

**NOMINATION OF
GENERAL MICHAEL V. HAYDEN, USAF
TO BE
DIRECTOR OF THE
CENTRAL INTELLIGENCE AGENCY**

HEARING
BEFORE THE
SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE
ONE HUNDRED NINTH CONGRESS
SECOND SESSION

MAY 18, 2006

Printed for the use of the Select Committee on Intelligence



Available via the World Wide Web: <http://www.access.gpo.gov/congress/senate>

U.S. GOVERNMENT PRINTING OFFICE

31-314 PDF

WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

SELECT COMMITTEE ON INTELLIGENCE

[Established by S. Res. 400, 94th Cong., 2d Sess.]

PAT ROBERTS, Kansas, *Chairman*

JOHN D. ROCKEFELLER IV, West Virginia, *Vice Chairman*

ORRIN G. HATCH, Utah

MIKE DeWINE, Ohio

CHRISTOPHER S. BOND, Missouri

TRENT LOTT, Mississippi

OLYMPIA J. SNOWE, Maine

CHUCK HAGEL, Nebraska

SAXBY CHAMBLISS, Georgia

CARL LEVIN, Michigan

DIANNE FEINSTEIN, California

RON WYDEN, Oregon

EVAN BAYH, Indiana

BARBARA A. MIKULSKI, Maryland

RUSSELL D. FEINGOLD, Wisconsin

BILL FRIST, Tennessee, *Ex Officio*

HARRY REID, Nevada, *Ex Officio*

JOHN W. WARNER, Virginia, *Ex Officio*

BILL DUHNKE, *Staff Director and Chief Counsel*

ANDREW W. JOHNSON, *Minority Staff Director*

KATHLEEN P. MCGHEE, *Chief Clerk*

C O N T E N T S

	Page
MAY 18, 2006	
OPENING STATEMENTS	
Roberts, Hon. Pat, Chairman, a U.S. Senator from the State of Kansas	1
Levin, Hon. Carl, a U.S. Senator from the State of Michigan	4
WITNESSES	
Hayden, General Michael V., USAF	12
SUPPLEMENTAL MATERIALS	
Letter dated May 17, 2006 from Senator John D. Rockefeller IV to General Michael V. Hayden	7
Letter dated May 17, 2006 from Director John D. Negroponte to Hon. J. Dennis Hastert with attachment showing dates and names of Congress Members who attended briefings on the Terrorist Surveillance Program	70
CIA/FBI failures in regard to two September 11 hijackers, the Phoenix Electronic Communication, and the Moussaoui Investigation (based on chart presented by Senator Carl Levin at October 17, 2002 joint inquiry hearing)	122
Letter dated April 27, 2006 from Darlene M. Connelly, Director of Legislative Affairs, Office of the DNI to Senator Carl Levin	123

**NOMINATION OF
GENERAL MICHAEL V. HAYDEN, USAF
TO BE
DIRECTOR OF THE
CENTRAL INTELLIGENCE AGENCY**

THURSDAY, MAY 18, 2006

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

The Committee met, pursuant to notice, at 9:33 a.m., in room SH-216, Hart Senate Office Building, the Honorable Pat Roberts (Chairman of the Committee) presiding.

Present: Senators Roberts, Hatch, DeWine, Bond, Lott, Snowe, Hagel, Chambliss, Warner, Levin, Feinstein, Wyden, Bayh, Mikulski and Feingold.

**OPENING STATEMENT OF HON. PAT ROBERTS, CHAIRMAN,
A U.S. SENATOR FROM KANSAS**

Chairman ROBERTS. The Committee will come to order.

The Committee meets today to receive testimony of the President's nomination for the Director of the Central Intelligence Agency. Our witness today is the President's nominee, General Michael V. Hayden.

Obviously, given his more than 35 years of service to our country, his tenure as Director of the National Security Agency, and his current position as the Principal Deputy Director of National Intelligence, why, General Hayden is no stranger to this Committee and he needs no introduction to our Members. In other words, we know him well.

So, General, the Committee welcomes you and your guests and your family.

Your nomination comes before the Senate at a crucial and important time, because the Central Intelligence Agency continues to need strong leadership in order to protect our national security.

The public debate in regard to your nomination has been dominated not by your record as a manager or your qualifications, the needs of the CIA, its strengths and its weaknesses and its future, but rather the debate is focused almost entirely on the Presidentially authorized activities of another agency.

The National Security Agency's terrorist surveillance program became public last December as a result of a grave breach of national security. A leak allowed our enemy to know that the President had authorized the NSA to intercept the international commu-

nications of people reasonably believed to be linked to al-Qa'ida—people who have and who are still trying to kill Americans.

At that time, largely uninformed critics rushed to judgment, decrying the program as illegal and unconstitutional. I think in the interim that cooler heads have prevailed and there is now a consensus that we must be listening to al-Qa'ida communications. Last week, in the wake of another story, those same critics reprised their winter performance, again making denouncements and condemnations on subjects about which they know little or nothing.

Inevitably, all of the media—all of America, for that matter—looks to us for comment. More often than not, although very frustrating, we are literally unable to say anything. Anyone who has ever served on a congressional Intelligence Committee has struggled with the issue of secrecy. How do we, as the elected representatives of the people, assure the public that we are fully informed and conducting vigorous oversight of our Nation's intelligence activities when we can say virtually nothing about what we know, even though we would like to set the record straight?

The result of this conundrum is that we quite often get accused of simply not doing our job. Such accusations by their very nature are uninformed and therefore are not accurate. Unfortunately, I have found that ignorance is no impediment for some critics. I fully understand the desire to know; I'm a former newspaper man. But I also appreciate the absolute necessity of keeping some things secret in the interest of national security.

In this regard, I am truly concerned. This business of continued leaks, making it possible for terrorists to understand classified information about how we are preventing their attacks, is endangering our country and intelligence sources and methods and lives. I believe the great majority of American people understand this. I think they get it.

Al-Qa'ida is at war with the United States. Terrorists are planning attacks as we hold this hearing.

Through very effective and highly classified intelligence efforts, we have stopped attacks. The fact we have not had another tragedy like 9/11 is no accident. But today in Congress and throughout Washington, leaks and misinformation are endangering our efforts. Bin Ladin, Zarqawi and their followers must be rejoicing.

We cannot get to the point where we are unilaterally disarming ourselves in the war against terror. If we do, it will be game, set, match al-Qa'ida.

Remember Khobar Towers, Beirut, the USS COLE, embassy attacks, the two attacks on the World Trade Center and the Pentagon, 9/11, and attacks worldwide and more to come, if our efforts are compromised.

I am a strong supporter of the First Amendment, the Fourth Amendment and civil liberties. But you have no civil liberties if you are dead.

I have been to the NSA and seen how the terrorist surveillance works. I have never seen a program more tightly run and closely scrutinized.

When people asked on September 12 whether we were doing everything in our power to prevent another attack, the answer was no. Now, we are, and we need to keep doing it.

I have often said and I will say again, I trust the American people. They do have a right to know. I do not trust our enemies. Unfortunately, there is no way to inform the public without informing our adversaries.

So how can we ensure that our Government is not acting outside the law if we cannot publicly scrutinize its actions? This institution's answer to that question was the creation of this Committee. We are the people's representatives. We have been entrusted with a solemn responsibility. And each Member of this Committee takes it very seriously. We may have differences, but we take our obligations and responsibilities very seriously.

Because intelligence activities are necessarily secret, the conduct of our oversight is also secret. In my humble opinion, it doesn't make a whole lot of sense to telegraph to our adversaries how we intend to learn about their capabilities and their intentions.

Oversight of the terrorist surveillance program is necessarily conducted behind closed doors. The Senate Intelligence Committee has been and will continue to exercise its oversight and responsibilities related to the NSA. Yesterday the entire Committee joined our continuing oversight of the program. Each Member will have the opportunity to reach their own conclusions. I have no doubt that they will. I encourage that.

As we continue our work, I want to assure the American people and all of my Senate colleagues, we will do our duty.

Now, with that said, I want to applaud the brave men and women of the intelligence community who are implementing this program. Their single focus and one and only motivation is preventing the next attack. They are not interested in the private affairs of their fellow Americans. They are interested in one thing, finding and stopping terrorists. America can be proud of them. They deserve our support and our thanks, not our suspicion.

Since I became Chairman of this Committee, I have been privy to the details of this effective capability that has stopped and, if allowed to continue will again stop, terrorist attacks.

Now, while I cannot discuss the program's details, I can say without hesitation, I believe that the NSA terrorist surveillance program is legal, it is necessary, and without it the American people would be less safe. Of this I have no doubt.

Finally, I want to remind the public that this open hearing is only part of the confirmation process. When this hearing ends, this open hearing, and the cameras are turned off, the Members of this Committee will continue to meet with General Hayden.

It would be inaccurate to state, as one national news editorial did today, that due to the classified constraints, Members will be limited in how much they can say at this confirmation proceeding.

In the following closed door and secure session, the elected representatives on this Committee will have the ability to pursue additional lines of questioning and will be able to fully explore any topic that they wish.

It is my hope that during this open hearing we can at least focus to some degree on General Hayden's record as a manager, his qualifications as a leader, and the future of the Central Intelligence Agency—issues that should be equally as important to the public.

With that said, again I welcome you to the Committee. I look forward to your testimony and your answers to our Members' questions. I note that Vice Chairman Rockefeller sends his deep regrets, as he is necessarily absent today. In his absence, I now recognize the distinguished Senator from Michigan for the purpose of an opening statement.

Senator Levin.

**OPENING STATEMENT OF HON. CARL LEVIN,
A U.S. SENATOR FROM MICHIGAN**

Senator LEVIN. Mr. Chairman, thank you. Thank you for finding a way also to involve all the Members of this Committee in the briefings about the surveillance program which there is so much concern and discussion about.

A few of us had been briefed, at least to some extent, partly into the program, but now because of your efforts, Mr. Chairman, and your decision, every member of this Committee can now have that capability. And for that I think we should all be grateful and are grateful.

The nomination of a new Director for the Central Intelligence Agency comes at a time when the Agency is in disarray. Its current Director has apparently been forced out and the previous Director, George Tenet, left under a cloud after having compromised his own objectivity and independence, and that of his Agency, by misusing Iraq intelligence to support the Administration's policy agenda.

The next Director must right this ship and restore the CIA to its critically important position. To do so, the highest priority of the new Director must be to ensure that intelligence which is provided to the President and to the Congress is, in the words of the new reform law, "timely, objective and independent of political considerations."

That language described the role of the Director of National Intelligence. But, as General Hayden himself has stated, that responsibility applies not only to the DNI and to the Director of the CIA personally, but to all intelligence produced by the intelligence community.

The need for objective, independent intelligence and analysis is surely as great now as it has ever been. The war on terrorism and the nuclear intentions and capabilities of Iran and North Korea could be life-and-death issues. Heaven help us if we have more intelligence fiascoes similar to those before the Iraq war, when, in the words of the head of the British intelligence, the U.S. intelligence was being "fixed around the policy."

General Hayden has the background and credentials for the position of CIA Director. But this job requires more than an impressive resume.

One major question for me is whether General Hayden will restore analytical independence and objectivity at the CIA and speak truth to power or whether he will shape intelligence to support Administration policy and mislead Congress and the American people as Director Tenet did.

Another major question is General Hayden's views on a program of electronic surveillance of American citizens, a program which General Hayden administered for a long time. That is the program

which has taken up a great deal of the public attention and concern in recent weeks.

The war on terrorism not only requires objective, independent intelligence analysis. It also requires us to strike a thoughtful balance between our liberty and our security. Over the past 6 months, we have been engaged in a national debate about NSA's electronic surveillance program and the telephone records of American citizens. That debate has been hobbled because so much about the program remains classified.

Public accounts about it are mainly references by the Administration, which are selective and incomplete, or the result of unverifiable leaks. For example, the Administration has repeatedly characterized the electronic surveillance program as applying only to international phone calls and not involving any domestic surveillance.

In January, the President said, "The program focuses on calls coming from outside of the United States, but not domestic calls." In February, the Vice President said, "Some of our critics call this a 'domestic surveillance program.' It is not domestic surveillance."

Ambassador Negroponte said, "This is a program that was ordered by the President of the United States with respect to international telephone calls to or from suspected al-Qa'ida operatives and their affiliates. This was not about domestic surveillance."

Earlier this year, General Hayden appeared before the Press Club where he said of the program, "The intrusion into privacy is also limited—only international calls."

Now, after listening to the Administration's characterizations for many months, America woke up last Thursday to the USA Today headline, "NSA Has Massive Database of Americans' Phone Calls."

The report said, "The National Security Agency has been secretly collecting the phone call records of tens of millions of Americans. The NSA program reaches into homes and businesses across the Nation by amassing information about the calls of ordinary Americans, most of whom aren't suspected of any crime."

The President says we need to know who al-Qa'ida is calling in America. And we surely do. But the USA Today article describes a Government program where the Government keeps a data base, a record of the phone numbers that tens of millions of Americans with no ties to al-Qa'ida, are calling.

And the May 12th New York Times article quotes, "One senior government official" who "confirmed that the NSA had access to records of most telephone calls in the United States."

We are not permitted, of course, to publicly assess the accuracy of these reports. But listen for a moment to what people who have been briefed on the program have been able to say publicly.

Stephen Hadley, the President's National Security Adviser, after talking about what the USA Today article did not claim said the following, "It's really about calling records, if you read the story—who was called when and how long did they talk. And these are business records that have been held by the courts not to be protected by a right of privacy. And there are a variety of ways in which these records lawfully can be provided to the Government. It's hard to find the privacy issue here," Mr. Hadley said.

Majority Leader Frist has publicly stated that the program is voluntary. And a Member of this Committee has said, "The President's program uses information collected from phone companies. The phone companies keep their records. They have a record. And it shows what telephone number called what other telephone number."

So the leaks are producing piecemeal disclosures, although the program remains highly classified. Disclosing parts of the program that might be the most palatable and acceptable to the American people, while maintaining secrecy, until they're leaked, about parts that may be troubling to the public, is not acceptable.

Moreover, when Stephen Hadley, the President's National Security Adviser, says that it's hard to find a privacy issue here, I can't buy that. It's not hard to see how Americans could feel that their privacy has been intruded upon if the Government has, as USA Today reports, a database of phone numbers calling and being called by tens of millions of Americans who are not suspected of any wrongdoing.

It is hard to see, however, if the leaks about this program are accurate, how the only intrusions into Americans' privacy are related to international phone calls, as General Hayden said at the National Press Club. And it's certainly not hard to see the potential for abuse and the need for an effective check in law on the Government's use of that information.

I welcome General Hayden to this Committee. I thank you, General, for your decades of service to our Nation. I look forward to hearing your views.

I also ask that a letter from Senator Rockefeller, sent to General Hayden yesterday, be made part of the record at this point.

[The information referred to follows:]

PAT ROBERTS, KANSAS, CHAIRMAN
 JOHN D. ROCKEFELLER IV, WEST VIRGINIA, VICE CHAIRMAN

ORRIN G. HATCH, UTAH	CARL LEVIN, MICHIGAN
MIKE DEWINE, OHIO	DIANNE FEINSTEIN, CALIFORNIA
CHRISTOPHER S. BOND, MISSOURI	RON WYDEN, OREGON
TRENT LOTT, MISSISSIPPI	ZYAN BAYLOR, INDIANA
OLYMPIA J. SNOWE, MAINE	BARBARA A. MIKULSKI, MARYLAND
CHUCK HAGEL, NEBRASKA	RUSSELL D. FEINGOLD, WISCONSIN
SAXBY CHAMBLISS, GEORGIA	

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
 WASHINGTON, DC 20510-6475

May 17, 2006

BILL FRIST, TENNESSEE, EX OFFICIO
 HARRY REID, NEVADA, EX OFFICIO

BILL DUHNKE, STAFF DIRECTOR AND CHIEF COUNSEL
 ANDREW W. JOHNSON, MINORITY STAFF DIRECTOR
 KATHLEEN P. MCCOBBE, CHIEF CLERK

SSCI# 2006-2078

General Michael V. Hayden
 Principal Deputy Director of National Intelligence
 Office of the Director of National Intelligence
 Washington, D.C. 20511

Dear General Hayden:

Congratulations on your nomination to be Director of the Central Intelligence Agency (CIA). I appreciated your call to let me know of the President's decision and I look forward to further discussions as the confirmation process moves forward.

Unfortunately, my recent back surgery will prevent me from attending the confirmation hearing scheduled for May 18th. I will, however, submit questions for the record. I also will review closely the transcripts of both the open and closed hearings as soon as they are available and prior to the Committee vote.

I am certain that your statement at the hearing will be thorough in describing your vision for the CIA. But let me mention several important issues I hope you will address in your testimony.

Preeminent among my concerns is the question of independence. I believe that over the past few years the U.S. Intelligence Community has been under intense political pressure to bring its analytic judgments and statements into conformance with Administration policies. This politicization has damaged the credibility of the Intelligence Community and undermined America's efforts to deal with critical national security challenges. The damage can only be repaired by leadership that is above reproach.

The need to avoid even the appearance of political influence is why I was so concerned about your actions in the wake of the President's acknowledgment of the National Security Agency's warrantless surveillance program. While it is understandable that you would be called upon to answer factual questions about the program, your multiple press appearances were part of a coordinated White House press strategy to defend the program and the policy to conduct the surveillance outside the legal requirements of the Foreign Intelligence Surveillance Act. Moreover, you were aggressively promoting the alleged benefits of the program to the public at a time when basic information about the program, including its existence, was being withheld from the full membership of the congressional intelligence oversight committees.

I wrote to Director Negroponte in February and expressed my belief that your participation was inappropriate and ill-advised. It is of the utmost importance that officials of the Intelligence Community avoid even the appearance of politicization, and that its senior leaders set an example. I hope that you will use your statement to explain your actions in this case and discuss the broader issue of the independence of the CIA.

In addition, I am interested in your view of the Administration's decision, suddenly reversed yesterday, not to fully inform all intelligence committee members about this NSA warrantless surveillance program, as well as its detention, interrogation and rendition programs. I believe this policy has not been consistent with the notification requirements of the National Security Act.

