third sentence.

Sec. 2. Executive Order 12333, as amended, is further amended by striking Part 1 in its entirety and inserting in lieu thereof the following new part:

PART 1 Goals, Directions, Duties, and Responsibilities with Respect to United States Intelligence Efforts

1.1 Goals. The United States intelligence effort shall provide the President, the National Security Council, and the Homeland Security Council with the necessary information on which to base decisions concerning the development and conduct of foreign, defense, and economic policies, and the protection of

United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal.

(a) All means, consistent with applicable Federal law and this order, and with full consideration of the rights of United States persons, shall be used to obtain reliable intelligence information to protect the United States and its interests.

(b) The United States Government has a solemn obligation, and shall continue in the conduct of intelligence activities under this order, to protect fully the legal rights of all United States persons, including freedoms, civil liberties, and privacy rights guaranteed by Federal law.

(c) Intelligence collection under this order should be guided by the need for information to respond to intelligence priorities set by the President.

(d) Special emphasis should be given to detecting and countering:

(1) Espionage and other threats and activities directed by foreign powers or their intelligence services against the United States and its interests;

(2) Threats to the United States and its interests from terrorism; and

(3) Threats to the United States and its interests from the development, possession, proliferation, or use of weapons of mass destruction.

It remains unclear whether future congressional actions, for example, to codify NSA's mission or to impose new privacy and civil liberties protections, will result in changes to the IRTPA or EO 12333.

by DNI McConnell to protest the administration's decision not to consult Congress on the EO amendments.[77]

Senator Barack Obama defeated his Republican opponent in November and was sworn into office as the 44th President on 20 January 2009. During the transition period, the president-elect was briefed extensively on the IC's structure, activities, and assessment of threats. Notwithstanding a recommendation from his predecessor to retain DNI McConnell and CIA Director Hayden in their positions to ensure continuity in counterterrorism and other intelligence operations, both resigned and new leaders were appointed in the unsettled post-IRTPA community.[78]

Durability and Impact

The Obama administration has not, as of this writing, pursued significant legislative changes to the IRTPA or further amended EO 12333. Congress, despite its pique over not being fully consulted on updates to the order, has not taken action in response to provisions in the directive. Rather, in the FY 2010 Intelligence Authorization Act (the first such legislation passed since 2005) Congress attempted to further strengthen the DNI by directing him to assess personnel levels in IC agencies, perform vulnerability assessments, and track the costs for major technical systems as well as conduct accountability reviews of IC elements.[79]

The directive's obscurity has been pierced intermittently by administration and media references to EO 12333 as a source of authority for controversial electronic surveillance programs disclosed by former NSA contractor Edward Snowden. It remains unclear whether future congressional actions, for example, to codify NSA's mission or to impose new privacy rights and civil liberties protections, will result in changes to the IRTPA or EO 12333.

In view of the widely divergent institutional positions advanced by the ODNI and CIA during the process of drafting amendments on coordination of overseas intelligence activities and covert action, it was foreseeable, if not inevitable, that the third DNI, retired Admiral Dennis Blair, and Obama's CIA Director Leon Panetta would disagree about their respective roles in these areas. While the carefully crafted terms of the amended EO do not offer a CIA director the right to appeal DNI decisions to the White House, their well-publicized disagreement on those issues nonetheless landed there for adjudication in spring 2009.[80]

Ultimately, Panetta's approach to designating the CIA's COS as the senior IC representative abroad and strictly limiting the DNI's role in covert action was endorsed by the Obama administration. Media accounts cited the White House's decisions on these disputes as a contributing factor in Blair's subsequent decision to resign.[81] These events, and the public manner in which they unfolded, were regarded by former officials and commentators as a setback for the DNI, ODNI, and a centrally-managed US intelligence enterprise.[a82]

These events recalled the warning in the letter transmitting the WMD Commission's final report to President Bush that the new DNI would require "powers and backing to match his responsibilities" and that headstrong IC agencies would "sooner or later…try to run around—or over—the DNI." The WMD Commission wrote that only the president's "determined backing will convince them that we cannot return to the old ways."[83]

