CONGRESS AND THE INTELLIGENCE COMMUNITY:

REBUILDING TRUST

A White Paper prepared by the AFCEA Intelligence Committee

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Congress and the Intelligence Community: Rebuilding Trust

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Introduction and Overview

The relationships among the Intelligence Community (IC), the Congress, and the American people, are impaired—in ways that risk in the long run compromising U.S. national security. Yet these relationships can and must be repaired. The Intelligence Committee of the Armed Forces Communications and Electronics Association (AFCEA) is pleased to present this white paper, part of a series[1] focused on the future of the IC. These papers, and the intelligence symposia they accompany, are intended to contribute substantively to an ongoing discussion of the nation's intelligence capabilities.

This paper explores two overarching themes:
- There are available ways to strengthen the relationship between the Congress and the IC.
- The nation's intelligence capabilities, and the safety of the American people, would benefit from a strengthened relationship.

The Current Relationship Between Congress and the IC

In recent years Congress has demonstrated significant concern regarding perceptions of the IC's behavior, practices, and management. In response, IC members sense that Congress wishes to limit their prerogatives and flexibility. Although a number of IC leaders enjoy support on Capitol Hill, the relationship that currently exists between Congress and the community has been undercut in recent years by several circumstances, including:

- Concerns relating to privacy issues associated with community activities in support of the Global War on Terrorism;

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[1] For previous AFCEA Intelligence Committee white papers, see:
http://www.afcea.org/mission/intel/committee.asp#papers.

- Concern that community components are not candid with Congress regarding their plans and activities; and

- Troubled performance on the part of the community in executing a number of major programs.

These circumstances are amplified by operating conditions intrinsic to Congress. Congressional oversight and appropriations committees, many would argue, have become risk-averse, often failing to recognize that technological uncertainty may reflect the potential to achieve unprecedented capabilities.

Operating difficulties in the oversight committees themselves have hampered Congress' relationship with the community. The House Permanent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI) have not produced in recent years conference authorization bills reflecting a position uniting the House and Senate. While the reasons—some political—for these failures are vexing, the failure has tended to diminish the role of these committees. As a result, the House and Senate Appropriations Committees and the respective House and Senate Armed Services Committees have had to act as "proxy" overseers.

In addition, the relationship of Congress with the IC is complicated by the complex committee structure that has remained in place, despite attempts to streamline and integrate the community stemming from 9/11 and the Intelligence Reform and Terrorism Prevention Act of 2004. The IC deals with the House and Senate Intelligence Oversight Committees, House and Senate Appropriations Committees, and the House and Senate Armed Services Committees. In addition, consideration is being given to the establishment of intelligence subcommittees of the House and Senate Appropriations Committees.

Operating within this complex committee structure, it is difficult for lawmakers to identify key issues, and to develop unified positions on those issues. As a result, the community contends with a bewildering set of differing concerns and priorities, as well as the need to satisfy the inconsistent priorities of different groups of congressional stakeholders.

Finally, intelligence issues have become more complex than in the past and more difficult to master. These include the complexities of integrating foreign intelligence and domestic law enforcement information, the challenge of information sharing across a wide variety of intelligence and open-source disciplines, and the need to acquire and deploy more promising—but ever more complex—technologies. Inherent in this complexity is the task incumbent upon lawmakers and their staffs to take on new and heavier burdens to understand the business of intelligence and to ensure its sound governance. The rise of a borderless, global information infrastructure adds complexity to questions relating to the governance of the signals intelligence component of the community. Vigorous debates regarding the role and effectiveness of the Foreign Intelligence Surveillance Act (FISA) and the effective functioning of the Foreign Intelligence Surveillance Court bear witness to the difficult nature of these issues.

These issues point to a relationship between Congress and the IC that is diminished by a lack of confidence and trust, divided oversight, a lack of agreement regarding priorities, and the challenge of mastering a growing range of increasingly complex issues. However, these issues are not new; the 9/11 Commission called on Congress to redress its own structure pertinent to intelligence appropriations and oversight. Addressing that need is as urgent as ever and perhaps more so given the dangerous and diffuse challenges the United States faces in today's global environment.

What the IC Needs from Congress

The situation described above represents the context for what the IC needs from Congress.

First, rationalize the appropriations and oversight structure employed with the IC: A small number of committees, supported by nonpolitical, professional staffs, could caucus more effectively, identify a core set of long-term issues that require congressional attention, and speak with unity regarding the priority of those issues. Creating numerous new committees and subcommittees, such as the Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment, and others subcommittees of the HPSCI, may not be an effective answer. In addition to increasing the workload for members, numerous committees foster "point solutions" and create a fractured view of IC issues.

What is needed is a smaller grouping able to focus in a unified way on the fundamentals of how the community is managed; the capabilities it develops, acquires and deploys; and how it is conducted.

