Chapter 6 - Government responses, accountability outcomes and prospects

This chapter analyses the effectiveness of US responses to the challenges posed by public-private intelligence ‘partnerships’. From 2006 onwards, key authorities within the executive and legislative branches attempted to respond to some of the most pressing challenges posed by the evolution of public-private intelligence interactions. As part of this, the Office of the Director of National Intelligence (ODNI), the Central Intelligence Agency (CIA), and the Department of Defense (DOD) began to collect data on contractors to refine their human capital policies and devise better procedures to control public-private interactions. Congress also made an effort to gather information and regulate public-private ‘partnerships’. Congressmen and women demonstrated a clear concern with the definition of inherently governmental functions, the workforce balance between contractors and government employees, and the relative lack of procedures and personnel managing contractors within the executive branch. However, because Congress was not able to pass intelligence authorisations between 2005 and 2008, efforts to regulate the ‘partnerships’ were limited. Unsurprisingly, given the constraints upon the administration, by the end of the presidency of George W. Bush, a series of accountability problems remained. These problems concerned accountability standards and the procedures used to implement these standards. First, the government still needed to clarify what exactly it considered to be within its remit and discussions focused on the adequacy of outsourcing intelligence collection, covert action, and analysis. Second, decision-makers lacked the mechanisms necessary to reach coherent decisions about the sourcing of intelligence functions in the short, medium and long term. This was a crucial shortcoming as the adoption of a coherent human capital policy is necessary to maintain, operate and control key intelligence activities. Third, the legal standards applying to public-private intelligence ‘partnerships’ remained poorly defined, and their application was limited because of the inadequacy of the intelligence community’s contract management capability. More generally, persistent problems within the accountability process are related to the fact that key intelligence accountability holders have lacked incentives to carry out their duty in a more rigorous manner. The key to inducing greater action on the part of policy-makers, it is argued here, lies in a heightened public awareness of the need for better intelligence accountability in the United States.
Government responses

Reforming acquisition management in the intelligence community

The challenge arising from accountability issues reached an apogee in 2006, prompting the executive and legislative branches to offer responses to some of the problems posed by the evolution of public-private intelligence ‘partnerships’. Two main factors explain this: first, a series of controversies regarding conflicts of interest, efficiency, human rights and civil liberties put pressure on the US government to consider the need for change; and second, a number of structural evolutions increased the need for responses as contractors were essential to the efforts to revamp the intelligence community. The ODNI, the DOD and the CIA therefore all started to regulate public-private interactions and, when the ODNI was established in 2005, it was granted authority ‘to coordinate a large, complex enterprise’, set policy, manage the National Intelligence Program (NIP), and ensure ‘integration across the IC workforce’. Under the Intelligence Reform and Terrorism Prevention Act (IRTPA), the Director of National Intelligence (DNI) was assigned authority for Major Systems Acquisitions funded in the NIP. As a consequence of this, public-private intelligence coordination and human capital management logically became an increasingly important issue for the ODNI. Moreover, the growth of the ODNI and its reliance on contractors to augment its capacity rapidly acted as a catalyst for looking at contractors.

While executive level scrutiny of public-private intelligence interactions pre-dated the Global War on Terrorism (GWOT), the available evidence suggests that contractors started drawing more attention from senior intelligence officials at the ODNI and the CIA from 2006 onwards. In 2006, the ODNI initiated a contractor inventory ‘to capture information on the

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1 This section focuses mostly on the ODNI, the CIA and, to a lesser extent, the Department of Defense. These organisations constitute centres of gravity within the US intelligence community.
3 Systems are defined as ‘a combination of elements that will function together to produce the capabilities required to fulfill a mission need’. ‘Major Systems’ are those whose ‘total expenditures for research, development, test and evaluation [are] estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars). See: US Code (2013), Title 41, Chapter 7, Section 403 (9).
number and costs of contractors throughout the Intelligence Community’. The ODNI Five Year Strategic Human Capital Plan, released as an annex to the 2006 National Intelligence Strategy, sought to determine ‘the optimum mix of military, civilian, contractor, and other human resources’. The document made a number of points that are relevant to this study such as the need to eliminate staff ceilings restricting the number of government employees within each agency, one of the most discussable factors behind the expansion of intelligence contracting in the GWOT. The annex also mentioned the Office of Management and budget (OMB) asked the ODNI to conduct a study determining whether contractors were engaged in inherently governmental tasks. This study, the ODNI noted, should allow it to develop a plan for rebalancing its workforce. This research however, through a Freedom of Information Act (FOIA) request to the ODNI, has revealed that the study was never instituted. Nevertheless, the Chief Human Capital Officer (CHCO) at the ODNI, Ronald Sanders, confirmed that contract management was ‘one of the very first things we set out to do when the ODNI was established’. Despite this, figures such as the aggregate numbers of contractors working for the IC remained unavailable prior to 2006, as a limited number of agencies collected this kind of information on their contractors. In other words, the effort to systematically gather information, explain, and optimise the IC’s reliance on contractors began only five years into the GWOT and this effort was the result of ‘congressional concern, ODNI concern, a desire to get a handle on the role of contractors, and the extent of contracting in the intelligence community’. Of this, Sanders has commented:

The inventory helps us know, not only in the aggregate across the community but agency by agency. And then our agencies have to explain to us and we in turn have to explain to Congress and OMB whether we have the right mix in that total force, military, civilian, contract […] we’re trying to make sure we have the data and the tools to be able to manage this in the right way.

This effort was furthered in subsequent years as the ODNI sought to ‘manage this year in and year out … build it into [its] budget … [and] plan for it over the long term’. An essential part of this entailed identifying mission requirements in order to ensure that the IC would retain appropriate capabilities in the long term. The Director of National Intelligence’s (DNI) 100 Day Plan for Integration and Collaboration in 2007 put a particular emphasis on ‘acquisition excellence’, and shortly after the position of Deputy Director of National Intelligence for Acquisition (DDNI/A) was created to provide ‘a pivotal leadership role to move forward with efforts to more fully integrate the Intelligence Community’.

The DOD also made efforts to control its contractor workforce more closely and both legal standards and their application improved. The Army established the Contract and Manpower Reporting Application in January 2005 ‘to increase the visibility of its contract workforce’ and provide metrics for assessing its reliance on contractors. The DOD established the Armed Contractor Oversight Division in 2007 to better track the occurrence of serious incidents involving contractors. Although they were not dedicated to the control of intelligence activities, these organisations controlled them as a part of DOD activities. DOD efforts were particularly noticeable in the controversial area of detainee interrogations. Deputy Secretary of Defense Gordon England released a directive that required appropriate training, proper supervision, close monitoring for DOD contract interrogators and debriefers and clarified the law applying to contract interrogators serving with or accompanying US Armed Forces in the field in times of declared war or contingency operation.