There is only one circumstance, covert actions, where the Congress has agreed to allow notifications to only a limited group of members. In all other areas of intelligence notifications, the President is bound to fully inform the congressional intelligence committees. He may request that the committees limit the distribution of non-covert action information, but it is clear the Congress has the express constitutional authority to make its own determinations about how to conduct its affairs. This principle also is embodied in Section 501(d) of the National Security Act of 1947 which states that the House and Senate shall each establish procedures for protecting classified information in its possession.

I think you will agree our intelligence programs are stronger and less likely to become lightning rods for controversy when the Congress is fully on board as a partner from the beginning. Ill-advised attempts to shield programs from oversight inevitably will lead to suspicion and a loss of credibility for the Intelligence Community and the Congress. Our mutual goal should be to ensure that critical intelligence programs receive the attention and support they need to be effective. I hope you will assure the Committee at your confirmation hearing that you will be responsive to the legitimate oversight needs of the Congress and that you will comply with the legal obligations the Director of the CIA is under to keep all committee members fully informed of the agency's intelligence activities.

Another way the intelligence process has been politicized in recent years has been the troubling and at times blatant leaking and selective declassification of intelligence information to support particular policy goals. As you well know, the disclosure of classified information does serious damage to our intelligence programs and undermines our national security. This issue gets significant attention but is often mischaracterized. Most disclosures of intelligence information, in my view, are generated by Executive Branch officials pushing a particular policy, and not by the rank-and-file employees of the intelligence agencies. We now know that the President himself is alleged to have authorized the release of classified intelligence information in order to defend his Iraq policy.

I encourage you to address the issue of how information is leaked or selectively declassified to further policy goals or, in the case of CIA employee Valerie Plame, as retribution. I also would like to hear your thoughts as to what obligation the CIA Director is under to correct public statements by government officials on intelligence matters that misrepresent intelligence judgments or that are contradicted by the underlying intelligence.

An area where I think your experience, both as a senior military officer and in your current position, will serve you well is in managing the increasingly complex relationship between the CIA and the Department of Defense. As we face a long term struggle against the international jihadist movement, all of our intelligence agencies will need to continue to expand collection activities. There is an appropriate role for the Department of Defense in human intelligence collection but the CIA through the National Clandestine Service (NCS) must be the lead agency providing overall

management and coordination of intelligence collection activities overseas. I know this was the intent of Director Negroponete when he established the NCS and I will be interested to hear your thoughts on how to make this structure work.

In addition to your plan for fully implementing the authority of the NCS, it will be important for you to lay out a vision for improving the morale of CIA employees, stopping the exodus of talented officers and setting a clear direction for the agency. I was encouraged by Director Negroponete's mention of the possible return of Mr. Steve Kappes. Such a move would send a signal that you value serious experienced intelligence professionals, rather than individuals willing to tow the political line or succumb to inappropriate pressure.

I know that some have raised the question of your continued military service. The only concern I have in this regard is clarifying the legal situation regarding the chain of command. The CIA is a civilian agency and the Director is answerable to the Director of National Intelligence (DNI) and the President, not the Secretary of Defense. I know that you understand this and will act appropriately. This principle of civilian control of the CIA has been of such concern that until recently the statute governing the CIA included a provision clarifying that a military officer serving as Director, or Deputy, was not subject to supervision by the Secretary of Defense or any other officer of the Defense Department. The Intelligence Reform and Terrorism Prevention Act of 2004 applied that section of the law to the newly-created DNI and Principal Deputy DNI but omitted it from the section dealing with the CIA Director.

I believe this omission was unintended and needs to be corrected. The fiscal year 2006 intelligence authorization bill, approved by the Senate intelligence committee in September of last year and still awaiting Senate action, included a provision that would have directed that the CIA Director and Deputy be appointed from civilian life. This provision recognized the value of military experience and would have allowed a recently retired officer to hold these positions, but not an individual serving on active duty. The rationale behind this provision and the one that previously applied is the need to make clear that the clandestine collection operations and the independent all-source analytic capability are free from the influence and institutional bias of other elements of the U.S. government.

I believe this is an important principle to uphold, no matter which individual occupies the position of Director. I hope you will address the chain of command issue in your testimony. Regardless of your decision on your military status, I will seek to ensure that legislation clarifying the chain of command issue is passed as soon as possible.

Finally, I want to raise with you my concern that the CIA, and the Intelligence Community as a whole, needs to be better positioned in its judgments concerning Iran. As you know, our committee's July 2004 review of Iraq intelligence exposed some glaring problems in the collection and analysis of intelligence information prior to the war. The Committee will need to hear from you on the question of whether the Intelligence Community has learned from these painful lessons and embraced the reforms necessary to deal with the challenges relating to Iran and other hard-target nations.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Rockefeller". The signature is fluid and cursive, with a large initial "J" and "R".

John D. Rockefeller IV
Vice Chairman

Senator LEVIN. And I just am delighted to report to each of us and to all of his colleagues and so many friends that Senator Rockefeller's recovery from his surgery is proceeding well, on schedule. And he is not only following these proceedings, but he is participating, to the extent that he can, without actually being here.

I thank you again, General, for your service.

And I thank you also, Mr. Chairman.

Chairman ROBERTS. Without objection, your request is approved.

And we are delighted to hear of Senator Rockefeller's progress. And I know that, in talking with him, when he talks about the Atlanta Braves, that he's getting a lot better.

[Laughter.]

Chairman ROBERTS. General Hayden, would you please rise and raise your right hand?

Do you, sir, solemnly swear that the testimony you are about to provide to the Select Committee on Intelligence of the U.S. Senate will be the truth, the whole truth and nothing but the truth, so help you God?

General HAYDEN. I do.

Chairman ROBERTS. General Hayden, you may proceed.

**TESTIMONY OF GENERAL MICHAEL V. HAYDEN, USAF,
DIRECTOR-DESIGNATE, CENTRAL INTELLIGENCE AGENCY**

General HAYDEN. Thank you, Chairman Roberts, Senator Levin, Members of the Committee.

Let me, first of all, thank the members of my family who are here with me today—my wife, Jeanine, and our daughter, Margaret; my brother, Harry; and our nephew, Tony. I want to thank them and the other members of the family, yet again, for agreeing to continue their sacrifices, and they know I can never repay them enough.

Chairman ROBERTS. General, if you would have them stand, why, the Committee would appreciate it.

General HAYDEN. Sure.

Chairman ROBERTS. Thank you for being here.

General HAYDEN. And, Mr. Chairman, if it's not too much, can I also thank the people of the last agency I headed, National Security Agency?

NSA's support while I was there and in the years since has been very much appreciated by me. I also deeply appreciate the care, patriotism, and the rule of law that continues to govern the actions of the people at the National Security Agency.

Mr. Chairman, it's a privilege to be nominated by the President to serve as the Director of the Central Intelligence Agency. It's a great responsibility. There's probably no agency more important in preserving our security and our values as a Nation than the CIA. I'm honored and, frankly, more than a little bit humbled to be nominated for this office, especially in light of the many distinguished Americans who have served there before me.

Before I talk about my vision for CIA, I'd like to say a few words about the Agency's most recent Director, Porter Goss. Over the span of more than 40 years, Porter Goss has had a distinguished career serving the American people, most recently as Director of the CIA, the organization where he started as a young case officer.

As Director, Porter fostered a transformation that the Agency must continue in the coming years. He started a significant expansion of the ranks of case officers and analysts in accord with the President's direction. He consistently pushed for a more aggressive and risk-taking attitude toward collection.

And he spoke from experience as a case officer and as a long-time member and then Chairman of the House Permanent Select Committee on Intelligence.

It was Porter who, as Chairman of the HPSCI, supported and mentored me when I arrived back in Washington as Director of NSA in 1999. More importantly, we developed a friendship that continues to this day. So I just want to thank Porter for both his service and his friendship.

The CIA is unique among our Nation's intelligence agencies. It's the organization that collects our top intelligence from human sources, where high-quality, all-source analysis is developed, where cutting-edge research and development for the Nation's security is carried out. And as this Committee well knows, these functions are absolutely critical to keeping America safe and strong.

The CIA remains, as Porter Goss has said, "the gold standard for many key functions of American intelligence." And that's why I believe that the success or failure of this agency will largely define the success or failure of the entire American intelligence community.

The act you passed last year, the Intelligence Reform and Terrorism Prevention Act, gives CIA the opportunity and the responsibility to lead in ensuring the success of the Director of National Intelligence.

Let me elaborate on that last sentence. The reforms of the last 2 years have in many ways made the CIA's role even more important. Now, it's true, the Director of Central Intelligence, the DCI, no longer sits on the seventh floor of the old headquarters building at Langley as both the head of the intelligence community and the CIA.

But, it's also true that no other agency has the connective tissue to the other parts of the intelligence community that CIA has. The CIA's role as the community leader in human intelligence, as an enabler for technical access, in all-source analysis, in elements of research and development, not to mention its worldwide infrastructure, underscores the interdependence between CIA and the rest of the community.

And although the head of CIA no longer manages the entire intelligence community, the Director continues to lead the community in many key respects. Most notably, the Director of CIA is the national HUMINT manager, responsible for leading human intelligence efforts by coordinating and setting standards across the entire community.

In addition, the Agency is—and will remain—the principal provider of analysis to the President and his senior advisers. It also leads the community's open-source activities through its open-source center, which is an invaluable effort to inform community analysis and help guide the activities of the rest of the IC.

In a word, the CIA remains, even after the Intelligence Reform Act, central to American intelligence. But this very centrality

makes reforming the CIA, in light of new challenges and new structures, an especially delicate and important task.

The Agency must be transformed without slowing the high tempo under which it already operates to counter today's threats. The CIA must continue to adapt to new intelligence targets, a process under way in large part to the leadership of George Tenet and John McLaughlin and Porter Goss.

And the CIA must carefully adjust its operations, analysis and overall focus in relation to the rest of the community because of the new structure, while still keeping its eye on the ball—intelligence targets like proliferation and Iran and North Korea, not to mention the primary focus of disrupting al-Qa'ida and other terrorists.

The key to success for both the community—the intelligence community—and for the CIA is an agency that is capable of executing its assigned tasks and cooperating with the rest of the intelligence community. CIA must pursue its objectives relentlessly and effectively, while also fitting in seamlessly with an integrated American intelligence community.

Picture the CIA's role in the community like a top player on a football team—critical, yet part of an integrated whole that must function together if the team is going to win. And as I've said elsewhere, even top players need to focus on the scoreboard, not on their individual achievements.

Now, Mr. Chairman, let me be more specific about the vision I would have for the CIA if I am confirmed.

First, I will begin with the collection of human intelligence. If confirmed as Director, I would reaffirm the CIA's proud culture of risk-taking and excellence, particularly through the increased use of nontraditional operational platforms, a greater focus on the development of language skills, and the inculcation of what I'll call, for shorthand, an expeditionary mentality.

We need our weight on our front foot, not on our back foot. We need to be field-centric, not headquarters-centric.

Now I strongly believe the men and women of the CIA already want to take risks to collect the intelligence we need to keep America safe. I view it as the Director's job to ensure that those operators have the right incentives, the right support, the right top cover and the right leadership to take those risks. My job, frankly, is to set the conditions for success.

Now, if confirmed, I'd also focus significant attention on my responsibilities as national HUMINT manager. I've got some experience in this type of role. As Director of NSA, I was the national SIGINT manager, the national manager for signals intelligence. And in that role, I often partnered with the CIA to enable sensitive collection.

As I did with SIGINT, signals intelligence, as Director of NSA, I would use this important new authority, the national HUMINT manager, to enhance the standards of tradecraft in human intelligence collection across the community. The CIA's skills in human intelligence collection makes it especially well suited to lead.

As Director and as national HUMINT manager, I'd expect more from our human intelligence partners, those in the Department of Defense, the FBI and other agencies—more both in terms of their cooperation with one another and also in terms of the quality of

their tradecraft. Here again, we welcome additional players on the field, but they must work together as a team.

Now, second, and on par with human intelligence collection, CIA must remain the U.S. Government's center of excellence for independent, all-source analysis. If confirmed as Director, I would set as a top priority working to reinforce the DI's, the Directorate of intelligence's, tradition of autonomy and objectivity, with a particular focus on developing hard-edged assessments. I would emphasize simply getting it right more often, but with a tolerance for ambiguity and dissent, manifested in a real clarity about our judgments, especially clarity in our confidence in our judgments. We must be transparent in what we know, what we assess to be true and, frankly, what we just don't know.

Red cell alternative analysis, red cell alternative evaluations are a rich source of thought-provoking estimates, and they should be an integral part of our analysis.

And—and I believe this to be very important—we must also set aside talent and energy to look at the long view and not just be chasing our version of the current news cycle.

Now, in this regard about analysis, I take very seriously the lessons from your joint inquiry with the House Intelligence Committee, your inquiry into the prewar intelligence on Iraq WMD, the 9/11 Commission, the Silberman-Robb Commission, as well as a whole bunch of internal intelligence community studies on what has worked and what has not worked in the past.

Ultimately, we have to get analysis right. For in the end, it's the analytic product that appears before the President, his senior advisers, military commanders and you.

Let me be very clear. Intelligence works at that nexus of policy-making, that nexus between the world as it is and the world we are working to create. Now, many things can legitimately shape a policymaker's work, his views and his actions. Intelligence, however, must create the left- and right-hand boundaries that form the reality within which decisions must be made.

Let me make one final critical point about analysis. When it comes to that phrase we become familiar with, "Speaking truth to power," I will indeed lead CIA analysts by example. I will, as I expect every analyst will, always give our Nation's leaders our best analytic judgment.

Now third, beyond CIA's human and analytic activities, CIA science and technology efforts already provide focused, flexible and high quality R&D across the intel spectrum. If I'm confirmed, I'd focus the Directorate of Science and Technology on research and development programs aimed at enhancing CIA core functions—collection and analysis. I would also work to more tightly integrate the CIA's S&T into broader community efforts to increase payoffs from cooperative and integrated research and development.

Support also matters. As Director of NSA, I experienced first-hand the operational costs of outdated and crumbling infrastructure. Most specifically, I would dramatically upgrade the entire CIA information technology infrastructure to bring into line with the expectations we should have in the first decade of the 21st century.

Now in addition to those four areas—which, I think the Committee knows, Mr. Chairman, form the four major Directorates out at the Agency—there are two cross-cutting functions on which I would also focus if confirmed.

To begin, I'd focus significant attention, under the direction of Ambassador Negroponte, the DNI, on the handling of intelligence relationships with foreign partners. As this Committee well knows, these relationships are of the utmost importance for our security, especially in the context of the fight against those terrorists who seek to do us harm.

These sensitive relationships have to be handled with great care and attention, and I would, if confirmed, regard this responsibility as a top priority. International terrorism cannot be defeated without international cooperation. And let me repeat that prevailing in the war on terror is and will remain CIA's primary objective.

For the same reason I'd push for greater information sharing within the United States, among the intelligence community and with other Federal, state, local and tribal entities. There are a lot of players out there on this one—the DNI, the program manager for the information sharing environment, the intelligence community's chief information officer, other agencies like FBI and the Department of Homeland Security.

The CIA has an important role to play in ensuring that intelligence information is shared with those who need it. When I was at NSA, I focused my efforts to make sure that all of our customers had the information they needed to make good decisions.

In fact, my mantra when I was at Fort Meade was that users should have access to information at the earliest possible moment and in the rawest possible form where value from its sharing could actually be obtained. That's exactly the approach I would use if confirmed at CIA.

In my view, both of these initiatives, working with foreign partners and information sharing within the United States, require that we change our paradigm from one that operates on what I've called a transactional basis of exchange—they ask; we provide—in favor of a premise of common knowledge commonly shared, or information access.

That would entail opening up more data and more databases to other intelligence community agencies, as well as trusted foreign partners, restricting the use of what I think is an overused originator-controlled caveat, and fundamentally embracing more of a risk management approach to the sharing of information.

Finally, Mr. Chairman, everything I've said today matters little without the people, the great men and women of the CIA whom, if confirmed, I would happily join, but also the people of this great Nation.

Respectfully, Senators, I believe that the American intelligence business has too much become the football in American political discourse. Over the past few years, the intelligence community and the CIA have taken an inordinate number of hits—some of them fair, many of them not. There have been failures, but there have also been many great successes.

Now, I promise you we'll do our lessons-learned studies, and I will keep you, I will keep this Committee and your counterpart in

the House fully informed on what we learn. But I also believe it's time to move past what seems to me to be an endless picking apart of the archaeology of every past intelligence success or failure.

CIA officers, dedicated as they are to serving their country honorably and well, deserve recognition of their efforts, and they also deserve not to have every action analyzed, second-guessed and criticized on the front pages of the morning paper.

Accountability is one thing and a very valuable thing, and we will have it. But true accountability is not served by inaccurate, harmful or illegal public disclosures.

I will draw a clear line between what we owe the American public by way of openness and what must remain secret in order for us to continue to do our job. The CIA needs to get out of the news as source or subject and focus on protecting the American people by acquiring secrets and providing high-quality all-source analysis.

Internally, I would regard it as a leading part of my job to affirm and strengthen the excellence and pride and the commitment of the CIA's workforce. And in return, I vow that, if confirmed, we at CIA will dedicate ourselves to strengthening the American public's confidence and trust in the CIA and reestablishing the Agency's social contract with the American people to whom we are ultimately accountable.

The best way to strengthen the trust of the American people is to earn it by obeying the law and by showing what is best about this country.

Now, as we do our work, we're going to have some really difficult choices to make. And I expect that not everyone will agree 100 percent of the time. But I would redouble our efforts to act consistent with both the law and a broader sense of American ideals. And while the bulk of the Agency's work must, in order to be effective, remain secret, fighting this long war on the terrorists who seek to do us harm requires that the American people and you, their elected representatives, know that the CIA is protecting them effectively and in a way consistent with the core values of our Nation.

I did that at NSA and if confirmed, will do that at the Central Intelligence Agency.