The process of amending EO 12333 to reflect the IRTPA structures and clarify authorities needed by the DNI to lead a more unified IC largely achieved its objectives, but the short-term impact of the updated order was limited. The change in administrations after the 2008 election brought into office new intelligence leaders with different backgrounds, priorities, and management styles. Momentum toward greater IC integration certainly slowed during this period but never fully stopped. DNI Clapper has reorganized the ODNI around teams led by national intelligence managers who are charged and empowered to integrate all facets of the US intelligence effort on a

a. In his memoir, *Duty* (294), Secretary Gates wrote that the administration's decision to side with Panetta in his dispute with Blair "made clear to all that the CIA director had more clout in the White House than the DNI did."

specific topic. The NCTC continues to play this integrating role in counterterrorism and increasing numbers of intelligence professionals at all grades are being exposed during joint duty assignments to the missions, cultures, and people of agencies other than their own.

A broad consensus has emerged among practitioners and commentators on post-9/11 intelligence reform:

- The IRTPA is a limited, imperfect vehicle for unifying US intelligence;
- the 2008 amendments to EO 12333 and other expressions of presidential support for the DNI added value at the margins but were insufficient to overcome flaws in the statutory model; and
- presuming there will be no fundamental shift away from the IC's federated structure, the quality of personal relationships between the DNI and others who share power within the community will largely determine the extent and pace of future integration and the improved outcomes greater unity is expected to produce.

It is similarly acknowledged that protecting the United States and its global interests by timely warning against every external threat is a difficult, even unattainable, standard for US intelligence. Our intelligence system will inevitably underperform or simply fail some future test and attention will turn, as it always has in the past, to reexamining the IC's structure, leadership, and performance.

This is the account of one recent effort to improve the functioning of that system by drafting what former National Security Advisor Hadley described as a "normative document" on US intelligence informed by the experiences and judgment of a uniquely qualified group of professionals who served together during a challenging period in our history.[ab]

❖ ❖ ❖

a. Secretary Gates summarized the process of amending EO 12333 and the leadership challenge confronting the DNI as follows: "[t]his was one of those rare instances where a unique set of personal relationships stretching back decades allowed us significantly to mitigate otherwise intractable bureaucratic hostility. And it is still another reminder that when it comes to government, whether it works or not often depends on personal relationships." *Duty* (92).

b. The current DNI, James Clapper, confirmed that many of the 2008 amendments to EO 12333 strengthened the hand of the DNI and are helpful in efforts to integrate the community. Clapper credited Hadley with leading an effective interagency coordination process that serves as an example of good government. (Clapper interview)