16 Ronald Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.11.
17 Ibid, pp. 11, 15
21 Jay Aronowitz, Deputy Assistant Secretary of the Army for Force Management, Manpower and Resources, Testimony before the US Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Contracting Oversight, On contractors: How much are they costing the government?, Hearing, 112th Congress, 2nd sess., 29 March 2012, p.2.
At the CIA, the Director created a ‘study group to review CIA’s use of contractors and develop a management strategy’ in November 2006. In retrospect it is clear that this study group was established because the Agency management lacked information about its contractors and this can be explained by the fact that the Agency’s contractor workforce grew as a result of a series of relatively independent decisions to contract within each directorate. The CIA study group on contractors concluded that responsibility for earlier mistakes lay with the Agency’s management, something Michael Hayden, then Director, recognised in a public statement. Reportedly, the study group made three recommendations: a ‘realignment of the workforce – identifying jobs that should be done only by staff and jobs that can be performed by contractors or a mix of contractors and staff’; taking an ‘efficient approach to contracting’ or centralise the management of contracts; ‘better workforce management through procedural and administrative changes’. In sum, these improvements targeted accountability standards and their application by a more competent management workforce. Hayden also asserted that he could reduce the Agency’s reliance on contractors by 10 percent before the end of Fiscal Year (FY) 2008 but this ‘in-sourcing’ initiative, also called ‘Go-Blue program’ in reference to the colour of the security badges worn by government employees, was contentious. An expert considered that this kind of in-sourcing measure constituted ‘arbitrary decision-making’ and that it can sometimes go too far; another argued they were the result of congressional pressure. However, the CIA’s efforts to re-balance the relative number of government employees and contractors can be explained by the fact that it had replenished its core workforce and began to shift ‘contract support out of intelligence analysis and collection and either into backroom support functions or out all

25 Former Senior Intelligence Official A, interview with author, 8 August 2011, Washington DC.
28 Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.10. Blue is the colour of the security badges worn by government officials. Contractors typically wear green and sometimes pink badges depending on their level of security clearance. In Washington parlance, contractors in the field of national security are often called ‘green-badgers’.
Charles E. Allen, who was Assistant Director of Intelligence for Collection from 1998 to 2005 and Under-Secretary of Homeland Security for Intelligence and Analysis from 2005 to 2009, noted that Hayden’s decision to in-source ‘has not affected the efficiency of the Central Intelligence Agency’. When reflecting upon his decision to reduce the Agency’s reliance on contractors by 10 percent a former senior intelligence official acknowledged this percentage was ‘arbitrary’. Interestingly, such measures did not extend to the ODNI whose management did not believe it was ‘over-reliant on contract personnel to accomplish [its] mission’.

In addition to in-sourcing, the CIA decided to make the contracting process more rigorous, emphasise performance-based models, and revamp training for contracting officer technical representatives (COTR). All of these decisions clearly aimed to improve standards of control. Furthermore, the CIA management sought to limit the revolving door phenomenon. In a public statement, the Director announced that ‘all Requests for Proposals and contracts issued after 1 June will bar contracting firms from bidding back within 18 months former CIA employees who resigned before retirement eligibility’. Michael Hayden argued that he did not want the CIA to become ‘a farm team for contractors’. This effort was a step in the right direction and yet, this measure was criticised because it applied to contractors, but not to the individuals sitting on companies’ boards. In addition, this ban was limited in time while personal relationships often are not.

Overall, the ODNI, the CIA and the DOD reacted to some of the challenges posed by the turn to outsourcing by devising or refining their human capital policies to improve the standards applying to public-private intelligence ‘partnerships’. In the case of the ODNI, the

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31 Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.8.
33 Former Senior Intelligence Official A, interview with author.
34 Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.12.
35 Central Intelligence Agency, ‘Director's Statement on Contractor Study’. For an early account of some these regulations, see: Walter Pincus and Stephen Barr, ‘CIA Plans Cutbacks, Limits on Contractor Staffing’, Washington Post, 11 June 2007, A02. For more details concerning this insourcing initiative, see: Appendix 11.
youth of the organisation explains why personnel management was lacking, at least until 2006. The organisation needed time to understand intelligence contracting, ‘to manage it, to optimize it’, but the situation was more contentious in the case of the CIA and the DOD which have relied on contractors for decades. One of the reasons behind the apparent absence of strategic workforce planning before the mid-2000s in these agencies is that, following the 9/11 attacks, priorities were directed towards action, mostly collection and covert action, rather than workforce and acquisition management. When contracting became an issue in the early twenty-first century, intelligence officials spent months determining just how many contractors were working for the IC and the count of government contractors was delayed by a series of methodological problems. For example, many contractors do not work full-time for the IC and as a result there is no easy comparison between full-time government employees and their contractor equivalent. Overall, deficiencies in the executive control of contractors have had the disturbing consequence of limiting congressional oversight of intelligence. When intelligence agencies do not have the necessary information or capabilities to control their workforce, congressional overseers can hardly be expected to do their job properly.

**Congressional efforts to regulate the ‘partnerships’**

Congressional efforts to respond to some of the accountability problems relating to public-private intelligence ‘partnerships’ became clearer from 2006 onwards; however, these efforts were precluded by partisan rivalry. Besides accountability triggers and structural evolutions, the political climate at the time explains why some representatives devoted increasing attention to their oversight role. The Democrats’ gains at the 2006 mid-term elections allowed them to push forward a political agenda that was more clearly opposing some of the Republican policies. In this context, the general level of congressional oversight rose significantly, including in the area of intelligence and national security. Looking at the number of congressional hearings related to national security intelligence (understood broadly) from 2001 to 2009, this table (below) shows a clear increase of the number of

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38 Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.7.  
40 Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.3; Former Senior Intelligence Official A, interview with author.
hearings from 2006 onwards. At the organisational level, this impetus was characterised by the creation of an oversight subcommittee within the House Permanent Select Intelligence Committee (HPSCI).