In that regard, I view it to be particularly important that the Director of CIA have an open and honest relationship with congressional Committees such as yours, so that the American people will know that their elected representatives are conducting oversight effectively.

I would also look to the Members of the Committee who have been briefed and who have acknowledged the appropriateness of activities to say so when selected leaks, accusations and inaccuracies distort the public's picture of legitimate intelligence activities. We owe this to the American people and we owe it to the men and women of the CIA.

Mr. Chairman, I hope that I've given the Members of the Committee a sense of where I would lead the Agency if I am confirmed.

I thank you for your time. And dare I say I look forward to answering the questions I know the Members have.

Chairman ROBERTS. I wish to inform the Members that we have about 2 or 3 minutes left on a vote. We will have intermittent votes throughout the day.

We are going to have a very short recess. I urge Members to return as soon as possible, and we will then proceed to questions.

The Committee stands in recess subject to call of the Chair.

[A brief recess was taken.]

Chairman ROBERTS. The Committee will come to order.

The Committee will now proceed to questions. Each Member will be recognized in the order of their arrival. For the first round, each Member will be granted 20 minutes. We will continue in open session as long as necessary.

Additionally, for the information of Members and the nominee, we will endeavor to take a short lunch break at the appropriate time. In addition, we are not going to have any further recesses. We will endeavor to keep the Committee running. I know all Members have questions to ask and time is of the essence.

General, do you agree to appear before the Committee here or in other venues when invited?

General HAYDEN. Yes, sir.

Chairman ROBERTS. Do you agree to send Central Intelligence Agency officials to appear before the Committee and designated staff when invited?

General HAYDEN. Absolutely, yes, sir.

Chairman ROBERTS. Do you agree to provide documents or any material requested by the Committee in order for it to carry out its oversight and its legislative responsibilities?

General HAYDEN. Yes, sir.

Chairman ROBERTS. Will you ensure that the Central Intelligence Agency provides such material to the Committee when requested?

General HAYDEN. Yes, sir.

Chairman ROBERTS. General, there's an interesting commentary in your opening statement about the endless picking apart of the archaeology of past intelligence failures and that CIA officers deserve not to have every action analyzed, second-guessed and criticized in the newspapers. And I agree that it is time to look forward, not in the rearview mirror, and I agree that the press is not the place to air these kinds of grievances, whether those grievances originate from outside or inside the Agency.

But it is important to be clear: Not having your actions second-guessed is something that is earned, not deserved.

After the Iraq WMD failure, the inquiry that was conducted by this Committee and approved with a 17-0 vote that proved without question we had an egregious intelligence failure, this Committee simply cannot take intelligence assessments at face value.

We have learned—and when I say we, I am talking about every Member of this Committee—when we have hearings and when we have briefings, we ask the analysts or we ask whoever is testifying: What do you know? What don't you know? What is the difference? And, then, the extra kicker is: What do you think? And we scrub it.

Now, I believe it is necessary for the Committee to rigorously examine the CIA's judgments about Iran, about North Korea, about China, about terrorism and proliferation as we work together to ensure there is not another failure like the Iraq WMD failure.

General, the Iraq WMD failure wasn't a failure only because the ultimate assessments were wrong. We both know that you can have a good analytical tradecraft and still get it wrong. Nobody bats 1.000 in the intelligence world. But the Iraq WMD failure was due in large part to a terribly flawed tradecraft.

General, as CIA Director, what steps will you take to improve the Agency's analytical tradecraft?

General HAYDEN. Senator, as I said in my opening statement, that's up there on the top rung. I mean, ultimately, everything that the CIA or any part of the intelligence community meets the rest of the world is in its analytic judgments.

Collection and science and technology support are behind the screen with that analytic judgment. And so it is the pass-fail grade for CIA, for the DI, for the intelligence community.

We've already begun to do some things, and here I think my role would be to make sure these changes are under way and then to reinforce success. Two or three quickly come to mind. One is something that you've already suggested. And that's vigorous transparency in what we know, what we assess, and what we know we don't know; and to say that very clearly so as not to give a policymaker, or a military commander, any decisionmaker a false confidence.

The second, I think, is a higher tolerance for ambiguity between ourselves and between ourselves and our customers. Now, this is going to require the customer to have a little higher tolerance for ambiguity as well. He or she is just going to have to be in a little less comfortable place when an analysis comes out that is truly transparent in terms of our confidence and different layers of confidence, in different parts of our judgment.

There's got to be a little more running room, too, for he said/she said inside the analysis, that dissenting views aren't, I guess, abstracted out of the piece; and, you know, we just kind of move it to the next level of abstraction and underlying disagreements are hidden, and that dissenting views aren't hidden by a footnote or other kind of obfuscations. We really have begun to do that.

In my current job, I get to see the briefing that goes forward every day and there is a difference in its texture and a difference in its tenor.

As I said before, Senator, that's the pass-fail grade. Everything else is designed to support that final analytic judgment.

Chairman ROBERTS. The CIA is clearly working, as you've indicated, to regain the trust of the policymakers and its customers. And I'm not trying to perjure the dedication and the hard work that our men and women of the CIA do, risking their lives on behalf of our country. The men and women in the field, I think, are doing an excellent job—the rank and file.

The Agency has made improvements, particularly in analysis. But the best way for the CIA to earn trust is to give analysts across the community the information they need to perform sound analysis and to encourage collectors to take any and all necessary risks so they can collect the needed information.

And I believe these actions are also the best way to restore the CIA's sense of pride—a goal that both you and I and, obviously, folks down at the CIA share.

General, in your assessment, is the CIA taking the risk necessary to get the analysts the intelligence they need to provide policymakers with sound analysis?

General HAYDEN. Senator, that's one of the areas, as I suggested in my opening statement, that I really want to take a very close look at. And I don't know how to answer your question. Is it doing enough? That's going to be some level of discovery learning for me.

But let me tell you what it is I think I do know about this.

We had the same dilemma at NSA. There's always a risk. And the more transparent you are, the more you may reveal and thereby compromise sources and methods—the same dynamic at Langley. At NSA, it's a little easier, maybe, to start pushing against the shoulders of the envelope here and get a little bit more risk-embracing because, as you know, if NSA oversteps and got a little too bold in sharing, at the end of the day, what they lose is a frequency.

If CIA gets a little too bold in sharing, at the end of the day, there could be real personal tragedy involved.

And so, although the approaches will be similar, I do understand that the protection of human sources might be a bit different than the protection of signal intelligence sources.

All that said, Senator, I mean, I think the Agency itself would admit that it is among the more conservative elements of the community in terms of sharing information. There are good reasons for that, as I just suggested. But just as we did at NSA, when we held our premises up to the light, when we looked at things carefully, we found that we actually had a lot more freedom of action than perhaps our rote procedures would suggest.

That's the approach I'd take at the Agency. It will be careful, but we'll be moving forward.

Chairman ROBERTS. The comment I would make in response to the first question that I asked you is that it appeared to most of us on the Committee, certainly to the Chairman, that the 2002 National Intelligence Estimate became more or less of an assumption train, in part based on what was known after the first Gulf War.

I believe it was David Kay who indicated after the first Gulf War that Saddam Hussein was 18 months away from having a missile delivery capability that was nuclear, obviously within range of Israel. And everybody thought at that particular time and scratched their head, because that estimate was not 18 months, it was much longer than that, and said, "Well, we're certainly not going to let that happen again."

And so, the assumption was, of course we have to err on the side of national security and security of that region.

Now, having said that, most of the other intelligence agencies, if not all, around the world, were on the same assumption train. The inspectors came in, and the inspectors were asked or forced to leave.

Virtually everybody, Members of Congress, people in the Administration, other intelligence agencies all throughout the world, assumed that Saddam Hussein would reconstitute his weapons of mass destruction. I think he probably thought he had the weapons of mass destruction. Anybody that would go in to see him and tell him he didn't probably wouldn't go out.

I think many in the military thought, different generals, this particular unit of the Republican Guard had the WMD and this did not.

But as we saw upon closer inspection, as the Committee worked through very diligently, interviewing over 250 analysts, we found out exactly what you said, that there were dissenting views, that there were caveats. And added together, it did provide a picture that was most troubling. And that's about the nicest way I can put it.

So what I am asking you, again—and you've already answered this—will you put those dissenting views, those caveats, that frank discussion of, “Wait a minute; let's take a closer look,” so that they are at least on the assumption train?

I don't know where they would be—in the middle of the train, front of the train. You might want to put them at the front of the train—not the caboose. Don't let the caboose go—so we don't get into this kind of a failure, which we just simply could not afford.

Would you have any comment?

General HAYDEN. Yes, sir. I couldn't agree with you more.

And you're right about the analysis. We just took too much for granted. We didn't challenge our basic assumptions.

Now, as you point out, there's historical reasons for that. In a sense, it's understandable. I'm not trying to excuse it. But there is a historical background to it. That should teach us an awful lot about taking assumptions for granted and letting them stand without challenge and without just simply looking and saying, “Can I put these pieces together in a different way?”

I think we're doing that. If we're not doing it enough, we'll certainly do more of it. That's precisely what it is we have to give to the Nation's policymakers.

Senator, one more thought, though. You know, all of this is shrouded in ambiguity. If these were known facts, you wouldn't be coming to us for them. And so we'll do our best to tell you what we know and why we think it and where we're doubtful and where we don't know. But I think everyone has to understand the limits of the art here, the limits of the science.

Again, if this were all known, we wouldn't be having the discussion.

Chairman ROBERTS. I'm going to add one more question before I turn to Senator Bond. You made the comment in regards to information-sharing.

Senator Rockefeller and I have been pushing a concept called information access—if you're into information-sharing, somebody owns it, then they make a decision as to whether they share it or not.

Now I'm not going back to the not-so-thrilling days of yesteryear where we looked at the intelligence community as basically a whole series of stovepipes of information with one agency very difficult to share information with another. And we just can't afford that.

And I think we've made great steps, more especially with the National Counterterrorism Threat Center. But you've indicated some concern in regards to sources, methods, and lives. Could you amplify a little bit on that, because we have been pushing information access—full access—to the entire intelligence community as we

work together jointly now to protect America, as opposed to information-sharing.

General HAYDEN. Yes, sir. And that's what I was trying to suggest in my opening statement, that we really have—and I mean this—on the transaction level—they ask; we respond—within the American intelligence community. We're world class. I mean, we really are good at that.

And so when you go out and talk to someone about sharing, they can pull out these statistics about the number of requests and the speed of the response and so on.

And in a different world, that would probably be very satisfying news. But no matter how well you do that, that transactional basis, you're not going to get to the agility we need to fight the current war. You can't be in an ask/respond mode. That simply will not work.

So we have to move to a world in which there is common information, commonly shared. Now that's a challenge, because there are full-on tradecraft and sources and methods concerns.

But I think the line we've got now is—well, my premise is the line's too conservative and that'll be my attitude if confirmed and if I go to the Agency.

Chairman ROBERTS. I appreciate that very much.

In the second round, I may touch upon that need for agility—i.e. hot pursuit—given the threats that we face today.

Senator BOND.

Senator BOND. Thank you very much, Mr. Chairman.

And welcome, General Hayden.

There are many questions that should be asked of you about your views on where the CIA goes and your qualifications. But I think there's been enough discussion that perhaps we should clarify a few points based on your previous role with the President's terrorist surveillance program. So let's just get this on the record so everybody will understand.

Are you a lawyer?

[Laughter.]

General HAYDEN. No, sir.

Senator BOND. Congratulations.

Did your lawyers at the NSA tell you the program was legal? Do they still maintain it's legal?

General HAYDEN. Yes, sir, they did, and they still do.

Senator BOND. How about the Department of Justice lawyers, the White House legal guidance that the program was legal?

General HAYDEN. Yes, sir. All that was consistent.

Senator BOND. Did you ever personally believe the program was illegal?

General HAYDEN. No, sir.

Senator BOND. Did you believe that your primary responsibility as Director of NSA was to execute a program that your NSA lawyers, that Justice Department lawyers and White House officials all told you was legal and that you were ordered to carry it out by the President of the United States?

General HAYDEN. Sir, when I had to make this personal decision in early October of 2001—and it was a personal decision—the math was pretty straightforward. I could not, not do this.

Senator BOND. It seems to me that if there are questions that people wish to raise about the legality of the program, or its structure, those would most appropriately be addressed to the Attorney General or other representative of the legal staff of the Executive branch.

The next question I think is very troubling, because of so many aspersions, assertions, characterizations and mischaracterizations. You addressed at the National Press Club the fact that the President has said this is designed to listen in on terrorist programs coming from overseas. This is to intercept al-Qa'ida communications into or out of the United States.

Could you explain for us the controls that you have to make sure that somebody doesn't listen in on a domestic political opponent or listen in on a neighbor or listen in on a business rival or listen in on the media?

You've explained that, I think. For the record, could you tell how this program is controlled to make sure it stays within the boundaries that the President outlined and the Constitution and the statutes require?

General HAYDEN. Yes, sir.

And, in fact, the way you framed it is the way I think about it. There are, kind of, three pillars that need to be in place for this appropriate.

One is it has to be inherently lawful, and, as you suggested, others are far more expert than I.

The second is that it's done in a way that it's effective.

And the third, that it's done just the way it's been authorized.

And I think your question deals with that last pillar.

Senator BOND. Right.

General HAYDEN. What we did, we have a very strict oversight regime. The phrase we use for the phenomenon you were describing is called targeting.

The targeting decisions are made by the people in the U.S. Government most knowledgeable about al-Qa'ida—al-Qa'ida communications, al-Qa'ida's tactics, techniques, procedures.

It's gotten close oversight. It has senior-level review. But it comes out of the expertise of the best folks in the National Security Agency. I don't make those decisions. The Director of SIGINT out there doesn't make those decisions. Those decisions are made at the program level and at the level of our counterterrorism officer.

They're targeting al-Qa'ida. There is a probable cause standard. Every targeting is documented. There is a literal target folder that explains the rationale and the answers to the questions on a very lengthy checklist as to why this particular number, we believe, to be associated with the enemy.

Senator BOND. And these are reviewed by—who reviews these; what's the review process?

General HAYDEN. There are several layers of review. There's obviously a management review just internal to the system. The NSA inspector general is well-read into the program and does routine inspections—I mean literally pulling folders, examining the logic train, talking to the analyst to see if the decisions were correct or warranted by the evidence in the folder.

That's also been conducted by the Department of Justice. They've done the same thing. They looked at the folders.

And to the best of my knowledge, the folks out there are batting 1.000. No one has said that there has been a targeting decision made that wasn't well-founded in a probable cause standard.

Senator BOND. Is there a possibility that somebody could sneak in a request for something that isn't an al-Qa'ida communication?

General HAYDEN. I don't know how that could survive in the culture of the National Security Agency, Senator. It's a very disciplined workforce.

Senator BOND. What if an analyst, or somebody who is directly engaged at the lowest level decided to pick up some information on somebody who was out of favor, who they didn't like, how would that be caught?

General HAYDEN. Senator, I recognize the sensitivity of the program, what we're talking about here, but, actually, that would be a problem in any activity of the National Security Agency.

Senator BOND. So this is not a problem that is specific to the present program. Any time you have an NSA, you have the ability—

General HAYDEN. Of course.

Senator BOND. And the question is what do you do to make sure that everybody stays within the guidelines?

General HAYDEN. The entire Agency, its general counsel, its IG—I mean, that's what it's built to do, to do that kind of oversight.

Senator BOND. And what if they get out of line?

General HAYDEN. Well, No. 1, no evidence whatsoever that they've gotten out of line in this program.

In the history of the Agency, there have been, you know, I'll say a small number of examples like that. Those are detected through normal processes, IG inspections and so on, and action is taken.

Senator BOND. I was at the Agency, and I saw the extensive oversight. I also heard on early morning radio somebody who had been employed at NSA for 20 or 25 years call in, and he was asked good questions by the morning show hosts. And I believe his reply was, when they asked him why he couldn't do that, he said because he didn't want to spend 10–15 years in prison.

Is this the kind of penalty that would ensue if somebody did that?

General HAYDEN. Sir, I can remember the training I got there and continued throughout my 6 years at the Agency, and this training is recurring—it must happen on a recurring basis for everyone there. And during the training, everyone is reminded, these are criminal, not civil, statutes.

Senator BOND. So what would your response be to the general accusations that tens of millions of Americans are at risk from having their privacy exposed in these communications?

General HAYDEN. Senator, the folks at NSA didn't need me to prod them on. But let me tell you what I told them when we launched the program. It was the morning of 6 October in our big conference room. About 80, 90 folks in there. And I was explaining what the President had authorized. And I end up by saying, "And we're going to do exactly what he said and not one photon or one electron more."

And I think that's what we've done.

Senator BOND. You've mentioned briefly about the impact of leaks on this program and other classified programs. What has happened, in your view, to our intelligence capability as a result of the leaks and disclosure of our activities?

General HAYDEN. Senator, it's difficult to quantify. I mean, there are so many variables that affect our ability to move against the enemy. So I can't give you a statistic, but I can't help but think that revelations like this have an effect on the enemy.

Now this program will continue to be successful, all right? But there will be an effect here. I mean, you can actually see this—and now I'm speaking globally, about disclosures of our tactics, techniques, procedures, sources and methods.

It's almost Darwinian. The more we put out there, the more we're going to kill and capture dumb terrorists.

Senator BOND. Because the smart ones will know how to avoid it.

General HAYDEN. Yes, sir.

Senator BOND. I think Porter Goss, in this room, in February, said the damage to our intelligence capability has been very severe. And is that a fact?

General HAYDEN. Oh yes, sir. If you're talking to beyond NSA, beyond signals intelligence, there's a whole panoply. There is easily documented evidence as to that.

Senator BOND. Going back to the NSA, I gather that there are some folks who really would like to see this program shut down. They may be phrasing it in various terms, but I suspect that there are some who say it ought to be shut down.

What would happen to our ability to identify and disrupt a planned al-Qa'ida attack in the United States were that to happen?