Second, support innovation: Congress and the IC must come to an understanding regarding the need for innovation, and then create a climate that will enable the community to be innovative. The following four critical elements may enable innovation within the community:

- **Allow for flexibility and agility in new capability development, acquisition and deployment:** The acquisition of new technologies, sometimes untested at operational scale, requires an acquisition and program management work force equipped to acquire technologies that are changing continuously. Innovation requires a community that is able to spot operational potential and modulate existing plans to exploit it. New acquisition policies and legislation need to have additional degrees of freedom to accommodate the change required to counter the range of asymmetric threats with which the IC must contend. These asymmetric threats, to a great extent, are able to operate with much greater agility than is the IC. Current acquisition processes sometimes impede the community's ability to address change.

- **Accommodate risk:** Technological innovation has inherent risks. The use of risk-reduction prototypes is a proven way to manage and reduce program risk. By explicitly accepting cost, schedule and performance uncertainty early in a program, prototypes often reduce risk as a program matures. The early development of the nuclear submarine program highlights the benefits of this approach. In the 1950s, the U.S. Navy acquired a series of risk-reduction platforms (the *Nautilus*, *Triton*, *Seawolf* and *Halibut*). These platforms served both as Navy operational units and as developmental test beds, each giving the Navy experience in the advantages and challenges of specific new technologies. While none of these submarines were the lead ships for their classes, subsequent production submarines benefited from the Navy's experience in building and operating these early nuclear platforms. This approach bespeaks the ability of Congress

in the 1950s to understand the need to confront and accept risk—and the subsequent operational benefits that accrue in doing so.

- **Build an acquisition and program management capability that is innovation-ready:** Congress has criticized in recent years, and with reason, the performance of IC acquisition and program management. Congress has not done enough, however, to help the community rebuild the acquisition and program management cadre needed for successful programs in a time of rapid technology change. Just as attempts by Congress to "micromanage" specific programs deemed to be troubled have led to few program improvements, discussion on Capitol Hill regarding the imposition on the community of Nunn-McCurdy[2] "breach" requirements is well-intentioned, but unhelpful. Requiring additional deficiency notifications of an IC under-equipped to manage important programs will result in more breach notifications, and possibly more punitive congressional actions. It does little, however, to address fundamental problems. Rather than attempt to manage directly, or to impose additional reporting requirements, Congress should determine what acquisition and program management deficits continue to impair the community's performance and provide it with both the resources (billets, people and professional development) requisite to overcome these problems (and keep them at bay for the foreseeable future), as well as the requirement to use this investment as Congress intends it be used. Such an investment would pay dividends as it created a community acquisition and program management cadre that was both more capable of mastering the challenges of a long-term developmental program, and possessed of the ability and flexibility necessary to seize on innovations brought to the community by its own people, as well as by its industrial partners, and apply those innovations swiftly to changing operational requirements.

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[2] Wikipedia notes: "The Nunn–McCurdy Amendment … is designed to curtail cost growth in American weapons procurement programs. It requires cost growth of more than 15% to be notified to the United States Congress, and calls for the termination of programs whose total cost grew by more than 25% over the original estimate, unless the Secretary of Defense submits a detailed explanation certifying that the program is essential to the national security, that no suitable alternative of lesser cost is available, that new estimates of total program costs are reasonable, and that the management structure is (or has been made) adequate to control costs."

- **Encourage IC-wide innovation programs:** Related to these issues is a need for Congress to encourage innovation on the community's part. Congressional support for both In-Q-Tel and the Intelligence Advanced Research Projects Activity (IARPA) is laudable, but reflects congressional uncertainty, and possibly ambivalence, regarding the extent to which a more unified approach to intelligence innovation should be undertaken. Even as Congress continues to call for a more unified IC, one in which information is shared via a common information-sharing environment (ISE), it has yet to require of the Office of the Director of National Intelligence a unified approach to supporting (and pushing) innovation across the community in the fashion by which the Defense Advanced Research Projects Agency (DARPA) supports the Department of Defense. As a result, congressional support to intelligence innovation is regarded as tentative and uncertain, reflecting perhaps a lack of congressional confidence in the ability of the community to employ innovation effectively. Again, building an effective acquisition and program management capacity within the IC would do much to restore Congress' confidence in the community.

Third, forge a new relationship with the industrial base as a partner for the IC: Congressional perceptions regarding the defense industrial base undermine the ability of the community to gain the full benefit of what the U.S. industrial base has to offer. Too often, Congress sees industry through the lens of issues such as "staffing," "level of effort" and the debate over "inherently governmental functions." Instead, Congress should ask the industrial base what it can and should do to invest in its own program management capabilities. Congress also should work with the community to encourage the development of a cleared cadre of program managers, innovators and technologists capable of executing complex developmental programs, rather that attempting to manage the number of industry people employed at any given time by the IC. The former issue represents the need to revive in the long term the U.S. national security industrial base, key to the nation's global interests; the latter issue reflects a short-term view and attempts to deal with an issue the dimensions of which will ebb and flow with community budgets and needs.