Before Congress provided any regulatory response to issues relating to intelligence and security contractors, it needed to gather information and assess the situation. A series of indicators (reports, statements, and bills) demonstrates that Congress, in particular the intelligence committees, was fairly determined to gather information about intelligence contractors. Congress then attempted to respond to some of the most pressing accountability problems generated by the relatively unplanned expansion of public-private intelligence ‘partnerships’ in the twenty-first century. These congressional measures focused on improving accountability standards and their application. They aimed to better define inherently governmental functions, find a balance between government employee and

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41 This broad understanding is based on the number of hearings for each year. The data were collected by the Intelligence Resource Program of the Federation of American Scientists, <http://www.fas.org/irp/congress/2001_hr/index.html> (accessed 20 February 2012). This measurement shows a clear augmentation of national security intelligence related hearings from 2006 onwards.


44 Data is not abundant because traditional indicators of congressional interest and activity such as the total number and the precise content of oversight hearings are often kept secret in the realm of national security intelligence.
contractors, and tackle issues of fraud, waste and abuse. However, congressional responses were complicated by political rivalry between the executive and legislative branches, but also within Congress.

Accessing information
In the years following the 9/11 attacks, Congress sought to acquire a greater understanding of public-private intelligence ‘partnerships’. From 2003 onwards a series of reports on security contracting were delivered to Congress by its two research arms: the General Accounting Office (or GAO, which became the Government Accountability Office in 2004) and the Congressional Research Service (CRS).\(^45\) While these reports provided relevant information, none of them focused entirely on intelligence contracting. In addition to these reports, interested representatives and congressional staffers were able to glean information from the work of public and private interest groups,\(^46\) and investigative journalists such as Tim Shorrock.\(^47\) For example, in 2006 Representative David Price (D-NC) made an alarming statement about intelligence contractors that seemed to refer to Tim Shorrock’s findings: ‘some reports estimate that approximately half of the intelligence community’s budget is now spent through contracts awarded to private sector firms. This is not an inconsequential matter,


and it requires the immediate attention of Congress’. In the following months and years, numerous congressional documents requested more information on intelligence contractors. A House report accompanying the Intelligence Authorization for FY 2007 proposed an amendment which required:

(1) the DNI to report to Congress on regulations issued by agencies within the Intelligence Community regarding minimum standards for hiring and training of contractors, functions appropriate for private sector contractors, and procedures for preventing waste, fraud, and abuse; (2) contractors awarded Intelligence Community contracts to provide a transparent accounting of their work to their contracting officers within Intelligence Community agencies; (3) the DNI to submit an annual report to Congress on the contracts awarded by Intelligence Community agencies; and (4) the DNI to make recommendations to Congress on enhancing the Intelligence Community’s ability to hire, promote, and retain highly qualified and experienced professional staff.

Although this amendment was added to the Senate’s version of the intelligence bill, the Senate never managed to pass the intelligence authorisation bill that year and the amendment died. Nevertheless, congressional intelligence committees and their members continued to express clear concerns about the IC’s inability to provide basic figures about its reliance on contractors. In a remarkable example, the final version of the House authorisation bill for FY 2008 included a whole section requiring a ‘comprehensive report on intelligence community contractors’.

As Congress received more information from the IC, it was able to refine its understanding of some of the problems plaguing public-private intelligence ‘partnerships’. A

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50 Shorrock, Spies for Hire, p.372.
key document was the ODNI 2007 report entitled ‘IC Core Contractor Inventory’. The Senate Select Committee on Intelligence (SSCI) described the report as ‘a good first step’ and considered it ‘provided a preliminary snapshot of the total number of full time equivalent (FTE) contractors by expenditure center’. The SSCI estimated it was essential that the DNI be able to reach ‘an appropriate balance of contractors and permanent government employees’. Following the estimation that the average annual cost of a core contractor was largely superior to that of a US government civilian employee (respectively $250,000 and $126,500), the committee recommended reducing the IC’s ‘dependence upon contractors’ in the long-term. This recommendation gave a first hint that political preferences were shifting in favour of in-sourcing.

Congressional committees also focused on the definition of the red lines delimiting the boundaries of the public sector. For example, in a series of questions sent to Admiral McConnell to prepare his nomination hearing to be DNI, Senator Wyden (D-OR) asked ‘what jobs, Admiral, do you believe are too important or too sensitive to be performed by contractors?’ In an authorisation bill, the HPSCI was ‘concerned that the Intelligence Community does not have a clear definition of what functions are ‘inherently governmental’ and, as a result, whether there are contractors performing inherently governmental functions’. Although these remarks were not part of the final legislation, they demonstrated a clear awareness of the problems at hand, and sent a very clear signal to the executive branch and its intelligence agencies. The focus on red lines was reinforced after Michael Hayden, then Director of the CIA, testified to the SSCI that his agency may have been relying on contractors to carry out interrogations. This possibility, as Senator Feinstein (D-CA) highlighted, raised important questions about the definition of governmental activities and the ‘legality of using contractors to perform interrogations involving so-called “Enhanced

53 John F. Hackett, Information Management Office, Office of the Director of National Intelligence, Letter to the author, 15 November 2011. This letter follows a FOIA request for ‘the fiscal year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel’.
56 Ibid, p.11.
57 US Senate, Select Committee on Intelligence, Nomination Hearing of Mike McConnell to be Director of National Intelligence, p.14.
Interrogation Techniques”.61 Following a proposition made by Senators Feinstein and Feingold (D-WI), the SSCI accepted to add an amendment to its intelligence authorisation and required:

a one-time report to the congressional intelligence committees by the DNI describing the activities within the Intelligence Community that the DNI believes should only be conducted by governmental employees but that are being conducted by one or more contractors, an estimate of the number of contractors performing each such activity, and the DNI’s plans, if any, to have such activities performed solely by governmental employees.62

A third area Congress touched upon was ‘the absence of procedures for overseeing contractors, ensuring the recognition of criminal violations and preventing and redressing of financial waste, fraud and abuse’.63 Congressional committees were particularly concerned about the potential ‘impact of organizational conflict of interest on major acquisitions’.64 For instance, the Intelligence Authorization for FY 2009 requested a ‘list of all contractors that have been the subject of an investigation by the inspector general of any element of the Intelligence Community during the previous fiscal year or that are or have been the subject of an investigation during the current fiscal year’.65 These congressional efforts to inform itself and better understand the privatisation of intelligence and its limits were laudable but insufficient to properly oversee this phenomenon.