General HAYDEN. Sir, my personal view, and the reason I accepted this in October 2001, is my responsibility to help defend the Nation. The folks who run this program I think believe, and correctly believe, they make a substantial contribution to the safety of the republic.

I went out to see them at the height of the first fur ball about this. And, you know, they're doing their jobs, but it was a difficult time. But the only emotion they expressed to me was they wanted to be able to continue to do their work. Their fear was not for themselves or they had done anything wrong, but that they wanted to be able to continue to do what it is they had been doing.

Now, that's a better judgment than mine. These are the folks who feel it, who have that tactile sense for what they do and what they affect.

Senator BOND. Let me move on to the things that really should be the focus of this hearing.

HUMINT is obviously the chief responsibility of CIA. You have been a SIGINT man for most of your career. What will be your priorities? How will you adjust to HUMINT? And what areas are the greatest need in our human intelligence-gathering capacities?

General HAYDEN. Sir, just one clarification for the record. I've actually been a HUMINTer. I was an attache behind the Iron Curtain for a couple of years during the cold war, and that's kind of in the center of the lane for human intelligence.

Actually I have more HUMINT experience going to CIA than I had SIGINT experience before I arrived at NSA.

Now, with regard to looking forward, two games going on simultaneously, and both equally important. One is inside the Agency, you know, dealing with CIA HUMINT, helping it become all that the Nation needs it to be. And as I suggested earlier, more non-traditional cover, more nontraditional platforms, more risk-taking.

And, Senator, I need to be honest. This would be reinforcing efforts already under way.

The other game is over here in the broader community. And I think it's singularly significant that Ambassador Negroponte made the Director of CIA the national HUMINT manager. There are other folks out there on the field playing this game—DOD, the FBI, other agencies—and both of them are bulking up in terms of their capabilities. This is a real opportunity to do this really well, on a scale we've not been able to do before.

And so I think there's got to be an equal amount of effort in that community role as well.

Senator BOND. Yesterday, at the Defense Appropriations hearing, Secretary Rumsfeld assured us that there's total, complete working interoperability and cooperation between the Department of Defense and the CIA and other agencies in human intelligence.

Has that been achieved or is that a work in process, a goal toward which we are working? And what do you think really about the relationships between the FBI, NSA, Department of Defense in the clandestine service?

General HAYDEN. Yes, sir.

I think it's best described as a process that needs to be continually managed. You've got folks out there, quite legitimately, but for slightly different purposes. They should be using common tradecraft. They should be using common standards. They should be using the same standards to validate a source.

They should be using the same language and the same formats when they make reports. Those are the things that the national HUMINT manager should ensure.

I know there has been a great deal of comment and concern about recent DOD activity and how it might bump into traditional CIA activity. I can tell you, in preparation for this, I have asked that question for the folks who were trying to get me ready for the hearing. Frankly, I got a better news story than I had anticipated.

Senator BOND. This Committee is most interested in that. So please, tell us. What's the story?

General HAYDEN. They talked about the MOU that had been signed between the DOD and the CIA in terms of how to coordinate and deconflict HUMINT activity. It's actually working. When there have been frictions, it's come about more out of inexperience than malice—and that we need to continue to move along those lines.

I know this is an important question for the Committee, an important question for the Members of the Senate.

Senator BOND. We will pursue that later on this afternoon.

On the military desire to expand human intelligence and get into areas of covert action, to the extent you can discuss it here, what is the proper responsibility between the Department of Defense

human intelligence operations and Central Intelligence Agency human intelligence operations? Is there a bright line?

General HAYDEN. Actually, I think that's what it is we're trying to do, is to create a bright line.

And I think, maybe, the reality is that what DOD is doing under title 10 authorities and what CIA does under title 50, actually where that line should be drawn, they get kind of merged so that the actions are actually on the ground, in reality indistinguishable, even though their are sources of tasking and sources of authority come from different places.

That's where we need to manage this. That's where this needs to be done well.

Let me explain this more in terms of opportunity than of danger, even though, you know, clearly we've got to do this right.

I think a fair case can be made that in several theaters of war, right now—Iraq, Afghanistan—that the CIA has picked up a large burden and done it very well, a burden that is in many times in direct support of U.S. military forces.

To have DOD step up to those kinds of responsibilities doesn't seem to me to be a bad thing. And if that frees up CIA activities to go back toward the more traditional CIA realm of strategic intelligence, there's a happy marriage to be made here, Senator.

Senator BOND. I recently read a book—a novel—a book on the CIA's role in Afghanistan. And according to the former CIA man who wrote it, the CIA was the one that did it and did all the important things, and the Department of Defense did not step up at the appropriate time.

Have you had an opportunity to review the general operations of the CIA in Afghanistan and the interaction with the Department of Defense there?

General HAYDEN. No, sir, I have not looked at it in detail.

Senator BOND. We'll talk about that later.

Probably the final question: There was some objection within the Agency to the DNI sending two dozen CT analysts to the National Counterterrorism Center as part of the lanes in the road.

Do you think that the objections from within the Agency were justified? And to what extent should the NCTC be engaged in the all-source terrorism analysis? To what extent should the CIA do the same?

General HAYDEN. Sir, it's a complicated question. But the truth in lending, obviously I agree with you because that's what I was trying to do in my current job as Ambassador Negroponte's deputy.

This is actually what I was trying to refer to in my opening remarks when I talked about conforming the shape of the CIA to meet the new intelligence structure which you have all legislated, while still sustaining high OPSTEMPO current CIA operations. I mean, that's the dilemma right there.

Briefly, and perhaps in a later round or this afternoon, Senator, we can get into more detail but briefly, here is what I see the challenge is. Right now, in a really good, in a really powerful sense, a lot of the engines of American intelligence are attached to today's very successful operational activities.

And the fact that Director Goss and the President and others can say that some significant percentage—and it's a big number—of

that organization that attacked us in 2001 has been killed or captured is a product of all of that focus.

But this is a long war. And it's not just going to be won with heat and blast and fragmentation. It is fundamentally a war of ideas. And we have to skew our intelligence to support the other elements of national power as well. That's the tough decision—how best to allocate our resources and then apportion it organizationally.

So you keep up this high OPSTEMPO that has al-Qa'ida on its back foot right now while still underpinning all of the other efforts of the U.S. Government that over the long term—over the long term—cuts the production rate of those who want to kill us and those who hate us rather than simply dealing with those who already have that view.

Senator BOND. Thank you very much, General.

Chairman ROBERTS. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

General, an answer to one of the pre-hearing questions of the Committee, you indicated that your role in developing the NSA's program that we've discussed here was to explain what was technically possible in a surveillance program.

And my question is this: After you explained, presumably to the Administration, what was technically possible, did you design the specific program or was the specific program designed elsewhere and delivered to you?

General HAYDEN. Senator, it's going to take a minute to explain, but I think you'd want a complete answer on this. Let me give you the narrative as to what was happening at that time.

As I briefed the Committee in closed session, I took certain actions right after the attack within my authority as Director and I informed Director Tenet, I informed this Committee and I informed the House Committee as well.

And after a discussion with the Administration, Director Tenet came back to me and said, "Is there anything more you can do?" And I said, "Not within my current authorities." And he invited me to come down and talk to the Administration about what more could be done.

And the three ovals of the Venn diagram as I described it were what was technologically possible, what was operationally relevant, and what would be lawful, and where we would work would be in that space where all three of those ovals intersected.

And as I said to Senator Bond, my role was, "Here's what's technologically possible, and if we could pull that off, here's what I think the operational relevance would be." And there then followed a discussion as to why or how we could make that possible.

I was issued an order on the 4th of October that laid out the underpinnings for what I described.

Senator LEVIN. So you participated in the design of the specific program?

General HAYDEN. Yes, I think that's fair, Senator. Yes. I think that's right.

Senator LEVIN. Now, if press reports are true that phone calls of tens of millions of Americans who are not suspected of anything—but nonetheless the records are maintained in a government data-

base—would you not agree that if that press report is accurate, that there is at least a privacy concern there, whether or not one concludes that security interests outweigh the privacy concerns?

General HAYDEN. Senator, from the very beginning we knew that this was a serious issue and that the steps we were taking, although convinced of their lawfulness—we were taking them in a regime that was different from the regime that existed on 10 September.

I actually told the workforce, not for the special program, but the NSA workforce on the 13th of September—I gave an address to an empty room, but we beamed it throughout our entire enterprise—about free peoples always having to decide to balance their security and their liberties, and that we, for our tradition, have always planted our banner way down here on the end of the spectrum toward security.

And then I told the workforce—and this has actually been quoted elsewhere—I told the workforce there are going to be a lot of pressures to push that banner down toward security. And our job at NSA was to keep America free by making Americans feel safe again. So this balance between security and liberty was foremost in our mind.

Senator LEVIN. Does that mean your answer to my question is yes?

General HAYDEN. Senator, I understand. There are privacy concerns involved in all of this. There's privacy concerns involved in the routine activities of NSA.

Senator LEVIN. Would you say there are privacy concerns involved in this program?

General HAYDEN. I can certainly understand why someone would be concerned about this.

Senator LEVIN. But that's not my question, General. It's a direct question.

General HAYDEN. Sure.

Senator LEVIN. In your judgment, are there privacy—

General HAYDEN. You want me to say yes or no.

Senator LEVIN. I want you to say whatever you believe.

General HAYDEN. Yes, sir. Here's what I believe. Clearly the privacy of American citizens is a concern, constantly. And it's a concern in this program, it's a concern in everything we've done.

Senator LEVIN. That's a little different from the Press Club statement where basically you said the only privacy concern is involved in international phone calls.

General HAYDEN. No, sir, I don't think it's different. I was very clear in what I said there, I was very careful with my language.

Senator LEVIN. Is that the only privacy concern in this program, international phone calls?

General HAYDEN. Senator, I don't know how to answer your question. I've just answered that there are privacy concerns with everything that we do, of course. We always balance privacy and security, and we do it within the law.

Senator LEVIN. The only privacy concerns, though, in this program relate to international phone calls?

General HAYDEN. Senator, what I was talking about in January at the press club was what—the program that the President had confirmed. It was the program——

Senator LEVIN. That he had confirmed publicly?

General HAYDEN. Yes, sir, that he confirmed publicly.

Senator LEVIN. Is that the whole program?

General HAYDEN. Senator, I'm not at liberty to talk about that in open session.

Senator LEVIN. I'm not asking you what the program is, I'm just simply saying, is what the President described publicly the whole program.

General HAYDEN. Senator, all I'm at liberty to say in this session is what I was talking about, and I literally, explicitly said this at the press club, I am talking about the program the President discussed in mid-December.

Senator LEVIN. You're not able to tell us whether what the President described is the whole program?

General HAYDEN. No, sir, not in open session. I am delighted to go into great detail in closed session.

Senator LEVIN. The NSA program that the New York Times on March 14th reported about said that NSA lawyers, while you were the Director of the Agency, opposed the Vice President's efforts to authorize the NSA to "intercept purely domestic telephone calls." Is that story accurate?

General HAYDEN. I could recognize a thin vein of my experience inside the story, but I would not characterize how you described the Times story as being accurate. I can give you a few more notes on that, Senator.

Senator LEVIN. But were there differences between the NSA and the Vice President's Office about what the desirable scope of this program was?

General HAYDEN. No, sir. There were discussions about what we could do. Our intent all along, in my discussions, was to do what it is the program does as described, one end of these calls always being foreign.

And as we went forward, we attempted to make it very clear that that's all we were doing and that's all we were authorized to do.

Senator LEVIN. All right. So there were no differences of opinion between your office—between the NSA and——

General HAYDEN. There were no arguments, no pushback, no "We want to," no "We won't"—none of that. No, sir.

Senator LEVIN. Thank you, General.

What was the view of NSA lawyers on the argument that was made by the Administration that the authorization for use of military force which was passed by the Congress authorized this program? Did your people agree with that?

General HAYDEN. I'd ask you to ask them directly for the details.

Senator LEVIN. Do you know whether they——

General HAYDEN. No, sir. I'll continue—there's more to be said.

When I talked to the NSA lawyers, most of my personal dialog with them, they were very comfortable with the Article II arguments and the President's inherent authorities.

Senator LEVIN. Does that mean that they were not comfortable with the argument that——

General HAYDEN. I wouldn't say that. But when they came to me and we discussed its lawfulness, our discussion anchored itself on Article II.

Senator LEVIN. And they made no comment about the authority which was argued by some coming from the authorization of military force?

General HAYDEN. Not strongly, one way or the another. It was Article II.

Senator LEVIN. During the confirmation hearings of Porter Goss, I asked him whether or not he would correct the public statement of a policymaker if that public statement went beyond the intelligence.

And here's what Mr. Goss said: "If I were confronted with that kind of a hypothetical where I felt that a policymaker was getting beyond what the intelligence said, I think I would advise the person involved. I do believe that would be a case that would put me into action if I were confirmed. Yes, sir."

Do you agree with Porter Goss?

General HAYDEN. Yes, sir, I think that's a pretty good statement.

Senator LEVIN. An independent review for the CIA, conducted by a panel led by Richard Kerr, former Deputy Director of the CIA, said the following—and this relates to the intelligence prior to the Iraq war—"Requests for reporting and analysis of Iraq's links to al-Qa'ida were steady and heavy in the period leading up to the war, creating significant pressure on the intelligence community to find evidence that supported a connection."

Do you agree with Mr. Kerr?

General HAYDEN. Sir, as Director of NSA, we did have a series of inquiries about this potential connection between al-Qa'ida and the Iraqi government. Yes, sir.

Senator LEVIN. Now, prior to the war, the Under Secretary of Defense for Policy, Mr. Feith, established an intelligence analysis cell within his policy office at the Defense Department.

While the intelligence community was consistently dubious about links between Iraq and al-Qa'ida, Mr. Feith produced an alternative analysis, asserting that there was a strong connection.

Were you comfortable with Mr. Feith's office's approach to intelligence analysis?

General HAYDEN. No, sir, I wasn't. I wasn't aware of a lot of the activity going on when it was contemporaneous with running up to the war. No, sir, I wasn't comfortable.

Senator LEVIN. In our meeting in our office, you indicated—well, what were you uncomfortable about?

General HAYDEN. Well, there were a couple of things. And thank you for the opportunity to elaborate, because these aren't simple issues.

As I tried to say in my statement, there are a lot of things that animate and inform a policymaker's judgment, and intelligence is one of them, and world view, and there are a whole bunch of other things that are very legitimate.

The role of intelligence—I try to say it here by metaphor because it's the best way I can describe it—is you've got to draw the left- and the right-hand boundaries. The tether to your analysis can't be

so long, so stretched that it gets out of those left- and right-hand boundaries.

Now, with regard to this particular case, it is possible, Senator, if you want to drill down on an issue and just get laser beam focused, and exhaust every possible—every possible ounce of evidence, you can buildup a pretty strong body of data, right? But you have to know what you're doing, all right?

I have three great kids, but if you tell me to go out and find all the bad things they've done, Hayden, I can build you a pretty good dossier, and you'd think they were pretty bad people, because that was what I was looking for and that's what I'd buildup.

That would be very wrong. That would be inaccurate. That would be misleading.

It's one thing to drill down, and it's legitimate to drill down. And that is a real big and real important question. But at the end of the day, when you draw your analysis, you have to recognize that you've really laser-beam focused on one particular data set. And you have to put that factor into the equation before you start drawing macro judgments.

Senator LEVIN. You in my office discussed, I think, a very interesting approach, which is the difference between starting with a conclusion and trying to prove it and instead starting with digging into all the facts and seeing where they take you.

Would you just describe for us that difference and why you feel, I think, that that related to the difference between what intelligence should be and what some people were doing, including that Feith office.

General HAYDEN. Yes, sir. And I actually think I prefaced that with both of these are legitimate forms of reasoning, that you've got deductive—and the product of, you know, 18 years of Catholic education, I know a lot about deductive reasoning here.

There's an approach to the world in which you begin with, first, principles and then you work your way down the specifics.

And then there's an inductive approach to the world in which you start out there with all the data and work yourself up to general principles. They are both legitimate. But the only one I'm allowed to do is induction.

Senator LEVIN. Allowed to do as an intelligence—

General HAYDEN. As an intelligence officer is induction.

And so, now, what happens when induction meets deduction, Senator? Well, that's my left- and right-hand boundaries metaphor.

Senator LEVIN. Now, I believe that you actually placed a disclaimer on NSA reporting relative to any links between al-Qa'ida and Saddam Hussein. And it was apparently following the repeated inquiries from the Feith office. Would you just tell us what that disclaimer was?

General HAYDEN. Yes, sir.

SIGINT neither confirms nor denies—and let me stop at that point in the sentence so we can stay safely on the side of unclassified.

SIGINT neither confirms nor denies, and then we finished the sentence based upon the question that was asked. And then we provided the data, sir.

Senator LEVIN. I think that you've commented on this before and I may have missed it and, if so, you can just rely on your previous comment.

But there have been press reports that you had some disagreements with Secretary Rumsfeld and Under Secretary Cambone with respect to the reform legislation that we were looking at relating to DNI and other intelligence-related matters.

Can you tell us whether or not that is accurate; there were disagreements between you and the Defense Secretary? Because some people say you're just going to be the instrument of the Defense Secretary. And if those reports are right, this would be an example where you disagree with the Defense Secretary, who—after all, you wear a uniform and he is the Secretary of Defense. Are those reports accurate?

General HAYDEN. Sir, let me recharacterize them.

The Secretary and I did discuss this. I think it's what diplomats would call that frank and wide-ranging exchange of views. He treated me with respect.

A couple of footnotes just to put some texture to this. I then testified in closed session to the HPSCI on different aspects of the pending legislation. It was unclassified testimony, even though the session was closed.

DOD put my testimony on their Web site. NSA didn't. And so that to me was a pretty telling step, that this was an open exchange of views.

It's been a little bit mischaracterized, too. I did not say move those big three letter muscular agencies outside of DOD. My solution was something like the founding fathers—enumerated powers. Don't get bollixed around on writing a theory of federalism. Just write down what you want the Federal Government to do.