Endnotes

1. Michael Warner (ed.), *Central Intelligence: Origin and Evolution* (Center for the Study of Intelligence, 2001) (hereafter *Origin and Evolution*), 8–10.
2. *Origin and Evolution*, 19–145. Reference materials attached to this volume include the full series of NSCIDs, memorandums, and executive orders on intelligence issued between 1947 and 1981. See also, Stephen Flanagan, "Managing the Intelligence Community," *International Security* 10, No.1 (Summer 1985): 67–77.
3. EO 11905, United States Foreign Intelligence Activities, 18 February 1976.
4. EO 11905, Sec. 5(b),(d),(g). For a succinct explanation of the Senate investigation led by Senator Frank Church into alleged "intelligence excesses," see "Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities" in *A History of Notable Senate Investigations* (U.S. Senate Historical Office, http://www.senate.gov/artandhistory/history/common/briefing/Investigations.htm).
5. *Origin and Evolution*, 9. See also Richard Best, *Proposals for Intelligence Reorganization, 1949–2004* (Congressional Research Service, updated 2004), 26.
6. EO 12036, United States Intelligence Activities, 24 January 1978. See John Oseth, *Regulating U.S. Intelligence Operations, A Study in the Definition of National Interest* (The University Press of Kentucky, 1985), 133–62, for a comprehensive account of congressional efforts during this period to amend the 1947 National Security Act with specific legislation constituting a "charter" for US intelligence.
7. EO 12333, United States Intelligence Activities, 4 December 1981 (hereafter "Original EO 12333"). See Appendix A to "The Evolution of the US Intelligence Community—an Historical Overview" in *Preparing for the 21st Century, an Appraisal of U.S. Intelligence* (Report of the Commission on the Roles and Responsibilities of the United States Intelligence Community, 1996).
8. Original EO 12333, Preamble.
9. Ibid.
10. Thomas Kean, Lee Hamilton, et al., *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (W.W. Norton, 2004).
11. Ibid., 399–428.
12. George W. Bush, "Remarks on Intelligence Reform," 2 August 2004 and 8 September 2004.
13. EO 13353, Establishing the President's Board on Safeguarding Americans' Civil Liberties; EO 13354, National Counterterrorism Center; EO 13355, Strengthened Management of the Intelligence Community; and EO 13356, Strengthening the Sharing of Terrorism Information to Protect Americans (all signed on 27 August 2004).
14. EO 13355, Section 1; "White House Conference Call on President's Orders", 27 August 2004; also cited in Michael Warner and J. Kenneth McDonald, *US Intelligence Community Reform Studies Since 1947*, (Center for the Study of Intelligence, April 2005) 38, fn. 27.
15. Public Law 108-458. See draft bill on intelligence reform attached to the Memorandum for the Vice-President et al. from Condoleezza Rice on "Draft Intelligence Reform Legislation", 13 September 2004, available at www.rumsfeld.com. A comprehensive, authoritative, and thoroughly engaging account of the IRTPA's legislative history is Michael Allen's *Blinking Red* (Potomac Books, 2013) (hereafter "*Blinking Red*").
16. See draft memo to the president on "National Intelligence Director: Organization Options" attached to Memorandum for the Vice-President et al. from Condoleezza Rice, 19 August 2004, available at www.rumsfeld.com.
17. See John Negroponte and Edward Wittenstein, "Urgency, Opportunity, and Frustration: Implementing the Intelligence Reform and Terrorism Prevention Act of 2004" in *Yale Law and Policy Review* 28, No. 2 (Spring 2010) for a firsthand account of challenges confronted by the first DNI and ODNI staff.
18. Stefanie Osburn interview by author, 14 January 2014, McLean, VA; and Jack Morrison (PIAB member) e-mail to author, 28 January 2014 and the author's notes.
19. Author's notes.
20. Ibid.
21. Ibid.
22. Corin Stone, David Shedd e-mails to author, 15 January 2014; Ben Powell interview by author, 20 March 2014, Washington, DC.
23. Mike McConnell interview by author, 17 January 2014, Herndon, VA.
24. Author's notes, Osburn interview, and Morrison e-mail.
25. Author's notes.
26. Ibid.
27. Steve Hadley interview by author, 2 December 2013, Washington, DC.
28. Author's notes.
29. Ibid.
30. James Clapper interview by author, 7 February 2014, McLean, VA; author's notes.
31. Michael Hayden interview by author, 5 February 2014, McLean, VA, and Deborah Barger interview by author, 26 February 2014, McLean, VA.