\textit{Regulation: a mixed record}

Congress from 2004 onwards attempted to use its legislative power to improve the accountability standards applying to public-private intelligence ‘partnerships’ based on the information it accessed. The intelligence authorisation bills for FY 2007, 2008 and 2009 included a series of provisions regulating the activities of intelligence contractors. However, they were never passed because of partisan tensions. According to a former senior ODNI official, the fact that the intelligence authorisation bills were not passed meant that

\begin{itemize}
  \item[64] US Senate, Select Committee on Intelligence, Intelligence Authorization for Fiscal Year 2008, Report 110-75, pp. 41-2.
  \item[65] US Senate, Select Committee on Intelligence, Intelligence Authorization for Fiscal Year 2009, Report 110-333, pp. 5-6.
\end{itemize}
intelligence community senior management had ‘unlimited flexibility’.\textsuperscript{66} A congressional staffer added that ‘legally, it certainly gives more leeway to the intelligence community to spend the funds it was appropriated’.\textsuperscript{67} However, the ODNI Chief Human Capital Officer remarked that his organisation did not abuse that ‘vacuum’.\textsuperscript{68} These authorisation bills are worthy of attention because they indicate the intelligence committees’ intentions with regards to the regulation of public-private intelligence ‘partnerships’ and parts of the IC followed some of the guidelines they provided. The 2008 intelligence authorisation bill offered more flexibility for the ODNI to manage its workforce. In its bill, the SSCI raised personnel caps, allowing a 20 percent growth of full time positions in the community and Congress no longer required the ODNI ‘to count re-employed retirees against [its] employment ceilings’.\textsuperscript{69} These measures were well received by the ODNI, which respected the employment ceilings established by the intelligence committees despite the fact that authorisation bills were not passed from 2005 to 2008.\textsuperscript{70} An insider noted that the flexibility offered by congressional measures allowed the ODNI to ‘civilian-ize’\textsuperscript{71} contract positions and ‘optimize the balance between military and civilian personnel on one hand and contract personnel on the other’.\textsuperscript{72} Nevertheless, the flexibility provided by the SSCI was also criticised for being ‘insufficient to meet the demand set by policy-makers’.\textsuperscript{73} In addition, the final versions of both the House and Senate intelligence authorisation bill for FY 2009 contained congressional guidance regarding inherently governmental functions, contractors’ performance and conflicts of interest. The bill explicitly prohibited interrogation by CIA contractors.\textsuperscript{74} Reflecting on this measure, Rep. Janice Schakowsky (D-IL) pointed out the ‘bill will take detention-related activities out of the hands of private contractors and put the responsibility back where it belongs, in the hands of authorized government personnel’.\textsuperscript{75} In the latest working version of

\textsuperscript{66} Sanders, Media Conference Call, p.12.  
\textsuperscript{67} Congressional staffer working on national security affairs A, interview with author, 10 June 2011, Washington DC.  
\textsuperscript{68} Sanders, Media Conference Call, p.12.  
\textsuperscript{69} Ibid, p.6.  
\textsuperscript{70} Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.6.  
\textsuperscript{71} Ibid, p.8.  
\textsuperscript{72} Ibid, p.3. See also: US Senate, Select Committee on Intelligence, Intelligence Authorization for Fiscal Year 2008, Report 110-75, pp. 2-3, 38.  
\textsuperscript{75} Rep. Schakowsky (D-IL), ‘Price-Schakowsky Bill Would Prohibit Intel Contractors From Detainee Operations’, 6 May 2008,
the House bill, the intelligence committee encouraged ‘the DNI to issue a formal policy establishing a procedure by which the Intelligence Community would be empowered to withhold incentives from companies with poor contract performance’. The bill also urged ‘the Deputy DNI for Acquisition to consider whether established firewalls are sufficient to prevent any potential conflict of interest’. Likewise, the Senate version of the bill contained a section prohibiting ‘conflicts of interest in intelligence community contracting’.

Congress also approached public-private intelligence ‘partnerships’ through the broader lens of security contracting. From 2004 onwards, Reps. Schakowsky (D-IL) and Price (D-NC) introduced a series of bills seeking ‘Transparency and Accountability in Security Contracting’ but these failed to be enacted. Furthermore, the MEJA Expansion and Enforcement Act of 2007, a bill supported by Rep. David Price, aimed to clarify US jurisdiction to prosecute US government contractors operating near a conflict area. The bill was passed on 4 October 2007 by a large majority in the House of Representatives. Its companion legislation in the Senate was introduced by then Senator Obama (D-IL) as the Security Contractor Accountability Act of 2007. However, the White House considered that ‘the bill would have unintended and intolerable consequences for crucial and necessary national security activities and operations’. This position was supported by Republican representatives such as J. Randy Forbers (R-VA) who explained that the proposed legislation could expose clandestine assets and ‘compromise critical intelligence activities’. In the same congressional debate, Rep. Price (D-NC) wondered:

Given that my bill only targets activities that are unlawful, why do my colleagues feel the need to clarify that it does not affect activities that are permissible? What

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83 Representative Forbers (R-VA), Congressional Record 153/19, 4 October 2007, p.H26633.
activities are contractors carrying out that are permissible but not lawful? If there are private, for profit contractors tasked with duties that require them to commit felony offenses, Congress needs to know about it. Such a revelation would point to a need for a serious debate about whether we are using contractors appropriately. 84

Ultimately, the bill never made it to the Senate floor and therefore never passed.

A series of congressional measures from 2004 onwards were more successful and raised the standards applying to the private provision of intelligence to the US government. The Defense Authorization Act for FY 2005 included language requiring the Secretary of Defense to issue guidance on DOD’s management of contractor personnel supporting deployed forces. Among other issues, the act mentioned the establishment of categories of security, intelligence, law enforcement, and criminal justice functions that are closely related to inherently governmental functions. 85 It also required training contract personnel involved in interrogations, 86 and clarified the military extraterritorial jurisdiction over contractors supporting defence missions overseas. 87 Concerning propriety, with the Cunningham scandal in mind, Congress made a particular effort towards transparency when it released, for the first time, information on intelligence earmarks in the report accompanying the 2008 defence appropriation bill. 88 However, this release remains an exception and although it may have dissipated some of the public pressure exerted on Congress, it did not provide any definitive remedy. Under increasing pressure from the White House, 89 Congress also legislated about domestic and foreign wiretapping and the involvement of telecommunication companies in

87 Ibid, section 1088.
the NSA warrantless eavesdropping programme. The Protect America Act of 2007 allowed the untargeted collection of international communications without court order. A year later, the FISA Amendment Act provided liability protection to electronic communication service providers assisting an element of the IC. From a strictly technical point of view, these laws, although they lowered the potential for judicial review, possessed the merit to clarify public-private interactions in this specific domain.