My view was you needed to write down what authorities the DNI had over NSA, NGA and NRO. The fact that they stayed inside the Department of Defense was actually pretty uninteresting—as long as you had these enumerated powers that Ambassador Negroponte now has—money, tasking, policy, personnel, classification.

Senator LEVIN. Is it fair to say that on some of those issues there were differences between you and Secretary Rumsfeld?

General HAYDEN. Yes, sir.

Senator LEVIN. General, there's been a great deal of debate over the treatment of detainees. Do we have one set of rules now that governs the interrogation of detainees, regardless of who is doing the interrogating and regardless of where the interrogations take place.

General HAYDEN. Senator, I'll go into more detail on this this afternoon. But I do have some things I'd like to say in open session.

Obviously, we're going to follow the law, we're going to respect all of America's international responsibilities.

In the Detainee Treatment Act, the language is quite clear. It talks about all prisoners of war under the control of the Department of Defense being handled in a way consistent with the Army Field Manual, and then a separate section of the law that requires all agencies of the U.S. Government to handle detainees wherever they may be located in a way that is not cruel, inhumane or degrading.

And that's the formula that we will follow.

Senator LEVIN. And the CIA is bound by that formula?

General HAYDEN. All agencies of the U.S. Government are bound by that formula. Yes, sir.

Senator LEVIN. Then by definition—

General HAYDEN. Yes, sir. By definition, any agency.

Senator LEVIN [continuing]. The CIA is included in that?

General HAYDEN. Yes, sir.

Senator LEVIN. And so that means—or let me ask you, rather than putting words in your mouth—does that mean that the CIA and its personnel and contractors are required to comply at all times in all locations in the same manner as military personnel with the following laws or treaties: A, the Geneva Conventions?

General HAYDEN. Senator, again, let me refer you to the language in the Detainee Treatment Act, which actually does make a distinction between prisoners of war under the effective control of the Department of Defense, and the second broader description that applies throughout the rest of the Government about cruel, inhuman and degrading.

Senator LEVIN. Are you unable, then, to answer that question?

General HAYDEN. No, sir, I'm not.

Senator LEVIN. Then what about the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment?

General HAYDEN. Yes, sir. All parts, all agencies of the U.S. Government will respect our international obligations.

Senator LEVIN. Including that one?

General HAYDEN. Yes, sir.

Senator LEVIN. The Detainee Treatment Act of 2005 you just described?

General HAYDEN. Right. Yes, sir. Absolutely consistent with that.

Sir, can I put a footnote on the previous one?

Senator LEVIN. Sure.

General HAYDEN. Obviously, with the reservations that have been stipulated by the U.S. Government in the ratification of that treaty.

Senator LEVIN. Finally, the Army Field Manual on Intelligence Interrogation?

General HAYDEN. The Army Field Manual, as the Detainee Treatment Act clearly points out, specifically applies to prisoners under the effective control of the Department of Defense.

Senator LEVIN. And therefore the CIA, you do not believe, is bound by that language?

General HAYDEN. Again, the legislation does not explicitly or implicitly, I believe, bind anyone beyond the Department of Defense, Senator.

Senator LEVIN. My time is up. Thank you very much.

General HAYDEN. Thank you, Senator.

Chairman ROBERTS. Senator DeWine.

Senator DEWINE. Mr. Chairman, thank you very much.

General, welcome.

General HAYDEN. Thank you, sir.

Senator DEWINE. Good to be with you today.

General, in 2002 the Senate and House issued a report on its joint inquiry into the intelligence community's activities before and after the terrorist attacks of September 11.

In that report, I had additional comments to the report. And I raised several issues that I believe, frankly, are still valid today. And I'd like to spend some time talking about those comments. I want to ask you whether, as Director of the CIA, you have plans to address them.

What I wrote in my additional comments, what I wrote in those comments and what I still believe to be true today is that we are facing a broken corporate culture at the CIA.

Too many of our clandestine officers work under official cover, which is of limited use today in getting close to organizations like al-Qa'ida. The CIA's Directorate of Operations has struggled to transform itself after the cold war, including taking better advantage of non-official cover or NOC operations.

Often this is because the tradecraft required to support nonofficial cover operations is so much more difficult and elaborate than what it is required for official cover.

To the extent that the Directorate of Operations is engaging in nonofficial cover operations, these have been damaged, in my opinion, by halfhearted operational security measures and underutilization by CIA's management.

I believe that, to truly advance our intelligence collection capabilities against the hard targets like terrorist groups, proliferation networks and rogue States, we need to make smarter and better use of nonofficial cover capabilities. It may be that, to do this, we need to put these kinds of operations simply outside of the Directorate of Operations.

General, you're a former Director of NSA. You've spent, now, a year as DNI's principal deputy and you are before us today to be confirmed as the next Director of CIA. You certainly know the issues as well as any person does.

I'd like to ask you a few questions. First, do you agree that we could make still better use of nonofficial cover operations? Do you agree that we need to be more creative and risk-taking in how we construct and use nonofficial cover?

And am I right to be concerned that nonofficial cover operations have not been given the resources and attention that they need to be given to truly be successful?

Are you prepared to give NOC operations the support and resources they need to truly succeed, even if that means further separation and perhaps—perhaps, General—even putting them into a new agency, separate from the mainstream of the Directorate of Operations?

General HAYDEN. Senator, I remember your language in the 2002 report.

Senator DEWINE. I'm glad you do. Very few people do. But I appreciate you do.

General HAYDEN. Yes, sir.

On your first two questions, on the value of it and the need to invest more in it, absolutely yes on both accounts. I think the record will show that the Agency has done that. I take your point, and that's a challenge to the Agency.

Clearly they have not done that third step, what you suggested. And you essentially, I think, concluded that the culture of the Agency was such that this baby would be strangled in the crib by the traditional way of doing business under embassy cover.

I had to go find that out, because clearly we've not done what you suggested might be a course of action, which is a separate entity, a separate agency that I think, according to your language, would actually draw in nonofficial cover folks from beyond the NSA or beyond CIA into this new structure.

That, clearly, has not been done.

Here's the dilemma. We faced it with creating the National Security Branch inside the FBI; it's the same question. Can you do something that new, that different, inside the existing culture, or do you just have to make this clean break, which I think you'd admit would be disruptive? But are the facts such that you have to make that clean break?

Clearly, the folks who preceded me there haven't made that decision yet. Senator, I need to find out how well we're doing and come back and tell you.

Senator DEWINE. General, I think you framed the issue perfectly. And I appreciate your response.

We trust, when you're in there, you're going to make that decision one way or the other. Because that is the question, whether it can be done that way or it has to be done and by breaking the mold and done an entirely different way. But it has to be done.

General HAYDEN. Yes, sir.

Senator DEWINE. And we have to move and we have to move quickly.

General HAYDEN. That's right.

Senator DEWINE. And so you have to be the agent of change. You have to move. You have to break the culture one way or the other.

In that light, let me ask a question. A lot has been written in the press about your plans to have Steve Kappes serve as your Deputy Director at the CIA.

Mr. Kappes, by all accounts, did a great job in the Directorate of Operations. But his successes there are really in the traditional mold. He was successful in working under official cover at running and managing traditional operations. He was successful as a member and a leader of the traditional corporate culture at the CIA.

What does it tell us that you're putting him in this position? And can he move this agency or help you move this agency into new areas?

General HAYDEN. Yes, sir.

I need to be careful here not to be presumptuous on confirmation and so on.

Senator DEWINE. We understand.

General HAYDEN. And I know Ambassador Negroponte did mention Steve's name at a press opportunity a week or so ago.

I know Steve pretty well. I have the highest regard for him. When I did the Rolodex check around the community about Steve when I first became aware that I may be coming to this job, which was not too long ago, Senator, they're almost universally positive. This is a guy who knows the business.

I don't know enough of Steve's personal history to refute some of your concerns, but let me offer a couple of additional thoughts, Senator.

Senator DEWINE. Yes. And, you know, I'm very complimentary of him.

General HAYDEN. I know, I know.

Senator DEWINE. I mean, you know, you look at someone's background and you say, "What have been his assets? And where are his strengths?" And it doesn't mean he can't move in a new direction.

General HAYDEN. Right. And let me tell you my thought process on that. I did this at NSA. At NSA, I brought back a retiree, Bill Black. And I brought Bill back as a change agent. Imagine the antibody, Senator, for somebody like me.

I mean, the phrase—I don't know what it is at CIA, but the phrase at NSA when describing the guy in the eighth floor office is "the current Director," all right?

[Laughter.]

General HAYDEN. You get a lot more authority when the workforce doesn't think it's amateur hour on the top floor. You get a lot more authority when you've got somebody welded to your hip whom everybody unarguably respects as someone who knows the business.

My sense is, with someone like Steve at my side, the ability to make hard turns is increased, not decreased.

Senator DEWINE. I respect your answer.

Let me ask you another question in this regard before I move on. In your written statement, you talk about expecting more from HUMINT collectors at DOD and the FBI. But I don't think I saw in the written statement any mention about the CIA itself. I think you've already answered this, but I want to make sure it's on the record. Do you also expect more from the Directorate of Operations?

General HAYDEN. Absolutely. I actually parsed it into two boxes in the statement, Senator.

One is internal. The CIA's got to actually get bigger and do more and do better. But there's also that other role where CIA—the Director of CIA has now been given responsibility for human intelligence across the Government.

Senator DEWINE. General, let's turn to the question about access to information.

Another concern I wrote about in 2002, and which I still have concern about, is the need to improve information access for analysts throughout the entire intelligence community. Information access—that is making sure that the analysts across the community get access to all that data that they are clear to see. It's really been a major focus of the Chairman, a major focus of this Committee.

In 2002, in my comments, I wrote that we needed to look at ways to do this, such as by using technology like multilevel security capabilities. I believe we need to develop systems that allow analysts to get to information quickly, easily and with the confidence that they are seeing everything that they are permitted to see.

Technology should not be the obstacle to achieving this. And we have the technology today.

For example, the National Air and Space Intelligence Center in Dayton, Ohio, has developed on its own, over the past few years, a multilevel access system called SAVANT which is used by their all-source analysts, analysts who hold different level of clearance, to gain appropriate access to information of varying classification levels in different data bases.

NASIC developed their software with investments of a few million dollars. They developed their systems themselves and they did this in a short period of time. So we would know that this type of technology is really feasible, we know that it can be done.

If you compare what NASIC has done with the situation at the National Counterterrorism Center, it's a little scary. Our Chairman likes to point out that when he visits the National Counterterrorism Center, he sees sitting under the desks of each of the analysts an amazing collection of eight or nine different computers, each with different connections back to the 28 different networks our intelligence community maintains.

The Chairman calls this the baling wire approach to bringing together intelligence data. To me, it's more like we have duct-taped our systems together. Surely we can do better than this.

But the obstacle, I think, here is policy. Intelligence community policies continue to work against information access and protect more parochial interests of various agencies in the community, such as the CIA and NSA.

I saw that you talked about this issue in your written statement. I appreciate that. You wrote that you would strongly push for greater information-sharing.

I saw you cited some of your own work at NSA as proof of your commitment to this goal. So let me ask you if you could talk for a moment, in the time I have remaining, about your commitment to information access.

You are, of course, the former Director NSA. You're about to be the next Director of CIA. These agencies, quite candidly, I don't believe, have a great record when it comes to implementing information access. Now you're doing better, but I think we have a ways to go.

Talk to me a little bit about what NASIC has done, the SAVANT program. Where can the CIA go in this area? How can we change the thinking at the CIA? The technology, I think, is clearly there.

General HAYDEN. Senator, you're right, it's not a question of technology. The impediments are, by and large, policy.

You've got to make sure that technology works, and you've got to hold it to a standard, and it's got to perform at the standard. But fundamentally these are questions of policy. In the current post, with the DNI, we've actually taken some steps forward in this regard, and perhaps this afternoon I can elaborate on that a bit as to some things we have done.

But I can tell you in open session, you just have to will it. You're not going to get everyone saying, "Oh, yeah, this is good, and it's OK." You're not going to get everyone to agree.

In many ways, you just have to make the decision and move forward. And we've done that on two or three things I'd really be happy to share with you this afternoon.

Now, I need to be careful. As I said earlier, human intelligence sources are a bit more fragile—I mean that literally—than other kinds of sources, and that has to be respected. But as we did at NSA, I think that the way ahead is, you hold all the premises up to the light.

Senator, there was an instance in NSA when we were trying to go forward and do something and someone said, “You can’t do that. There are several policies against it.” And it took me a while getting those kinds of briefings to then say, “Whose policies?” They were mine. They were under my control. So they were changeable. They weren’t, you know, handed down to us from Mount Sinai.

Senator DEWINE. General, I appreciate your answer.

Just one final comment before I turn it back to the Chairman. This Committee has spent a lot of time looking at what happened after September 11th. We’ve looked at a lot of problems and the challenges of the intelligence community.

It seems to me one of the biggest challenges is to make sure that every consumer, every person who needs to know, every analyst who needs to know information, gets that information in a timely manner.

It’s so simple to state, but it’s so hard, many times, to implement. And your dedication and making sure that that happens and we change the culture, we drive through that culture—the technology is there, we just simply have to do it.

General HAYDEN. Yes, sir.

Senator DEWINE. I appreciate it. Thank you very much.

Thanks, Mr. Chairman.

Chairman ROBERTS. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

General, good morning to you and your family. And, Mrs. Hayden, you’ll be interested to know, your husband went into considerable detail about how much you two loved to go to those Steelers games together, so I know you all are very devoted to family, and we’re glad you’re here.

General, like millions of Americans, I deeply respect the men and women who wear the uniform of the United States. Every day, our military risks life and limb to protect our freedom, demonstrating qualities like accepting personal responsibility. They are America at its best.

Here on the Senate Intelligence Committee, I’ve supported our national security in a time of war by voting to give you the tools needed to relentlessly fight the terrorists while maintaining vigilance over the rights of our citizens. Those votes I’ve cast fund a number of top secret programs that have to be kept under wraps because America cannot vanquish its enemies by telegraphing our punches.

Now, in return for keeping most of the vital work of this Committee secret, Federal law, the National Security Act of 1947, stipulates—and I quote here—you “keep the Congressional Intelligence Committees fully and currently informed of all intelligence activities other than a covert action.”

It is with regret that I conclude that you and the Bush administration have not done so. Despite yesterday’s last-minute briefing, for years—years, General—you and the Bush administration have

not kept the Committee fully and currently informed of all appropriate intelligence activities.

Until just yesterday, for example, for some time now only two Democratic Senators present this morning were allowed by the Bush administration to be briefed on all these matters that are all over our newspapers.

These failures in my view have put the American people in a difficult spot. Because the Committee hasn't been kept informed, because of these revelations in the newspapers, now we have many of our citizens—law-abiding, patriotic Americans who want to strike the balance between fighting terrorism and protecting liberty—now they're questioning their Government's word.

So let me turn to my questions.

In your opening statement, you said that under your leadership, the CIA would act according to American values. So we're not talking about a law here, but we're talking about values. For me, values are about following the law and doing what you say you are going to do. When it comes to values, credibility is at the top of my list.

Now, General, having evaluated your words, I now have a difficult time with your credibility. And let me be specific.

On the wiretapping program in 2001, you were told by the President's lawyers that you had authority to listen to Americans' phone calls. But a year later, in 2002, you testified that you had no authority to listen to Americans' phone calls in the United States unless you had enough evidence for a warrant. But you have since admitted you were wiretapping Americans.

Let me give you another example. After you admitted you were wiretapping Americans, you said on six separate occasions the program was limited to domestic-to-international calls. Now the press is reporting that the NSA has amassed this huge data base—that we've been discussing today—of domestic calls.

So with all due respect, General, I can't tell now if you've simply said one thing and done another, or whether you have just parsed your words like a lawyer to intentionally mislead the public.

What's to say that if you're confirmed to head the CIA we won't go through exactly this kind of drill with you over there?

General HAYDEN. Well, Senator, you're going to have to make a judgment on my character.

Let me talk a little bit about the incidents that you brought up.

The first one, I believe, is testimony in front of the combined HPSCI and SSCI, the joint inquiry commission on the attacks of 9/11. And in my prepared remarks, I was trying to be very careful because we were talking not in closed session in front of the whole Committee, but in front of the whole Committee in totally open session.

I believe—and I haven't looked at those remarks for a couple of months now—I believe I began them by saying that I had been forthcoming in closed sessions with the Committee.

Now, you may quibble that I've been forthcoming in closed sessions with some of my information with the leadership of the Committee or with the entire Committee, but that the language of the statute you referred to earlier does allow for limited briefings in

certain circumstances. And I know there'll probably be questions on what are those legitimate circumstances.

If anyone in the U.S. Government should be empathetic to the dilemma of someone in the position I was in, it should be Members of this Committee who have classified knowledge floating around their left and right lobes every time they go out to make a public statement.

You cannot avoid in your responsibilities talking about Iran, or talking about Iraq, or talking about terrorist surveillance. But you have classified knowledge. And your challenge and your responsibility is to give your audience at that moment the fullest, most complete, most honest rendition you can give them, knowing that you are prevented by law from telling them everything you know.

That's what I did while I was speaking in front of the National Press Club. I chose my words very carefully because I knew that some day I would be having this conversation.

I chose my words very carefully because I wanted to be honest with the people I was addressing. And it wasn't that handful of folks downtown. It was looking into the cameras and talking to the American people.

I bounded my remarks by the program that the President had described in his December radio address. It was the program that was being publicly discussed. And at key points in my remarks I pointedly and consciously down-shifted the language I was using.

When I was talking about a drift net over Lackawanna or Fremont or other cities, I switched from the word "communications" to the much more specific and unarguably accurate "conversations."

And I went on in the speech and later in my question-and-answer period to say we do not use the content of communications to decide which communications we want to study the content of.

In other words, when we looked at the content of a communication, everything between "hello" and "goodbye," we had already established to a probable cause standard that we had reason to believe that that communication, one or both of those communicants were associated with al-Qa'ida.

Senator, I was as full and open as I possibly could be.

In addition, my natural instincts, which I think all of you have seen, is to be as full and open as law and policy allow when I'm talking to you as well.