Finally, support the exploration of new organizational structures for the IC: Congress is "settling" on the community structure that has emerged in the post-9/11 world, albeit with concern regarding the size and complexity of the staff of the Office of the Director of National Intelligence. Yet, the nature of the community organization and the changing threat environment call not for "settling," but instead for the community to continue to examine and experiment with models that create agile teams capable of dealing with dynamic issues. Such contingency organizations were created during the Manhattan Project, and they led to truly effective solutions, even as the existing scientific and military establishments sustained the resources and efforts necessary for long-term programmatic and operational success.

How the IC Can Earn Congress' Confidence and Trust

The recommendations above require a great deal on the part of Congress. The community itself must earn Congress' confidence if it expects Congress to express trust in the manner in which the IC conducts its affairs.

First, the community should be as forthcoming as possible with congressional members and cleared congressional staff regarding community plans, requirements and capabilities. The level of resources required for an effective national IC is sufficiently vast that there is little point in pretending that small programs can avoid congressional oversight. Such an approach invites suspicion, uncertainty and punitive congressional action.

Second, community leaders and program managers should meet quarterly with congressional appropriators and authorizers to discuss both long-term needs and plans; recent progress made; and problems encountered, particularly in the execution of complex programs. Such an approach would generate more congressional confidence in the willingness of the community to engage with the Congress in an open and productive dialogue. It would likely create between the community and Congress a closer and more enduring set of relationships that could sustain the challenges and problems inevitable in the oversight and management of something as complex as the IC. Such an approach also

would help create in Congress a cadre of members and staff who would acquire knowledge and understanding of issues that grow more complex every day.

Finally, a rigorous schedule of discussions between Congress and the IC could be a "forcing function" to encourage Congress to rationalize its own committee structure. This would also help create a more compact structure able to focus on a core and consensual set of issues, as well as to work with the community on a consistent basis. Such an approach also could diminish the apparent politicizing of congressional engagement with the community to which some observers point as an impediment to effective congressional oversight.

The Public's Relationship with the IC

A crisis in public trust for the community has been visible—one that has deepened over the last decade. The community must regain the trust of the nation's public, both as to its intentions and to its capacity to protect this nation's interests.

First, the open dialogue between recent community leaders and the public should be sustained. The recent Director of the Central Intelligence Agency (CIA) and the recent Director of National Intelligence built dialogues with the public, engaging in discussions regarding the questions intelligence can and should answer, as well as the challenges associated with intelligence operations in a world in which national borders no longer separate the United States from its adversaries. Indeed, transnational movements operating overseas and in the United States have cast into stark relief the problems associated with building a common operational picture that associates both foreign intelligence and domestic law enforcement.

Second, the IC has a great deal at stake in its relationship with the public. The community needs a steady supply of talented, intelligent and patriotic people prepared to serve their country. The IC works with the public in general, and the academic community in particular, to encourage the development of educational opportunities associated with the community's needs for intelligence analysts, linguists, political scientists, technologists, managers and other intelligence professionals. Communicating with

the public requires the community to speak with as much candor as possible, encouraging the public to view the IC with trust and confidence.

Third, Congress can aid the community in its dialogue with the public. Congressional appropriators and authorizers should make sure the public understands the national interests to which the IC contributes. It also should help explain to the public the complex legal questions confronting the community and the larger national security community. The nation's security in an age of state and non-state actors, as well as asymmetric, transnational movements, requires a nuanced understanding of the principles in law that govern foreign intelligence and those that protect U.S. civil rights. This understanding is challenged by the rise of a global information infrastructure that respects neither national boundaries nor the legal distinctions between foreign intelligence and law enforcement. U.S. lawmakers have a special responsibility in building an informed discussion with the public regarding the role of intelligence.

Summary Recommendations

The relationship between Congress and the IC is impaired, but the AFCEA Intelligence Committee believes that it can and must be improved substantially:

- **Congress should assess and rationalize the structure and composition of the committees that appropriate for and authorize the activities of the community.** In doing so, it should focus on development of a structure that helps identify core issues, and builds and sustains expertise appropriate to today's complex issues among congressional members and staff.
- **Congress should help the community (and invest in the community to) build the acquisition and program management capabilities requisite to achieving success on complex and challenging programs.** It should seek to cultivate a tolerance for risk, agility and flexibility as the community confronts new challenges and opportunities. It also should encourage community innovation, as well as the exploration of new organizational models, and it should give urgent consideration to providing the community with a more robust advanced research projects organization, using as a starting point for this consideration the current DARPA approach.

- **The IC and Congress should engage in a more routine and robust dialogue, one that builds trust on both sides.**
- **Both Congress and the community have an urgent need to strengthen the understanding the public has of the challenges confronting the IC and the role the community plays in securing the United States.**

Many of these observations have been made in the past. Action on them is overdue. The AFCEA Intelligence Committee urges Congress and the IC to close ranks on these issues.