In the absence of intelligence authorisations, defence authorisation acts provided further guidance to regulate security contracting and set up a series of databases to facilitate government access to information on its contractors. An authorisation directed the DOD, the Department of State, and the US Agency for International Development (USAID) to identify a common database for information on contracts and contractor personnel in Iraq and Afghanistan, and another one required a contractor misconduct database be kept. The Defense Authorization Act for FY 2008 asked the Secretary of Defense and the Secretary of State to prescribe regulations for vetting, training and using private security companies’ personnel. Congress also devoted increasing attention from 2005 onwards to the balance between government employees and contractors. The National Defense Authorization Act for FY 2006 directed the DOD to consider using federal government employees. This prefigured a shift from out- to in-sourcing and a broader redefinition of public-private boundaries. In a section called ‘Insourcing New and Contracted Out functions’, the 2008 National Defense Authorization Act required the DOD to:

devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, DoD civilian employees to perform new

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functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees.\textsuperscript{97}

The section warranted special consideration to keep in-house those functions that are ‘closely associated with the performance of an inherently governmental function’. Eventually, ‘in an effort to reconcile the definitions and examples of inherently governmental functions’, the National Defense Authorization Act for FY 2009 directed the OMB to:

(i) develop a single consistent definition of an “inherently governmental function,”  (ii) establish criteria for agencies to identify critical functions, and (iii) provide guidance to improve internal agency staffing decisions to ensure that federal employees are filling critical management roles.\textsuperscript{98}

In this context, it is interesting to note that, to a certain extent, the same rationale has been used to justify in-sourcing and outsourcing. In-sourcing, according to a DOD memorandum, was supposed to improve the government’s ‘ability to reduce costs and manage the Defense workforce’.\textsuperscript{99} More importantly, in passing this act, Congress effectively accepted the need to define more clearly those activities that can only be legitimately carried out by public authorities.

\textit{The political nature of intelligence oversight}

The political nature of congressional oversight can impact both positively and negatively on intelligence accountability. The fact that Congress took on the subject of intelligence contractors made it a political issue. This politicisation of the subject acted positively to the extent it triggered executive briefings on the topic. Indeed, the text of the National Security Act of 1947 mentions that intelligence agencies should brief any ‘anticipated and significant intelligence activity’ to Congress. According to Michael Hayden this threshold is political and not legal.\textsuperscript{100} Following this understanding, the growing interest Congress expressed about intelligence contractors from 2006 onwards made it worth reporting on, and therefore inflated some of the communication channels between the executive and legislative branches of government.

\textsuperscript{100} Michael Hayden in Video: C-SPAN, The Privatization of U.S. Intelligence.
However, when it started to get more information on contractors, Congress was not able or willing to respond properly. Political tensions prevented representatives to pass intelligence authorisations bills from 2005 to 2008. Referring to the unprecedented refusal of the majority leader to bring the 2006 and 2007 intelligence authorisation bills to the floor, Senator Rockefeller (D-WV) pointed out an ‘inexplicable and unpardonable failure’ that will ‘result in less effective oversight’. Although no reason was ever advanced for this failure, political partisanship and Republican support for the Bush administration have been considered as one of its causes. A CRS report noted that ‘Members did not choose to compromise disagreements either amongst themselves or with the White House on issues they considered important’. The Republican White House invoked a series of reasons, none of which were directly related to public-private intelligence ‘partnerships’, to veto the intelligence authorisation bill for FY 2008 and this veto was never overridden by Congress. According to Joseph Mazzafro, an intelligence specialist, the bill for FY 2009 was never passed ‘because of partisan differences over language on interrogation techniques’. These deadlocks draw attention to the eminently political nature of the intelligence accountability process. At the margin, the ‘politicisation’ of the accountability process weakens accountability standards. In the absence of intelligence authorisation, the intelligence appropriation bills passed as a part of the Defense budget became more significant. In comparison, Congress had no trouble passing defence authorisations, bills on security contracting, or even the FISA Amendments Act. Congressional cohesion on defence issues suggests that intelligence oversight may benefit from a broadening of intelligence to the realm of defence and security.

Outcomes and prospects

What not to privatise?

Despite the efforts made by the government after 2001, the persistence of problems afflicting public-private intelligence ‘partnerships’ underlined the need for more exacting standards in a variety of areas. By early 2009, the boundaries between public and private intelligence remained unclear and from a legal point of view, three areas had been defined as ‘inherently governmental’: ‘allocating funds, prioritizing workload, and making decisions’. What exactly ‘making decisions’ meant is not clear. For instance, a former CIA lawyer noted that, within his agency, committing the government to spend money and personnel actions such as hiring, firing, and promoting were indisputably ‘inherently governmental’. Besides these functions, the definition of what lay within the governmental realm remained relatively opaque, allowing for multiple interpretations. Figures such as Senator Feinstein (D-CA) therefore tried to expand the ‘inherently governmental’ domain to include sensitive activities such as interrogation, though from a strictly legal point of view this was not the case. Nevertheless, legal considerations should not prevent an in-depth debate on the boundaries and nature of government in the sector of intelligence and national security. Scholars such as Simon Chesterman, and Alan Chvotkin, the general counsel of an industry association, concurred on the point that a certain amount of work should only ever be done by government officials and never be contracted. Chesterman convincingly argued that, because of its democratic legitimacy, the government should define its own realm or prerogatives. Chvotkin adopted a more pragmatic stance and considered that the government should always be able to plan for its requirements. Most analyses implicitly or explicitly refer to the potential consequences of privatisation when envisaging the scope of public-private

109 Frederic Manget, phone conversation with author, 10 August 2011.
112 Legal expert on national security contracting, interview with author.
intelligence ‘partnerships’ and emphasise that the government is better positioned than the private sector to ‘withstand the political costs of misadventure’.113