Anyone who's gotten a briefing on the terrorist surveillance program from me—and up until yesterday that was everybody who had ever gotten a briefing on the terrorist surveillance program—I would be shocked if they thought I was hiding anything.

There was only one purpose in my briefing, and that was to make sure that everyone who was getting that briefing fully understood what NSA was doing.

Now, Senator, I know you and other Members of the Committee have concerns that we've gone from two to five to seven to the full Committee. I understand that. I told you in my opening remarks what my instincts were in terms of briefing the full Committee. There's a very, very crude airman's metaphor that talks about, if you want people at the crash, you got to put them on the manifest.

Senator WYDEN. General, let me—

General HAYDEN. Let me make just one more remark, OK?

And so my personal commitment is to be as open as possible. I cannot commit, Senator, to resolving the inherent stresses between Article I and Article II of the Constitution that were intentionally put in there by the founding fathers.

Senator WYDEN. General, I'm focused just on the public record. You know, I'm going to go out and try now to dissect what you have just said and compare it to those others.

General HAYDEN. Yes, sir.

Senator WYDEN. But let me give you a very quick example.

General HAYDEN. OK

Senator WYDEN. The Trailblazer program. As you know, I'm committed to being careful about discussing this in public—a sensitive information technology program. But as you know, I asked you about this in open session—

General HAYDEN. Yes, sir.

Senator WYDEN [continuing]. When you were up to be deputy DNI.

I went back and looked at the record, and you said, "Senator Wyden, we are overachieving on that program." Those were your words.

I opened up the Newsweek magazine this week. And there are quoted—again, just out of a news report—reports that there's \$1 billion worth of software laying around, people who have decades of experience saying—I think their quote was—"A complete and abject failure."

And so I ask you again. I'm concerned about a pattern where you say one thing in these open kind of hearings, and then I and others have got to get a good clipping service to try to figure out what independent people are saying and then to reconcile them.

So were you accurate when you came, in an open session, to say that the Trailblazer program was overachieving?

General HAYDEN. Senator, the open session you're referring to, was that last year during the confirmation?

Senator WYDEN. Yes.

General HAYDEN. OK, thanks.

Senator, I will promise you, I will go back and read my words. But what my memory tells me I said was that a lot of the failure in the Trailblazer program was in the fact that we were trying to overachieve, we were throwing deep and we should have been throwing short passes—if you want to use a metaphor—and that a lot of the failure was we were trying to do too much all at once.

We should have been less grandiose, not gone for moon shots and been tighter in, more specific, looking at concrete results, closer in rather than overachieving by reaching too far.

My memory is that's what I was describing. I can't ever think of my saying we were overachieving in Trailblazer. That was a tough program, Senator.

Senator WYDEN. Those were your words, General. And again, I question using your word—open session—whether we have gotten, on that particular program, the level of forthcoming statements that is warranted.

And to me, this is a pattern and something that has made me ask these questions about credibility.

Now, to move on to the next area, for 200 years, our government has operated on the proposition that the people must have some sort of independent check on the government. Americans want to trust their leaders, but they also want checks and balances to ensure, in this area, in particular, we fight terrorism and protect liberty. I think Ronald Reagan got it right. He said we've got to verify as well as trust.

Where is the independent check, General, the independent check that can be verified on these programs that the newspapers are reporting on?

General HAYDEN. The verification regime, as I said earlier, Senator, was very tight. And, admittedly, an awful lot of the hands-on verification was from close in. It was the general counsel at NSA. It was the inspector general at NSA.

Senator WYDEN. Is that independent oversight, when the general counsel at NSA is what passes judgment? All of these people here—and most of us were kept completely in the dark until yesterday—have election certificates, General. That, it seems to me, is at least some kind of independent force.

And I'd like you to tell me what is the independent verification of these programs that I see in the newspapers.

General HAYDEN. Yes, sir.

And, beyond that, there was the over-the-shoulder performed over the NSA oversight regime by the Department of Justice.

Beyond that, within weeks of the program starting, we began a series of briefings to the senior leadership of the Senate Select Committee and the House Permanent Select Committee on Intelligence. I think the first briefing occurred with a couple of weeks of the launching of the program and within 2 months of the launching of the program, we had our second briefing—so that the leadership of the Committee understood what we were doing.

And those briefings were as forthcoming as I could possibly make them. And there were no restrictions. Let me make that very clear. I mean, no one was telling me what of the program I can share with the leadership of the Committee. That was entirely within my control.

In fact, when we gave the briefings, the other people in the room saw the slides for the first time when the Chairman and the senior member were seeing the slides for the first time. And my only purpose, Senator, was to make sure that this second branch of government knew what it was we were doing.

I actually told the folks who were putting the briefing together for me to make it in-your-face. I don't want anyone coming out of this 1, 2, or even 5 years later, to say, "Oh, I got some sort of briefing, but I had no idea."

And so I was, frankly, personally, very aggressive in making sure this branch of government knew what we were doing.

Senator WYDEN. General, what you're talking about, what you've described, is essentially in-house verification, unilateral verification. You've talked about how NSA counsels give you advice and the Justice Department gives you advice.

You say you told a handful of people on this Committee. The fact is the 1947 law that says all of us are to know about non-covert

activities wasn't complied with. And I don't think that's independent verification.

Now, in 2002, General, you said to the joint 9/11 inquiry, and I'll quote here, "We as a country readdressed the standards under which surveillances are conducted, the type of data NSA is permitted to collect and the rules under which NSA retains and disseminates information."

You said, "We need to get it right." You said, "We have to find the right balance."

Now, I've looked very hard, General, and, respectfully, I can't locate any "we" that was involved in any of these efforts that you've suggested. Certainly there wasn't any "we" that worked together on the ground rules for the program that the USA Today says you set up.

So it seems to me, whatever you and the Administration have done with respect to these programs—and as you know, I can't even talk about what I learned yesterday—whatever was done, you did it unilaterally. And as far as I'm aware, we as a country weren't part of any effort to set the standards in these programs. And most of the Members of this Committee were kept in the dark and weren't part of any informed debate about these programs.

So, General, who is the "we" that you have been citing?

General HAYDEN. Senator, again, I briefed the leadership of this Committee and the House Committee. I briefed the chief judge of the relevant Federal court.

The passage you're referring to I remember very, very clearly. It was an exchange I had with Senator DeWine, and we were talking about the balance between security and liberty. And I probably got a little too feisty and said something along the lines of, "Senator, I don't need to be reminded how many more Arabic linguists we need at NSA. I got that. What I really need is to understand, and for you to help me understand, where the American people would draw the line between liberty and security."

Senator, I believed that then. I believe it now. I used all the tools I had available to me to inform the other two branches of government exactly what NSA was doing. I believed in its lawfulness. And after these briefings, which I think numbered 13 up to the time the New York Times story came out in December, I never left the room thinking I had to do anything differently.

Senator, these are hard issues. Senator Levin asked me, "Are there privacy concerns?" I said, "Of course there are privacy concerns."

But I'm fairly—I'm very comfortable with what the Agency did and what I did personally to inform those people responsible for oversight.

Senator WYDEN. I want to stick to the public record.

A handful of Senators were informed. They weren't even allowed to talk to other Senators. One of the Senators who was informed raised questions about it. That doesn't strike me as a we, inclusive, discussion of where we're going in this country.

General, if we had not read about the warrantless wiretapping program in the New York Times last December, would 14 of the 16 Members of this Senate Intelligence Committee ever heard about this program in a way consistent with national security?

General HAYDEN. Senator, I simply have no way of answering that question. I don't know.

Senator WYDEN. Let me ask you about a couple of other areas. I believe I have a few remaining moments.

Chairman ROBERTS. Actually, the Senator is incorrect. His time has expired. But you're certainly free to pursue them in a second round.

I would like to make it very clear that I was briefed on all 13 occasions, along with the Vice Chairman and the leadership of the Congress. You might think we're not independent. I am independent and I asked very tough questions. And they were answered to my satisfaction by the General and other members of the briefing team. Others did as well.

If you'll hold just for a moment. It is my recollection of the 13 briefings with the very independent leadership, in a bipartisan way, after asking tough questions, that nobody ever left the room that did not have an opportunity to ask further questions and to have the general follow up with an individual briefing if they so desired, and indicated at that time that they were—if not comfortable, thought the program was legal, very impressed with the program and thanked the Lord that we had the program to prevent any further terrorist attack.

That precedent started with President Carter, President Reagan, President Bush, President Clinton and the current President, based on two Members of the Intelligence Committee and two members of the Intelligence Committee on the other side of the Hill, basically, and the leadership.

That was held closely. There's always a tug and pull by statute and otherwise, according to the 1947 National Security Act, in regard to the obligation of the executive to inform the legislative.

The worry, of course, was in regard to, if that briefing is expanded to a great many Members, about the possibility of leaks. I personally do not believe, in my own judgment, that Members leak that much, although I know when some leak happens, always staff is blamed.

But having said that, in this particular instance, I want to tell the Senator from Oregon that I felt that I was acting independently, asked tough questions and they were answered to my satisfaction. I obviously cannot speak for the other Members, but it is my recollection that that was the case.

We then moved from two to five, and then from five to seven, because of my belief that the more people that were read into the operations of the program, the more supportive they would be, for very obvious reasons. We have a program—a capability, as I like to say it—to stop terrorist attacks when terrorist attacks are being planned.

I think that is so obvious that it hardly bears repeating.

And now we have the full Committee. And so the independent check on what you are doing in regard to this whole capability is us. Now it took a while for us to get here from there. But during those days, under previous Presidents, we did not have this kind of threat—which is unique, very unique—and we did not have this capability.

So things have changed. Rightly so. So now the full Committee will be the independent check in regards to what you're doing.

Senator WYDEN. Mr. Chairman, since you have launched this extensive discussion, can I have about 30 seconds to respond?

Chairman ROBERTS. You have 30 seconds precisely.

Senator WYDEN. I have enormous respect for you, as you know. I'm only concerned—

Chairman ROBERTS. Did all this happen because Pittsburgh beat Seattle in the Super Bowl or what?

[Laughter.]

Senator WYDEN. I'm only concerned that the 1947 law that stipulates that the congressional intelligence Committees be fully informed, as it was done even back in the cold war, be followed.

And, General, just so you'll know, on a little bit of humor, in my morning newspaper, a gentleman named Abraham Wagner, who is a former National Security Council staffer said—and he issued a strong statement of support for you—he said, “Our Committee, they ought to smack him with a frying pan over the head and make sure he won't do it again,” with respect to these limited briefings in terms of this Committee and making sure we're following the 1947 law.

Thank you, Mr. Chairman.

Chairman ROBERTS. Well, the law also provides a limited briefing in regards to the judgment of the President in regard to national security matters and, obviously, anything that would endanger sources and methods and lives.

I think we have exhausted this issue to the satisfaction of the Committee, or at least I hope so.

Senator—where are we here—Senator Feinstein.

Senator FEINSTEIN. Thank you.

Chairman ROBERTS. I might add, if we have a vote, we're going to break for lunch. And then if we do not have a vote, it is my intent—oh, I beg your pardon, it's Senator Snowe. This is the second time that I have made an error.

Senator Snowe, I owe you my deepest apology. You were here before this hearing opened up. And so you are now recognized.

Senator Feinstein, I apologize to you. It was the Chair's mistake.

Senator Snowe is recognized.

Senator SNOWE. Thank you Mr. Chairman. And I want to welcome you, General Hayden, to the Committee and congratulate you on your nomination as Director of the CIA. And I also want to extend my appreciation to you for your more than 30 years of service to this country.

General HAYDEN. Thank you.

Senator SNOWE. You've certainly been a person of the highest integrity and you've had a distinguished career.

In thinking about all the issues that we're confronting today with respect to the agency that you've been nominated for, that you'll be leading an agency that has been, as you mentioned in your opening statement, plagued by problems at the very same time that our nation is confronting a great set of challenges, you'll be taking the reins at the CIA not only for a tumultuous time for this country, but also for the CIA itself.

And your leadership is going to be so essential in reasserting the role of the Agency in becoming a preeminent authority in intelligence-gathering and analysis and as the overall intelligence capability is solidified as we did under the law.

Your confirmation comes at a time when we would be doing far more than just simply filling a position. Because the CIA is now central not only to our national security, but ever more so in the post-September 11th environment in identifying shadowy and elusive threats.

And so your leadership will require changing the status quo in order to avoid the intelligence failures of the past.

Also, as you mentioned in your opening statement about facing the multiple challenges, not only restructuring and reestablishing the Agency's core mission, but also in restoring the morale—low morale among the dedicated CIA personnel—but also in synchronizing the gears of our Nation's human intelligence collection capability.

Moreover, the CIA is also facing not only the major internal reorganizations, but also facing territorial turf grabs from the Department of Defense in areas that have and continue to be a congressionally mandated domain for the CIA.

And that concerns me, the encroachment by the department, because not only does it present potential conflicts, but it also is potentially going to divert resources from the CIA's ability to craft its overall strategic mission for developing the strategic intelligence that's so essential to anticipating and deterring the threats of the future.

So, General Hayden, I think it's going to be critical, as you look forward, to explain to this Committee how you intend to implement your reforms, what your vision is going to be, and particularly in grappling with the encroachments and the bureaucratic expansion by the Department of Defense, which obviously is going to be problematic. It already has.

In addition, I also would like to have you address some of the issues regarding the NSA and the wiretapping program and the phone data collection that was initially conducted during your tenure. It obviously has raised some fundamental concerns.

I sought to serve on this Committee because of my 10 years previously in serving in the House of Representatives as Ranking Member of the subCommittee that oversaw terrorism. And I vigorously fought for anti-terrorism measures. In fact, I got the first information-sharing measure passed, following the first World Trade Center bombing in 1993.

I don't think anybody disputes the urgency of the ultimate goal of fighting terrorism. I think there is no dispute about it. There is no contest on that very question.

I think the real issue is how we can best accomplish that goal together, within the constitutional framework of the constitutional rights of privacy and freedom.

And this is the major challenge, as we heard the debate here earlier with the Chairman and Senator Wyden. The goal cannot be accomplished without ensuring that we uphold the systems of checks of balances, to be absolutely sure that they are respected, upheld

and applied. The founding of our country was predicated on those principles.

I happen to believe that, with the programs in question, that the Congress was really never really consulted or informed in a manner that we could truly perform our oversight role as co-equal branches of government, not to mention, I happen to believe, required by law.

And, frankly, if it were good enough yesterday to be briefed as the Senate Intelligence Committee as the full Committee and the House Intelligence Committee, then why wasn't it good enough to brief the full Committees 5 years ago?

The essence is what we have in responsibilities, is having a vigorous checks and balance system. And I know that you mentioned the gang of eight, but the gang of eight was not in the position to have staff, to hold hearings to examine the issues. It was really a one-way briefing. There was nothing more that they could do with the information, other than objecting to each other or to the Administration—to you, to the President, whatever.

And I think that in and of itself undermines our ability to perform the roles that we're required to do. In this time, in the global war on terror, the executive and the legislative branches must work together if we're going to engender confidence, really and to ensure that the real checks and balances exist. To do otherwise, I think breeds corrosive mistrust and distrust. It does not serve the interests of the people.

And so, if there was a time about marshaling our forces across the branches of government and across the political aisle, it is now. And I think the time is to be able to work together on those issues that imperil our Nation.

And so, with that, I would like to ask you about the notification to the gang of eight, because this is central to the issues that you will be facing, if confirmed as the Director of CIA, because you'll still have opportunities and decisions to be made within the Agency on whom to brief, whether it's a limited group that is basically handcuffed in its ability to do and perform the checks and balances.

It's not enough for the executive branch to agree among themselves, among all agencies. There has to be a give and take in this process. And that's, in essence, what it's all about.

And so the notification to a very limited group that could do nothing much with that information essentially is not the kind of checks and balances that I think our founding fathers had in mind.

So I would like to ask you what was your disposition about the whole notification process at that point when this program was created and designed by you as the Director? Did you advocate to notify the full House and Senate Committees?

And what will be your disposition in the future, if confirmed as Director, about notifying full Committees or more limited groups with respect to these issues? Because there are other programs that obviously you'll be in a position to determine who should be notified.

General HAYDEN. Yes, ma'am.

Really important question and critical issues.

Without getting into what should be privileged communications, let me describe the view September-October 2001. As you recall, technologically feasible, operationally relevant, what would be lawful. One of the contributions that I gave to the conversation was congressional notification.

When we were discussing this, I literally said in our small group, "Look, I've got a workforce out there that remembers the mid-1970s." And forgive me for a poor sports metaphor here, but the line I used is, "Since about 1975, this Agency has had a permanent one ball, two strike count against it, and we don't take many close pitches."

And so it was important to me that we brief the oversight bodies. I was delighted that the decision was made to do that almost before we got the program under way.

I've forgotten the specific dates, but the first briefing was in September—I'm sorry, that's not right—was in October of 2001. And the program didn't get under way until October 6.

And we had a second briefing with the leadership of the HPSCI and SSCI before—I think it was by the 2nd of November—within about 30 days.

So I was very, very pleased that that had been done.

Ma'am, I don't claim to be a constitutional lawyer, and I made a quick reference to the inherent tensions between Article I and Article II. But, again, it was very important for me that we briefed the leadership.

If there was to be a dialog beyond that as to who should be briefed and so on, my view certainly was, I could be open to anyone after a decision was made to conduct that briefing. And I know many of you have seen these briefings, and I will still stand by I have been very open.

Senator SNOWE. I don't have any doubt about that. I think it's important that we don't utilize this as a common practice. Because it's my understanding about the gang of eight that it's generally a rare, extraordinary circumstance. It's obviously in the instances of covert operations—

General HAYDEN. Right. Right. To which it is specifically applied by statute.

Senator SNOWE. Yes. And I just think it's very important, because I think it's unfortunate where we are today, you know, whether we're discussing the legalities and illegalities about the program, what it's all about.

In essence, it undermines all of our authority. And, you know, we have a collective wisdom and experience on the House and Senate Intelligence Committee of more than 150 years of experience.