32. Mike McConnell memorandum to Steve Hadley, 22 February 2008.
33. Ibid.
34. Office of the Secretary of Defense Memorandum, "Executive Order 12333," 15 February 2008 (unsigned); Gen. James Cartwright (JCS) Memorandum for DNI, "Joint Staff Inputs on Executive Order 12333 Revision," undated.
35. US Department of Justice Memorandum for DNI, 13 February 2008 (unsigned).
36. Mike Hayden Memorandum to Steve Hadley, "The Nature of CIA Post-Intelligence Reform" (undated); Hayden interview; and author's notes.
37. Michael V. Hayden, "The State of the Craft: Is Intelligence Reform Working?" in *World Affairs Journal*, 1 September 2010), at http://www.worldaffairsjournal.org/search/site/%22intelligence%20reform%20working%22
38. Public Law No. 108-458, 118 Stat. 3638 (2004) (IRTPA), Section 1011.
39. Memorandum of Agreement between the Director of National Intelligence and the Secretary of Defense concerning the Management of Acquisition Programs Executed at the Department of Defense Intelligence Community Elements, 14 March 2008.
40. Amended EO 12333, 1.3 (b) 22.
41. IRTPA, Section 1012.
42. IRTPA, Section 1011.
43. Powell interview; author's notes.
44. Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Report to the President* (unclassified version), 31 March 2005, 365–74. Details of a presidential directive to the CIA director regarding implementation of the WMD Commission's recommendations on HUMINT management remain classified. See Press Release, the White House, *Bush Administration Actions to Implement WMD Commission Recommendations* (29 June 2005) at http;//georgebush-whitehouse.archives.gov/news/releases/2005/06//20050629-5.html.
45. Amended EO 12333, 1.10(e).
46. IRTPA, Section 1011.
47. Original EO 12333, 1.5(e).
48. Amended EO 12333, 1.3(b)(4)
49. Amended EO 12333, 1.7(a)(5)(6).
50. McConnell interview.
51. Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433).
52. McConnell interview.
53. IRTPA, Section 1018.
54. McConnell interview; and McConnell to Hadley memorandum.
55. OSD-Hadley and JCS-Hadley memorandums.
56. Hayden interview; and Hayden to Hadley memorandum.
57. Secretary of Defense Memorandum for the Assistant to the President for National Security Affairs, 14 April 2008.
58. Author's notes.
59. Amended EO 12333, 1.3(d).
60. OSD to Hadley and JCS to Hadley memorandums.
61. OSD-Hadley memo. See also "Memorandum of Agreement between the Secretary of Defense and the Director of National Intelligence on the Director of Defense Intelligence" (May 21, 2007) for a description of the USD/I's responsibilities as D/DI.
62. Author's notes.
63. Amended EO 12333, 1.5(d) and (e)(2).
64. Hayden-Hadley memorandums.
65. Ibid.
66. Ibid.
67. Amended EO 12333, 1.3(b)(3).
68. Original EO 12333, 1.8(d) and 1.14(a).
69. Michael Hayden Memorandum for DNI, 14 July 2008.
70. Author's notes.
71. Amended EO 12333, 1.3(b)(20).
72. FISA Amendment Act of 2008 (Public Law 110-261). See Eric Lichtblau, "Deal Reached in Congress to Rewrite Rules on Wiretapping", *New York Times*, 20 June 2008.
73. Author's notes.
74. Statement by the White House press secretary and fact sheet: "A Lasting Framework for United States Intelligence Activities," 31 July 2008; both available at http://georgebush-whitehouse.archives.gov/news/releases/2008/07/20080731.html.
75. Senior Administration Officials Background Briefings on the Revision of Executive Order 12333 (31 July 2008), available at http://georgebush-whitehouse.archives.gov/news/releases/2008/07/20080731.html.

76. See, e.g.: Scott Shane, "Bush Issues Order Seeking to Unite the Efforts of U.S. Spy Agencies," *New York Times*, 1 August 2008, and Siobhan Gorman, "Overhaul Elevates Intelligence Director," *Wall Street Journal*, 31 July 2008.
77. Daniel W. Reilly, "House Republicans Walk out of Meeting with DNI McConnell," *Politico*, 31 July 2008, quoted House intelligence committee chairman Peter Hoekstra on the protest: "[t]he president is within his authorities to sign an executive order, but his administration is wrong to suggest that Congress was in any way involved or consulted in this process."
78. McConnell and Hayden interviews.
79. FY2010 Intelligence Authorization Act (Public Law 111-259). See Richard A. Best Jr., *Director of National Intelligence Statutory Authorities: Status and Proposals* (Congressional Research Service, 16 December 2011).
80. See, e.g.: Mark Mazetti, "Turf Battles on Intelligence Pose Test for Spy Chiefs," *New York Times*, 8 June 2009, and David Ignatius, "Duel of the Spy Chiefs," *Washington Post*, 11 June 2009.
81. Marc Ambinder, "The Admiral's Listless Ship: The Demise of Dennis Blair," *The Atlantic*, May 2010.
82. Robert Gates, *Duty* (Alfred A. Knopf, 2014).
83. *WMD Commission Report*, Letter of Transmittal.