Based on the above perspectives it is useful to consider intelligence by functions to take into account specific circumstances and reflect on the boundaries of the public realm.114 Given the secrecy, the extraordinary authority and relative legal immunity accompanying intelligence collection, many observers have wondered whether contractors should carry out such activities.115 From this perspective, certain HUMINT operations should not be outsourced because they can require the ‘exercise of substantial discretion’ and can ‘directly affect the life, liberty, and property of both U.S. persons and foreign nationals’.116 However privatising HUMINT is deemed to be acceptable when the government manages to remain responsible and closely control the use of private means. Likewise, it has been argued that the use of force should not be outsourced since private companies do not enjoy the same legitimacy as does the state.117 In recent years, this argument has taken on a particular significance in the context of the ‘drone war’ and the involvement of the private sector in the administration of lethal force through targeted killings. There is little dissent from the view that key decisions regarding such aggressive actions should always remain in the hands of elected officials (or their political appointees) in order to ensure that the accountability relationship between the decision-maker and the people is as straightforward as possible. An investigative journalist who has worked for the DOD, questions who is really responsible when the private sector develops, constructs, ships, arms, flies the drones remotely, and the government employee just presses the button.118 Although this expert is right to pose this question, a dose of pragmatism is necessary because technical knowledge and privileged access to certain networks occasionally require a reliance on the private sector in HUMINT

118 Investigative journalist A, interview with author, 10 August 2011, Washington DC.
or other types of covert operations.\textsuperscript{119} When this kind of situation occurs, the existence of well-defined and effective control procedures is absolutely essential in order to guarantee public control over private means.

The privatisation of intelligence analysis raises interesting questions on its impact on the analytical integrity of intelligence products, though ultimately there is little, if any, evidence that privatisation generates an ‘economic’ type of politicisation of intelligence. From a legal perspective it is possible to argue that privatising analysis risks ‘delegating to contractors duties and functions reserved for governmental performance’ because these can be ‘intimately linked to the direction and control of intelligence and counterintelligence operations’\textsuperscript{120}. Yet, based on similar statutes, one legal scholar posits that as long as analysis is construed as ‘developing options’ it should not be considered as inherently governmental.\textsuperscript{121} Another approach considers different types or levels of intelligence analysis. The outsourcing of some sorts of analysis such as analysis based on OSINT is uncontroversial.\textsuperscript{122} Contracting out analyses on particularly sensitive topics, such as the Iranian nuclear programme, may be highly contentious (although there is no reason to trust contractors less than government employees as long as they are cleared and competent). Perhaps one of the most convincing arguments against privatisation holds that, at the highest level, intelligence products that are directly policy-relevant to questions of war and peace, such as the President’s Daily Brief (PDB) or the National Intelligence Estimate (NIE), should not be written by contractors.\textsuperscript{123} Similarly, one former government official considered that if a senior analyst in charge of similar products were to be a private contractor this would give ‘an unfair advantage’ to his/her company in the form of ‘a direct access to the President’.\textsuperscript{124} One of the main concerns at this level is that privatising intelligence analysis may impact negatively on the integrity of the product and allow private interests to exert undue influence on the government’s decisions. From this perspective, contractors could tailor the findings of their intelligence reports in order to please their governmental client and obtain the renewal or the continuation of their contract.\textsuperscript{125} This is a notion that Richard Immerman, Assistant

\textsuperscript{119} Former Senior Intelligence Official B, interview with author.
\textsuperscript{120} Chesterman, \textit{One Nation Under Surveillance}, p.98.
\textsuperscript{121} Chesterman, “We Can’t Spy...If We Can’t Buy!”, pp. 1072-3.
\textsuperscript{122} CRS Expert A, interview with author.
\textsuperscript{123} Member of a Public Interest Group A, interview with author, 20 June 2011, Washington, DC.
\textsuperscript{124} Former Senior Intelligence Official B, interview with author.
Deputy Director of National Intelligence for Analytical Integrity and Standards from 2007 to 2009, has rejected. It is entirely conceivable that private sector analysts may feel under some sort of pressure when their next contract depends on their consumers’ appreciation of what they delivered but government analysts essentially face the same kind of pressure. Investigative journalist Tim Shorrock has argued that intelligence analysis should not be outsourced at all, because of the risk of undue influence and the fact that Congress may lose sight of what constitutes the core of intelligence reports when privatised. Shorrock’s point on oversight is however misguided because, in theory, congressional intelligence committees have full access to any piece of information deemed relevant. Moreover, although Shorrock’s position is understandable, in practice it is simply unachievable. Given the unpredictable nature of world affairs, intelligence capabilities cannot possibly cover the entire universe of possibilities at any point in time. As a result, intelligence agencies are bound to rely on the private sector for expertise and analysis on certain topics. As long as appropriate procedures ensure the integrity of the intelligence products, privatising analysis will not be a problem.

Some types of activities are, by their very nature, difficult to outsource properly and public authorities may therefore wish to avoid privatising them. Joshua Foust has argued that when measuring performance is difficult, or even impossible, privatisation should be avoided. However, this argument overlooks the fact that the IC does not always outsource by choice but also through necessity. Moreover, whether or not the employee is drawn from the government or the contractor workforce, his/her manager will face a similar difficulty to define metrics, and will be likely to turn to more qualitative types of assessment to judge the work of his/her subordinates. Of course, some intelligence functions have been outsourced without much controversy. This is the case in the involvement of the private sector in areas such as information technology support. Nevertheless, outsourcing in this area still requires the government to maintain a stable pool of well-qualified public managers able to control private sector activities. On the whole, the ability of public accountability holders to remain

126 Richard H. Immerman, e-mail correspondence with author, 29 March 2013.
127 Shorrock, Spies for hire, p.380.
in charge of key decisions (involving matters of life and death, and constitutional freedoms) is the main criteria determining the acceptability of privatisation.

When to privatise: refining the sourcing decision

Sourcing decisions represent another key area for improvement that has generated interest in recent years. Such decisions are inevitably context dependent and therefore subject to periodic changes. On the whole, the criteria guiding sourcing decisions can be divided into a number of categories. At the strategic level, decision-makers can consider the capabilities of the intelligence community as whole and each agency’s requirements. Recent history, from the downsizing of the IC in the 1990s to the post-9/11 surge, suggests that strategic planning in this area has been either insufficient or inappropriate. In this respect, the human capital plan proposed by the ODNI in 2006 was a step in the right direction. Nevertheless, the impetus towards in-sourcing has raised fears that the pendulum may swing back too far and the political aspect of sourcing decisions culminated in 2007 when, following strong partisan rivalries, the National Defense Authorization Act put a moratorium on all DOD public-private competitions under OMB Circular A-76. There has been concern that sourcing decisions became politicised with the Democratic Party defending the Unions, in particular the Federal Workers Union and its government employees, and Republicans advocating a ‘healthy industrial base for defense, intelligence, national and homeland security’. To this day, the optimal balance between government and contractor employees remains difficult to determine. This question is important because, at the margins, excessive outsourcing could strip the government of its ability to understand and control the activities it contracts out; conversely, too much in-sourcing could prevent the government to tap into key private sector capabilities. Moreover, in the short term, time constraints and operational reasons may make outsourcing or in-sourcing preferable or even necessary.