It seems to me that we could build upon and enhance our capabilities in working together as legislative and executive branches to do what is in all of our interest in the indisputable ultimate goal of fighting terrorism. I don't think that there's any question about that. It's how you best do it.

We know the President has power. It's how that's exercised and the checks and balances that he utilizes. And that's where we come in, in performing vigorous oversight, not just a one-way street here. And I just want to encourage you, because the days ahead are going to be challenging.

General HAYDEN. Oh, yes.

Senator SNOWE. And certainly with this Agency and the reorganization.

And I make that point because I think it's fundamentally important. There's so much that each Member—and in this branch of government, we're not adversaries, we're allies in the war on terror. And we should be able to make that work. We might have differences, but that's not the issue.

The issue is, how do we build a stronger platform from which to make sure America is safe? And that should be bipartisan. That should be a both-branches-of-the-government endeavor.

General HAYDEN. I understand.

Senator SNOWE. And so I hope that we can accomplish that.

I would like to go on to the whole issue of DOD and CIA coordination, because I think it's a fundamental issue. And I know there are many issues there. And I'd like to get your thoughts on how you're going to exhibit the kind of independent leadership with particularly the Department of Defense—because as they further expand and encroach in areas, expanding their clandestine forces, paying informants, gathering deeper and deeper into human intelligence, I think that this is going to be a serious—potentially—contest if the CIA does not regain its ground and reclaim its lost territory.

Now, I know you have said that it's a blurring of functions. The Pentagon has said, "Well, we had to fill in the vacuum where the CIA could not." I would like you to tell the Committee, General Hayden, as to how you think you will go about exhibiting and demonstrating the kind of leadership that's going to be essential to regaining the core missions of the CIA.

General HAYDEN. Yes, ma'am.

And if I could, I'd like to put a few more details on my answer in the afternoon session, where I can make some increased distinctions. But I think I can discuss it at some length right now.

First of all, you welcome more players on the team. That's good news. Now, the players have to play as a team and they've got to know how to play the sport. Those are the responsibilities of the national HUMINT manager.

There's an MOU in place. The word I get from the current leadership at CIA is it's working pretty well and the trend lines are positive. But that, as I've told before, that's a process to be nurtured, not a solution to be made and put on the shelf. That's got to be managed constantly over time.

Here's where the rub comes, ma'am.

DOD, operating from title 10 authorities, in what the Secretary will quite legitimately call inherent military activities—and you'll see Dr. Cambone describing it that way—conducts activities that to the naked eye don't look any different than what a case officer in the CIA would be doing under authorities that come out of title 50 of the U.S. Code. And, frankly, you probably shouldn't worry about that distinction, and certainly the environment in which we're working isn't going to make the distinction that, "Oh, these are title 10 guys and these are title 50."

And so one thing that we have to do is, No. 1, be witting to everything that is going on, deconflict everything that is going on,

and when there is conflict, elevate it to the appropriate level almost immediately so that it's resolved.

And then when the activity is known and deconflicted and coordinated, that the activity, no matter what its legal roots—title 10 or title 50—is conducted according to standards, standards of tradecraft and standards of law.

I don't see that responsibility falling on anyone except the national HUMINT manager. So whether it's being done by FBI, whether it's being done by combatant command, whether it's being done by the Defense HUMINT Service or by CIA, it's got to be done well and right.

Senator SNOWE. Well, would your memorandum of agreement between DOD on this question outline the issues? I mean, is it going to be a clear delineation?

General HAYDEN. The responsibilities are quite clear. As I suggested earlier, we run into trouble when people don't follow it. And more often than not, that's out of ignorance rather than malice. So there's still work to be done.

Senator SNOWE. I know you mentioned that it would be done on a step-by-step basis. And I'm concerned about the incrementalism of that, as the DOD is very aggressive in filling the void or the vacuum in developing this parallel intelligence structure.

General HAYDEN. Yes, ma'am, there's an analogue to that in SIGINT.

There are signals intelligence activities inside the Army, inside the Navy, inside the Air Force. As Director of NSA, I had the responsibility to ensure that those were done legally and done well.

I think there's a parallel here, that, we don't have to refuse the additional assistance, but that there's a role to be played so it's done lawfully and orderly and it's deconflicted.

Senator SNOWE. Well, you were mentioning the Under Secretary of Defense for Intelligence, Dr. Cambone. And I understand the DOD issued a directive last fall regarding requiring the concurrence from Dr. Cambone before any personnel could be transferred between the Department of Defense into any of the integration centers, for example, or any other joint efforts under the Office of the Director of National Intelligence.

General HAYDEN. Yes, ma'am. Your staff's done good homework.

And our view at the Office of the Director of National Intelligence is that those people who are on NIP—National Intelligence Program—billets are effectively under the control of the Director of National Intelligence. And your legislation allowed the DNI to move—what?—up to 100 billets in the first year of a new center.

Now, we can do that with healthy regard to the DOD personnel system. But I think the Ambassador intends to exercise his authorities.

Senator SNOWE. You even acknowledge that there are discrepancies by saying there's genuine overlap regarding the authorization of personnel moves that will have to be resolved one step at a time.

Director Negroponte noted before Congress that there had been an open conflict with the Pentagon over at least one issue. And that was personnel. He went on to raise the issue with Congress

by subtly saying, I don't mean to invite help, but one area that the intelligence community's working on now is the area of personnel.

I think what is even more disconcerting is that the Director indicated and characterized the situation by saying we look at those people as intelligence people and Secretary Rumsfeld certainly looks at those as DOD folks. So I find it troubling, at a time which the department is really moving very aggressively and pursuing a parallel track and a parallel operation when it comes to intelligence, and you describe it as a genuine overlap.

How do you intend to resolve this overlap?

General HAYDEN. Actually, that wasn't the Ambassador saying that. That was me.

Senator SNOWE. That was you?

General HAYDEN. Yes, ma'am. And, as I said earlier when we talked about the law, rather than sitting in Philadelphia and articulating a theory of federalism, the folks just wrote down the powers they wanted the Federal Government to have. That's what you did for the DNI.

And so I think this is just a question of exercising those powers. And I think the Ambassador's view—certainly, my view is that billets, individuals funded in the national intelligence program, are first and foremost under the DNI. For those things, you're giving the DNI control.

Senator SNOWE. Finally, in the New York Times recently, there was an article that, I think, has captured the essence of my concerns and others as well about how the CIA hasn't been able to develop the strategic intelligence, which is a crucial issue.

Because obviously we need—and you mention in your own remarks about having to be governed by the daily news in responding to those issues rather than having a chance to see the forest through the trees and looking at the big picture and anticipating the threats of the future.

I mean, that's what this is all about. And how do you intend to reposition the CIA in that respect? Because I think that that is a very essential and significant capability that must be vested within the CIA. We need to have it geared toward that goal.

General HAYDEN. Yes, ma'am.

And there are some pernicious influences out there right now. I mean, just the public news cycle, the CNN cycle, puts pressure on the community not to allow decisionmakers to be surprised.

We're in a war. And the OPSTEMPO of the war in Afghanistan, in Iraq, global war on terrorism, I mean, just sucks energy into doing something in the here and now.

It will require a great deal of discipline to pull resources and psychic energy away from that and focus it on something that's important but not urgent, and that's why I put that comment in my remarks.

And it actually came into the draft late after some folks looked at it and said, you need to make that commitment as well, that you need to pull some people off for the long view, for the deep view. Otherwise, we will appear to be successful, but we'll be endlessly surprised.

Senator SNOWE. Thank you, General Hayden.

Chairman ROBERTS. The Senator's time has expired.

Senator SNOWE. Thank you, General Hayden.

Thank you, Mr. Chairman.

Chairman ROBERTS. Senator Feinstein.

And let me announce at this particular time that following Senator Feinstein's questions, we will break for lunch. We will resume the Committee hearing at 1:30. That should give people approximately 40 minutes for lunch. And the order will be Senator Hatch, Senator Warner, Senator Hagel, Senator Feingold, Senator Chambliss, Senator Mikulski, Senator Lott, and Senator Bayh.

Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I'd just like to say at the onset that I very much agree with Senator Snowe's opening comments, and I'm very pleased that she made them.

I'd like to note that I drafted and proposed for inclusion in the intelligence authorization bill an amendment which would amend the National Security Act's requirements to increase reporting requirements to Congress. Staff have this proposal. I intend to move it whenever I can.

Essentially, it would state that briefing the Committee means all Members of the Committee, which is the current intent, we believe, and that in the very rare cases where only certain Members are briefed, all Members get a summary, so that at the very least, everyone can assess the legality and advisability of the action, and carry out our oversight responsibility. The amendment specifies that an intelligence activity is not considered authorized until this briefing takes place.

So I'd like to ask you to take a look at that, if I might.

General, I was very impressed with your opening statement. I think you have the "vision thing," as they say, right. I think what you want to do for the Agency is the correct thing to do. So that's all good.

I want to just ask you this one question about it. Would you make a commitment to this Committee that all of the top officers of this agency will be intelligence professionals?

General HAYDEN. Ma'am, obviously the answer is yes. I'm just parsing off the question to make sure I understand all of the ramifications because, frankly, at NSA, one of the things we did and had some success was to bring some folks in from the outside to do things that weren't inherently intelligence.

But I understand—

Senator FEINSTEIN. I think you understand what I'm saying.

General HAYDEN. Yes. Within that confine, yes.

Senator FEINSTEIN. I appreciate that commitment.

Now, I also believe that Americans want to be protected. I know there are no citizens in any major city that want to see another attack. And I happen to believe that there are people that want to do us grievous injury, if not kill us. So the only tool there really is to stop something is intelligence. And that's where, I think, the issues become very thorny. And in my questions, I want to try to sort a few of them out.

What was your role in the initiation of the program at issue, the terrorist surveillance program?

General HAYDEN. Sure, ma'am. I had done some things, as I briefed the Committee, told this Committee, the House counterpart, told Director Tenet. I was asked by Director Tenet, "Could you do more?"

I said, "Not within current law."

He says, "Well, what could you do more?"

And I put it together with, as I said, technologically possible, operationally relevant, now the question of lawfulness.

So I described where we had stopped our expansion of activities because of the current legal structure under which we were operating.

Senator FEINSTEIN. Did individuals in the White House push for a broader and further-reaching surveillance program, including purely domestic calls without warrant—

General HAYDEN. No, ma'am.

Senator FEINSTEIN [continuing]. As was reported in last Sunday's New York Times?

General HAYDEN. Yes, I understand. And I will give you just a touch more granularity in the closed session. But in open session, these were all discussions. Our views were—NSA views—were highly regarded, and there was never an argument over that issue.

Senator FEINSTEIN. Thank you.

What legal guidance did you seek and review before initiating the surveillance program? If this Committee doesn't have copies—and we don't—of the legal opinions, may we receive them please?

General HAYDEN. Ma'am, I'll take your question. I have not read the Justice legal opinion as well.

But what I was assured by the signature of the Attorney General on the first order, and by the opinion of the White House counsel, and the judgment from the Office of Legal Counsel in Justice, was that this was lawful and was within the President's authorities.

I then brought the question to NSA lawyers, three guys whose judgment I trust, three guys who advise me and who have told me not to do things in the past, and laid out the question. And they came back with a real comfort level that this was within the President's authorities.

Senator FEINSTEIN. Did they put anything in writing?

General HAYDEN. No. And I did not ask for it. I asked them to look at the authorization, then come back and tell me.

But in our discussion—I think Senator Levin asked this earlier—in our discussion, although they didn't rule out other underpinnings for the President's authorization, they talked to me about Article II.

Senator FEINSTEIN. Has the Administration sought—or has the NSA sought title I warrants from the FISA Court for the collection of telephone content? And has it sought pen register trap-and-trace device approval from the Court for the collection of telephone records or transmittal information?

General HAYDEN. Ma'am, let me give you that answer in closed session—just a slight discomfort. But I'll be happy to give it to you as soon as we get to closed session.

Senator FEINSTEIN. All right. I will ask it. I think it's an important question.

General HAYDEN. Yes, ma'am. Of course.

Senator FEINSTEIN. It is my belief that FISA should remain the exclusive authority for all domestic surveillance in the United States. It needs some updating because of the particular situation we're in and the enormous increases in technology since 1978.

As you know, I have asked NSA for suggested improvements both by letter and in person, and I have not received a response. I'm in the process of drafting a bill, and I would appreciate a response on the technical improvements that can be made to FISA.

General HAYDEN. Yes, ma'am. I understand. I've discussed this with General Alexander. NSA has crafted some views and some language. They have given that to the Department of Justice, because, in addition to the technology, there are issues of law involved here, as well. And that dialog is ongoing, but I have been assured that it is moving forward.

And I will take the urgency of your message back, ma'am. I understand.

Senator FEINSTEIN. Because as you know, bills are being marked up in the Judiciary Committee, and so there is a time element to this.

General HAYDEN. Yes, ma'am. And I know there are multiple bills out there each trying to move this forward and craft that balance between liberty and security.

Senator FEINSTEIN. Thank you.

I want to ask you some questions about the Fourth Amendment. And I know I don't need to read it for you, but just for the record, let me quote it. "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

Do you believe the Fourth Amendment contains a probable cause standard?

General HAYDEN. It clearly contains a probable cause standard for warrants to conduct searches. There's the broader phraseology. And I've actually talked to some of my relatives who are in law school at the moment about the construction of the amendment, which talks in a broad sense about reasonableness, and then, after the comma, talks about the probable cause standards for warrants.

The approach we've taken at NSA is certainly not discounting at all, ma'am, the probable cause standard and need for probable cause for a warrant. But the standard that is most applicable to the operations of NSA is the standard of reasonableness—you know, is this reasonable?

And I can elaborate a little bit more in closed session, but for example—for example—if we have a technology that protects American privacy up to point X in the conduct of our normal foreign intelligence mission, it is reasonable, and therefore we are compelled, to use that technology.

When technology changes and we can actually protect privacy even more so with the new technology, "reasonable" just changed and we must go to the better technology for the protection of privacy. It's that reasonableness debate that informs our judgment.

Senator FEINSTEIN. Let me ask you, that “reasonable” standard is your standard. It’s not necessarily the law because the Fourth Amendment very specifically states—in Judiciary, we had former FISA judges come before us. They said, in effect, in their court, the probable cause standard was really a reasonable suspicion standard.

Now you’re creating a different standard which is just, as I understand it, just “reasonableness.”

General HAYDEN. No, ma’am. I don’t mean to do that. And Lord knows, I don’t want to get deeply into this because, I mean, there are serious questions of law with people far more expert than I.

To give an example, purely illustrative and hypothetical, NSA, in the conduct of its foreign intelligence work, intercepts a communication from a known terrorist, let’s say, in the Middle East. And the other end of that communication is in the United States.

One end of that communication involves a protected person. Everything NSA is doing is legal up to that point. It is targeting the foreign end. It has a legitimate reason for targeting it and so on.

But now, suddenly, we have bumped into the privacy rights of a protected person. Now, no warrant is involved. We don’t go to a court.

Through procedures that have been approved by this Committee, we must apply a standard to protecting the privacy of that individual.

And so we’ve touched the privacy of a protected person. But there are clear regulations held up to the reasonableness standard of the Fourth Amendment, but not the warrant requirement in the Amendment, ma’am.

Senator FEINSTEIN. Well, I’d like to debate that with you this afternoon, if I might.

General HAYDEN. Sure.

Senator FEINSTEIN. Let me move to detention, interrogation and rendition.

I’m very concerned that these practices create enormous long-term problems for our country. They cast shadows on our morality, our dedication to human rights and they disrupt our relations with key friends and allies.

The Administration has stated that when it renders an individual to a third country for detention or interrogation, it obtains diplomatic assurances from that country that the suspect will not be tortured.

What steps does the Administration take to verify compliance with such assurances after a detainee is rendered or transferred?

General HAYDEN. Yes, ma’am. By law, we’re required to make a judgment on the treatment that someone who is transferred to another sovereign power would get. In the legislative history of the law which we’re following here, the requirement is a judgment that torture is less rather than more likely in the case involved.

Clearly, if we received evidence, indications and so on that that had happened, that would impose additional responsibilities on us.

Senator FEINSTEIN. Well, what United States Government officials visit those sites to see if there is such evidence?

General HAYDEN. Ma’am, the true answer is I don’t know, and I’d be reluctant to try to speculate. I don’t know.

Senator FEINSTEIN. In an interview with Time magazine published on April 12th, Director of National Intelligence John Negroponte said, "The terrorist suspects held by the CIA in secret prisons are likely to remain incommunicado detention for as long as the war on terror continues."

As Principal Deputy to the DNI, is it your policy that individuals may be secretly detained for decades?

General HAYDEN. Ma'am, I know there's been some broad discussion about this publicly. I know Secretary Rice has talked about our responsibilities under both U.S. and international law.

Let me give you a full answer, ma'am, and let me give it to you in the closed session, but I would really be happy to answer your question.

Senator FEINSTEIN. Is there a periodic review of what useful and actionable intelligence can be gathered through interrogations and debriefings of terrorists that have been held with no contact with al-Qa'ida or other groups for years?

General HAYDEN. Again, a more detailed response in closed session. Let me just hold it for closed, ma'am.

Senator FEINSTEIN. You can't say whether there's a periodic review?

General HAYDEN. Ma'am, obviously we would do things for a purpose, and therefore the intelligence value of any activity we undertake would be a very important factor.

But, again, I don't want to state or imply things that I should not in open session. So let me just hold it, and I will give you a very detailed answer in the closed session.

Senator FEINSTEIN. On March 17, 2005, Director Porter Goss stated to the Senate Armed Services Committee that waterboarding fell into "an area of what I will call professional interrogation techniques."

Do you agree with that assessment? Do you agree with Mr. Goss's statement that waterboarding may be acceptable? If not, what steps have been taken or do you plan to take to correct the impression that may have been left with Agency employees by Mr. Goss' remarks?

General HAYDEN. Yes, ma'am. Again, let me defer that to closed session, and I would be happy to discuss it in some detail.