134 Former Congressional Staffer, interview with author. For more on this, see: Stiens, ‘Uncontracting: The Move Back to Performing In-House’, p.184.
Intelligence managers can consider the suitability of the private option, or the type of services the private sector can provide, and their cost on their own merits. Cost-effectiveness has historically been a key factor in decisions to outsource. However, to credibly outsource to save money, the government needs appropriate information and decision-making instruments to perform cost-benefit analyses. In the past, the DOD and the OMB have lacked sufficient information ‘to assess the soundness of savings estimates’. On occasions, there have been some concerns that in the process of choosing, the government could be over-reliant on contractors who ‘have an economic incentive to overestimate their savings and efficiencies’. In addition, measuring the relative cost-effectiveness of public and private options poses methodological problems, in particular when determining what factors to include in the calculation of the ‘true cost’ of government employees. Finding a reliable methodology is essential because, as long as uncertainty about the cost of a government employee remains, ‘shifting from contractors could prove to be a false savings’. At this level, privatisation decisions can be impeded by broader limits on ‘objective’ knowledge. Certain types of activities, such as intelligence analysis, are notably hard to put metrics on. In the words of a former Assistant Director of Central Intelligence for Analysis and Production, ‘although improvements undoubtedly can be made in intelligence, determining how efficient an inherently inefficient and intellectual process can be remains elusive’. On the whole, the means to make cost-effectiveness a sound rationale for privatisation have been lacking.

Decision-makers may want to consider the acceptability of private sector involvement, both from a legal and political point of view. Outsourcing may require making an exception to, or amending of, statutes, for example in the case of congressional ceilings on the number of government employees. Public knowledge of the privatisation of some


139 Former congressional staffer, interview with author. See also: David Berteau et al., DoD Workforce Cost Realism Assessment, Report of the CSIS Defense-Industrial Initiative Group, May 2011.


143 Paula J. Roberts, US Senate, Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Intelligence Community Contractors: Are We Striking the Right Balance?, Hearing, 112th Congress, 1st sess., 20 September 2011, p.36. See also: Rostker, *A Call to Revitalize the Engines of Government*, pp. 13-4. For another example,
covert operations could also trigger public indignation and this possibility should be taken into account by decision-makers. Finally, the government needs to consider its ability to manage contractors, control their performance and administer contracts before it privatises intelligence functions. Overall, it should be noted that these criteria for reaching sourcing decisions are ideal-types that may well overlap in practice. For instance, the acceptability of private sector involvement will depend on the government’s ability to control such activity. In addition, less rational factors, such as political preferences, may interfere with sourcing decisions. Nevertheless, these criteria constitute a good working framework on which to base sourcing decisions.

**Improving standards**

*Legal standards and their application*

The legal standards applying to public-private intelligence ‘partnerships’, and their application, were imperfect even by 2009. The privatisation of intelligence effectively increased the number and types of activities carried out by the private sector and raised the need to amend regulatory asymmetries that benefited that sector. This was particularly the case in the realm of civil liberties and ethics or conflicts of interests where private organisations have been able to function with fewer legal restrictions than the government. The impact of the Federal Acquisition Regulation on the market for intelligence has been criticised by certain commentators who propose to change or simplify this body of law to liberalise the market and make it more efficient. While legal standards can always be improved, existing legislation needs to be applied correctly and this requires appropriate procedures. In recent years, criticisms have continued to focus on key stakeholders’ lack of control over the contractor workforce and their access to contractors’ information. Despite governmental efforts, in late 2008 the ODNI recognised that it continued to face significant

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145 Michaels, ‘All the President’s Spies’, p.902.


challenges in the area of acquisition management and noted that the IC (still) lacked the data to effectively manage its contractor workforce. In this respect, the use of databases, perhaps even of a single database tracking waste and abuse, to make contractor information more easily accessible and digestible is an important recommendation. This on-going effort has been complicated by the sheer number of contractors, information security requirements and the conflicting bureaucratic interests that characterise the US intelligence community. Another proposal that has been put forward focused on the extension of whistle-blower protections for contractor employees, and the expansion of the Freedom of Information Act (FOIA) to include ‘mandated disclosure of standard contractual terms’. Public access to information is an important aspect of intelligence accountability and though these measures could improve the application of existing standards, nothing suggests the executive and legislative branches would be willing to pass them.

The application of standards and procedures also requires a workforce able to ensure their implementation. By 2009, the IC contract management workforce required both qualitative and quantitative improvements as well as better training existing personnel and hiring more acquisition specialists. In order to develop and maintain an experienced acquisition workforce, the government also had to find the proper balance between outsourcing and in-sourcing and make sure it retained enough qualified personnel to control the contractor workforce. A specialist recommended that the IC protect its acquisition workforce ‘with draconian non-compete rules that would make it economically impossible for the private sector to hire these acquisition professionals away from the government before retirement’. This bold measure might, nevertheless, be impossible to implement and is unlikely to generate consensus. The key to attract and retain talented individuals in crucial

150 Sanders, Results of the Fiscal Year 2007 U.S. Intelligence Community Inventory of Core Contractor Personnel, p.14.
151 Investigative journalist A, interview with author.
152 Dickinson, ‘Outsourcing Covert Activities’, p.532.
156 Mazzafro, ‘Too Many Contractors; Too Much Cost?’. 
positions was ‘an incentive and reward system’ that ‘facilitates the recognition’ of contracting officers.157 As a result, better and more coherent career paths for acquisition personnel were needed to create a more ‘stable and capable’ acquisition workforce.158 In addition, it should be noted that further in-sourcing could reduce the need for a sizeable contract management workforce and reduce accountability problems.159 However this solution is not desirable as it does not take into account the traditional ebb and flow of sourcing policies and the resulting need for acquisition specialists over the long term.

**Political standards and incentives**

The willingness of key intelligence accountability holders to uphold high standards of accountability has been one of the most central challenges facing intelligence accountability in the US. Between 2001 and 2009, the gaps within the US intelligence accountability system impacted on the evolution of public-private intelligence ‘partnerships’. Political partisanship has impacted negatively on the quality of intelligence oversight in the last decade. This was clearly the case when Congress was unable to pass intelligence authorisation bills between 2005 and 2008. Recent research has shown that representatives’ lack of interest in intelligence oversight and the roots of the problem, it is argued, lie with poor incentives.160 One way to approach the problem of incentives focuses on the role of money in the US political system and correlates electoral success, funding from private companies, and ‘suspect appropriation choices and corruption’.161 The logical recommendation is to start ‘changing the incentive structure that currently exists for any member of Congress’.162 This would necessitate a change in the funding system of political campaigns in the US and such a move is unlikely to be generated by issues of security contracting and intelligence accountability alone. Moreover, the role of money in politics is not the only problem with regards to intelligence accountability and the privatisation of intelligence. Nevertheless

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162 Ibid.
focusing on these officials is essential since, in a democratic society, they necessarily originate most changes.

In the last decade, there has been a trend in intelligence and security studies to move away from bureaucratic models of intelligence accountability in order to develop a more networked approach to accountability.\textsuperscript{163} Scholarship on the privatisation of security emphasises the role of private companies and civil society alongside governmental accountability holders.\textsuperscript{164} Such relationships, it has been suggested, could occur within specific organisations which would investigate and publicly report intelligence accountability gaps.\textsuperscript{165} These suggestions are worth considering but it is not clear why they would be implemented by the government. Major intelligence affairs in the last decade have not wrought fundamental changes in the system of intelligence accountability in the way the Church committee did in 1975. This suggests that the solution to the problems of intelligence accountability may not come through a radical overhaul of the system.

Certain authors have emphasised the role that private companies can play in regulating themselves.\textsuperscript{166} Companies, it is argued, can act as the new guarantors of the US accountability regime.\textsuperscript{167} Corporations are the first and closest point of control over their own personnel and they are also susceptible to be aware of breaches by their competitors.\textsuperscript{168} Peer pressure and competition can also contribute to the professionalization of the industry and generate higher standards of behaviour.\textsuperscript{169} In addition, corporations are largely well-disposed towards their regulation since they have a long term interest in maintaining a good public image in order to gain comparative advantage against government agencies or other

\textsuperscript{167} Michaels, ‘All the President’s Spies’, p.906.
\textsuperscript{168} Jackson Maogoto, Virginia Newell, and Benedict Sheehy, \textit{Legal Control of the Private Military Corporation} (Basingstoke: Palgrave Macmillan 2009) p.140.
companies. Self-regulation is also ‘unlikely to impose onerous requirements’. In practice, however, self-regulation is insufficient to palliate the range of problems derived from public-private intelligence ‘partnerships’. In the domain of private security, codes of conduct are more likely to regulate those violations that are deemed to be minor breaches of law. Furthermore, this type of solution would hardly solve problems such as the lack of transparency in the market. The most obvious problem here is that codes of conduct are not legally binding. As a result, sanctions are not credible and rarely applied. As long as they are given a choice, companies are unlikely to share information they hold with any trade association that is supposed to enforce a code of conduct, especially if it contradicts their for-profit orientation. Furthermore, companies reporting their own employees’ misdeeds could deter would-be clients. In the context of national security secrecy, it is also unlikely that peers or consumers are able to identify companies’ breaches. These deficiencies point to the role of the government in setting and enforcing further means of regulation by, for example, using contracts to require specific training or accreditation from independent experts or industry association. From this perspective, the solution to the problems of public-private intelligence ‘partnerships’ lies in better public-private coordination in the domain of accountability. In assessing intelligence accountability in the US, a consensus exists among scholars regarding the lack of incentives for government stakeholders to carry out their oversight duty. Mark Lowenthal, a former intelligence practitioner, explains the conservatism of the executive by the fact that ‘many policy makers understand some of the fragility of the intelligence community and fear the responsibility of making things worse’.

175 Singer, Corporate Warriors, p.222.
178 Lowenthal, Intelligence. From Secrets to Policy, p.343.
That said, the findings of this thesis on accountability triggers suggest media and public interest groups can play a central role in raising public pressure in favour of change.

**Conclusion**

During the GWOT, a series of scandals, and the evolution of the political climate, prompted the US government to respond to some of the challenges relating to public-private intelligence ‘partnerships’. From 2006 onwards, intelligence agencies and Congress attempted to collect information about public-private intelligence ‘partnerships’ in order to regulate them. Based on the information collected, the executive and legislative branches attempted to define ‘inherently governmental’ functions, establish reporting channels, and improve the legal responsibility of the IC’s private intelligence ‘partners’. In this context, executive measures were relatively successful but rather sporadic. The CIA refined its regulations and policies, and the ODNI and the DOD did so to a lesser extent. Most of the measures taken by Congress were impeded by political partisanship between, and within, the legislative and executive branches of government. Only broader congressional measures, such as defence authorisations that targeted not only intelligence contracting but also security contracting, gathered enough impetus to pass.

Despite the government’s reactions and responses, problems persisted and the government needed to improve accountability standards and their application at multiple levels. The distinction between public and private domains of intelligence activity was not well defined. Imprecision gave rise to uncertainty and allowed various interpretations of what really constituted ‘inherently governmental’ activities to coexist. Criteria such as the consequences of outsourcing, the nature of government and the nature of some intelligence activities can be used to decide whether or not a function should be outsourced. A convincing case can be made that, as long as outsourcing is properly controlled by the government, any intelligence function can be outsourced. Furthermore, sourcing decisions remained difficult. The government made a clear effort to establish a long-term human capital strategy. However a shift towards in-sourcing increased fears that the ebb and flow of outsourcing and in-sourcing could continue to affect the capabilities of the IC. In order to reach balanced decisions, a number of factors such as intelligence requirements, timing, the suitability of the private offer and its cost, the government capability to manage contractors and the

acceptability of outsourcing some functions can influence decision-makers. By 2009, the legal standards applying to public-private intelligence ‘partnerships’ and their application continued to be inadequate. Most importantly, the government still lacked the capabilities to hold private intelligence providers to account. In turn, remaining gaps pointed to deeper flaws in the US system of intelligence accountability, not least concerning key accountability holder’s political willingness to carry out their duties. Calls for a more ‘networked’ system of accountability have emphasised the role that non-governmental actors can play in triggering and implementing accountability. In light of this, better public-private coordination at the level of accountability holders is the solution to public-private problems. Yet, if such coordination is to play a greater role within the US system of intelligence accountability, the key to implementing changes remains in the hands of the federal government, and, in turn, in the hands of US people if they are inclined to push for change.