Senator FEINSTEIN. Do you believe that the CIA is legally bound by the Federal anti-torture statute and the Detainee Treatment Act adopted last year?

General HAYDEN. Yes, ma'am.

Senator FEINSTEIN. Does the President's signing statement affect CIA's compliance with this law?

General HAYDEN. Again, ma'am, I don't want to get between Article I and Article II and the inherent tensions between those. But let me answer the question as the potential Director of the Central Intelligence Agency.

The CIA will obey the laws of the United States and will respond to our treaty obligations.

Senator FEINSTEIN. Has the Agency received new guidance from the Department of Justice concerning acceptable interrogation techniques since the passage of the Detainee Treatment Act?

General HAYDEN. Let me answer that in closed session, ma'am. But, again, I will be delighted to answer it for you.

Senator FEINSTEIN. The New York Times reported on November 9, 2005, that in 2004 the CIA inspector general concluded that certain interrogation practices approved after the September 11th attacks did constitute cruel, inhuman, and degrading treatment as prohibited by the Convention Against Torture.

Do you agree with the IG's conclusion? And what corrective measures, in any, have been instituted in response to the IG's findings?

General HAYDEN. Ma'am, again: More detailing in closed session. I would have to learn more about the IG's findings.

In addition, again, the definitive statement as to what constitutes U.S. law and whether behavior comports or does not comport with U.S. law, I would look to the Department of Justice for guidance.

Senator FEINSTEIN. Ambassador Negroponte and other intelligence officials have estimated that Iran is some years away from a nuclear weapons capability. How confident are you of these estimates?

General HAYDEN. Again, I would be happy to give additional detail in closed session. But I do want to say more about this in an open. Iran is a difficult problem. We call it a hard target. But I think it unfair to compare what it is we believe we know about Iran with what it is we proved to know or not know about Iraq. We have got a great deal of intelligence focus on the target. I would say that that judgment was given somewhere between medium and high confidence, ma'am.

Senator FEINSTEIN. Given the problems with estimates of Iraqi weapons of mass destruction, how can the American public being confident of the accuracy of estimates regarding Iranian plans and programs?

General HAYDEN. Yes, ma'am, fair question. And we've got to earn confidence by our performance. We have to earn confidence by our performance. We have learned a lot of lessons from the Iraq WMD study. Many of the lessons you've documented for us.

One key one that I wanted to mention when the Chairman was talking about it. The Iraq WMD estimate was essentially worked in a WMD channel. It was absent a regional or cultural context. We are not doing that now. It was looked at, almost, square-cornered-wise, mathematically, ma'am, in terms of precursor chemicals or not, precursor equipment or not, absent, I think, a sufficient filter through Iraqi society and what we knew of it.

We're not doing that on Iran. Besides the technical intelligence, there's a much more complex and harder to develop field of intelligence that has to be applied as well. How are decisions made in that country? Who are making those decisions? What are their real objectives?

Senator FEINSTEIN. One of the questions you answered in writing—No. 8, to be specific—asked what you thought are the greatest threats to our national security. And your response essentially restated Ambassador Negroponte's testimony before this Committee in February.

I mean, I don't disagree with the Ambassador's statement, but do you have any independent or differing views on the threats we face?

General HAYDEN. Well, in one sense, your legislation made it very clear that the Ambassador sets the priorities, and so on the face of it I don't recoil that my priorities look a lot like his.

Five things come to mind—CT, No. 1, counterterrorism; counterproliferation; Iran; East Asia, Korea; and one that over-arches all of them. We can't be surprised again.

Senator FEINSTEIN. OK

Now, let me go to an issue, many Members of Congress are concerned—

Chairman ROBERTS. Senator, I hate to do this, but there is a vote under way, and you will have ample time on a second round if we can do that.

Senator FEINSTEIN. Do I have time remaining?

Chairman ROBERTS. Yes—well, no. But if you can wrap it up in 30 seconds or something like that, that would be helpful.

Senator FEINSTEIN. Can I just do it quickly?

General HAYDEN. Yes, ma'am.

Senator FEINSTEIN. This is the uniformed active-duty presence. Have you thought about that? And could you share with us your decision?

General HAYDEN. Sure—my current thinking.

The concern that my being in uniform affects my thinking, my life affects my thinking. The fact I have to decide what tie to put on in the morning doesn't change who I am, one.

Two, chain of command issues—nonexistent. I'm not in the chain of command now. I won't be in the chain of command there. I respond to Ambassador John Negroponte.

Third, more important, how does my being an active-duty military officer affect my relationship with the CIA workforce? For want of a better term, since we're rushing here, ma'am, can I bond, and can they bond with me? That's the one that I think is actually a serious consideration. If I find that this gets in the way of that, I'll make the right decision.

Senator FEINSTEIN. Thank you.

Thank you very much. Appreciate it.

Senator WYDEN. Mr. Chairman, did you say 1:30?

Chairman ROBERTS. The Committee will stand in recess subject to call of the Chair. And we will resume the hearing at 1:30. There is a vote right now, and we will take that time for lunch. And so would encourage all Members to come back at 1:30.

General HAYDEN. Thank you, Mr. Chairman.

[Whereupon, at 12:54 p.m., the Committee recessed, to reconvene at 1:30 p.m. the same day.]

AFTERNOON SESSION

[1:38 P.M.]

Chairman ROBERTS. The Committee will come to order.

The Committee will proceed with Members and their questions on a 20-minute timeframe. And the next Senator to be recognized is Senator Hatch.

Senator Hatch.

Senator HATCH. Well, General Hayden, there's been some commentary about the fact that you continue to wear the uniform that you have so proudly distinguished over your long, I think 35-year career. Certainly, you're not the first Director of Central Intelligence to wear it.

But let me just ask you directly, because I think this needs to be on the record. Let's say that you step out from your office for a moment, and then you return and there are two messages for you. They're marked exactly the same time, these two messages. One is from Ambassador Negroponte and the other one is from Secretary Rumsfeld. Whose call are you going to return first?

General HAYDEN. Yes, sir, that's pretty straightforward.

Senator HATCH. That's straightforward, yes.

General HAYDEN. Yes, sir. I work for the Ambassador, and so I would return his call.

Senator HATCH. That's right. You're going to report to Ambassador Negroponte.

General HAYDEN. Yes, sir.

Senator HATCH. Now, let me add the Chairman of the Intelligence Committee.

[Laughter.]

General HAYDEN. Sir, I would set up a conference call.

[Laughter.]

Senator HATCH. And a more serious question—what does your military experience bring to this position should you be confirmed?

General HAYDEN. Yes, sir.

I mean, as you said, I'm proud of my military experience. It actually has been fairly broad. But if you stop and do the math, there's a big chunk of time—I actually stopped and did this over the weekend—more than 20 years in intelligence.

And if you look at the career in another way, there's an awful lot of it with an interface to the civilian world—4 years as an ROTC instructor, 2 years on the National Security Council staff, 2 years in an embassy behind the Iron Curtain.

So I think, frankly, it's given me a pretty good background. In terms of the military aspect, has to do with leadership and management, the intelligence aspect, lots of experience. And working in a civilian environment is not going to be something that's foreign or alien to me.

Senator HATCH. Thank you. There aren't too many people who can match you. In fact, I don't know of anybody really, and there are some pretty good people out there.

I just got this letter that was directed to Speaker Denny Hastert as of yesterday's date, signed by Mr. Negroponte, Director Negroponte. Now, this letter says, "I am responding on behalf of National Security Adviser Stephen Hadley to Ms. Pelosi's May 2, 2006, inquiry regarding the classification of the dates, locations and names of Members of Congress who attended briefings on the terrorist surveillance program.

"Upon closer review of this request, it has been determined that this information can be made available in an unclassified format.

"The briefings typically occurred at the White House prior to December 17, 2005. After December 17th, briefings occurred at the Capitol, NSA or at the White House. A copy of the list is enclosed."

You remember those briefings.

General HAYDEN. Yes, sir.

Senator HATCH. You were there.

General HAYDEN. Yes, sir.

Senator HATCH. Well, it just said, on 25th of October 2001 the Members of Congress who were briefed at that time were Porter Goss, Nancy Pelosi, Bob Graham and Richard Shelby.

General HAYDEN. Yes, sir.

Senator HATCH. Those were the Chair and Vice Chair of the Senate Intelligence Committee. And of course, Nancy Pelosi was the Ranking Minority Member over there and Porter Goss was then the Chair.

General HAYDEN. Yes, sir.

Senator HATCH. On November 14th, the same four were briefed again. Is that correct?

General HAYDEN. That's right.

Senator HATCH. On December 4th not only were the Members of the Intelligence Committee leadership briefed, but the Chair of the Senate Appropriations Committee, Daniel K. Inouye, Senator Inouye, and the Ranking Minority Member, Senator Ted Stevens were briefed, is that correct?

General HAYDEN. Yes, sir.

Senator HATCH. On March 5th, you again briefed Porter J. Goss and Nancy Pelosi and Richard Shelby—in other words, the people who were the leaders of the—

General HAYDEN. Yes, sir. Senator Graham couldn't make that meeting, so we swept him up a week or two later.

Senator HATCH. Yes, you did. On April 10th, Bob Graham got briefed on the same materials, I take it.

Then on June 12th Porter Goss and Nancy Pelosi, the Chair and the Ranking Member over the House, were briefed again, right?

General HAYDEN. Yes, sir.

Senator HATCH. On the 8th of July 2002, the Chair and the Ranking Member, Bob Graham and Richard Shelby, were briefed?

General HAYDEN. Yes, sir.

Senator HATCH. OK. On January 29, 2003, again the leaders of the two intelligence Committees were briefed, Porter J. Goss, Jane Harman, Pat Roberts and John D. "Jay" Rockefeller IV?

General HAYDEN. Yes, sir.

Senator HATCH. OK. Then, on July 17, 2003, Porter Goss, Jane Harman, who was then Ranking Member, Pat Roberts and Jay Rockefeller were again briefed, is that correct?

General HAYDEN. Yes, sir. That's right.

Senator HATCH. Then on March 10, 2004, you briefed the speaker of the House, Denny Hastert, the Majority Leader of the Senate, William Frist, Bill Frist, the Minority Leader of the Senate, Tom Daschle, the Minority Leader of the House, Nancy Pelosi, the Chair and Ranking Member of the House and the Chair and Ranking Member of the Senate Intelligence Committee, is that correct?

General HAYDEN. Yes, sir.

Senator HATCH. Then on the 11th of March, 2004—

General HAYDEN. Sir, the next day.

Senator HATCH. Yes, the very next day you briefed the Majority Leader of the House. This is all on the warrantless surveillance program, right?

General HAYDEN. Yes, sir.

Senator HATCH. OK. Then on the 23rd of September, 2004, you briefed Peter Hoekstra, who's now the Chairman of the House Intelligence Committee.

General HAYDEN. Right.

Senator HATCH. Then on 3rd of February, 2005, you briefed Pete Hoekstra, Jane Harman, Pat Roberts, Jay Rockefeller, the leaders of the respective Intelligence Committees, right?

General HAYDEN. Yes, sir.

Senator HATCH. And then on the 2nd of March, 2005, you briefed Harry Reid, the Minority Leader of the Senate, right?

General HAYDEN. Yes, sir.

Senator HATCH. And on the 14th of September, again, the leaders of both Intelligence Committees—Hoekstra, Harman, Roberts and Rockefeller, right?

General HAYDEN. Yes, sir.

Senator HATCH. And I just thought I'd get this all on the record, because I don't think people realize the extent to which you and the Administration have gone to try and inform Congress, even though you've followed the past history where—since Jimmy Carter—where you did it this way, right?

General HAYDEN. Sure.

Senator HATCH. On the 11th of January, again, the Members of the Intelligence Committees of both the House and Senate and Speaker Hastert, right?

General HAYDEN. Yes, sir, and—yes, sir, that's right.

Senator HATCH. And on the 20th of January, Harry Reid and Nancy Pelosi, Pat Roberts and Jane Harman, right?

General HAYDEN. Yes, sir.

Senator HATCH. On the 11th of February, 2006, Pat Roberts, our current Chairman.

On the 16th of February, Denny Hastert and Pete Hoekstra, right?

General HAYDEN. Yes, sir.

Senator HATCH. On the 28th of February, you briefed the Chairman of the House Appropriations Committee and the Defense Subcommittee, Bill Young. You briefed the Ranking Minority Member,

House Appropriations Committee—of the Defense Subcommittee, John Murtha.

General HAYDEN. Yes, sir.

Senator HATCH. Right?

General HAYDEN. Yes, sir.

Senator HATCH. On March 3, 2006, you then briefed Jay Rockefeller individually, right?

General HAYDEN. Yes, sir.

Senator HATCH. OK. Then on March 9th, you briefed the seven members of this subCommittee that was formed.

General HAYDEN. That's right.

Senator HATCH. OK. And that included me.

General HAYDEN. Yes, sir.

Senator HATCH. OK. So the names were Roberts, Rockefeller, Hatch, DeWine, Feinstein, Levin and Bond.

Then on the 10th of March you briefed Senator Bond by himself.

Then, on the 13th of March, you briefed Pat Roberts, Dianne Feinstein and Orrin Hatch, right?

General HAYDEN. Yes.

Senator HATCH. OK.

On the 14th of March, Mike DeWine, Senator DeWine.

On the 27th of March, Carl Levin. Is that correct?

General HAYDEN. Sir, I believe these latter ones now include visits to NSA, where they visited the Agency and had an extended period of time.

Senator HATCH. That's right. In other words, all these people had familiarity with the warrantless surveillance program. And you made yourself available to answer questions and to make any comments that they desired for you to make that were accurate.

General HAYDEN. Yes, sir.

Chairman ROBERTS. Excuse me, Senator, on that last one, you may have missed, but the General indicated that was a trip out to the NSA so we could actually see how the program worked.

Senator HATCH. Sure. OK.

And then on March 29th, my gosh, you briefed Pete Hoekstra, Jane Harman, John McHugh, Mike Rogers, Mac Thornberry, Heather Wilson, Jo Ann Davis, Rush Holt, Robert E. "Bud" Cramer, Anna Eshoo and Leonard Boswell, all members of the HPSCI in the House, the Intelligence Committee in the House. Right?

General HAYDEN. Yes, sir.

Senator HATCH. And then on the 7th of April, 2006, you briefed Hoekstra, McHugh, Rogers, Thornberry, Wilson and Holt again.

General HAYDEN. Yes, sir. I believe that that was actually a field trip to NSA for them.

Senator HATCH. Well, that's fine, but my point is you were briefing them on this warrantless surveillance program.

General HAYDEN. Yes, sir, that was the subject.

Senator HATCH. And then on the 28th of April, you briefed Jane Harman, Heather Wilson and Anna Eshoo. Right?

General HAYDEN. Yes, sir. Again, a trip to NSA.

Senator HATCH. And then, finally, on May 11th, and you've had some briefings since, but this is the last I've got—May 11th you

briefed Bill Young and John Murtha who are both on the House Appropriations Committee.

General HAYDEN. That's right.

Senator HATCH. That sounds to me like you've made a real effort to try and help Members of Congress to be aware of what was going on.

General HAYDEN. Sir, my purpose in the briefing was to be as complete and as accurate as possible.

Senator HATCH. What's your purpose of this warrantless surveillance program? My gosh, are you just doing this because you just want to pry into people's lives?

Senator HATCH. What's the purpose, if you can succinctly say?

General HAYDEN. No, sir. It's not for the heck of it. We are narrowly focused and drilled down on protecting the Nation against al-Qa'ida and those organizations who are affiliated with al-Qa'ida.

Senator HATCH. You wanted to protect American citizens from terrorists all over the world?

General HAYDEN. Yes, sir. Yes, sir. Exactly.

And under this program we can only touch the information that is provided under this program if we can show the al-Qa'ida or affiliate connection. That's the only purpose for which it's used.

Senator HATCH. And instead of saying you monitored the calls, what you did is you—this program only applied to foreign calls into the country or calls to known al-Qa'ida or suspected al-Qa'ida people outside of the country?

General HAYDEN. Sir, in terms of listening or eavesdropping or whatever phrase is used in the public domain, what we call intercepting the call, what we call the content of the call, the only calls that are touched by this program are those we already believe, a probable cause standard, are affiliated with al-Qa'ida and one end of which is outside the United States.

Senator HATCH. But isn't it true that the President had to reauthorize this program every 45 days?

General HAYDEN. On average. It varied depending on schedules and his travel and so on. But on average, about 45 days, yes, sir.

Senator HATCH. How would you describe the classification of the warrantless surveillance program?

General HAYDEN. It was very closely held. It was, for all practical purposes, a special access program. We had to read people into the program specifically. We have documentation.

Senator HATCH. Do you consider it one of the most serious classified programs in the history of the Nation?

General HAYDEN. Yes, sir. I mean, that is fencing it off—I mean, everyone refers to my old agency as the super-secret NSA. This was walled off inside NSA. That's the compartment that it was in.

Senator HATCH. So this just wasn't monitoring calls of domestic people. This was monitoring calls into the country and out of the country to or from suspected affiliates of al-Qa'ida.

General HAYDEN. That's accurate. That's precisely accurate.

Senator HATCH. Now, if we had this program, let's say a year before 9/11, what effect would it have been on 9/11, do you believe?

General HAYDEN. I've said publicly—and I can demonstrate in closed session, how the physics and the math would work, Senator—that had this been in place prior to the attacks, the two hi-

jackers who were in San Diego, Khalid al-Mihdhar and Nawaf al-Hazmi, almost certainly would have been identified as who they were, what they were and, most importantly, where they were.

Senator HATCH. Now, the media—Senator Levin said it's phone calls, but the media has made that sound like you were intercepting phone calls. The fact of the matter is that—well, maybe I can't ask that question.

Well, you said you always balance privacy rights and security rights.

General HAYDEN. Yes, sir.

Senator HATCH. But your major goal here was to protect the American people.

General HAYDEN. Oh, sir, the only goal. I mean, let me narrow it down so it's very, very clear.

This activity wasn't even used for any other legitimate foreign intelligence purpose. I mean, there are lots of reasons, lots of things that we need to protect the Nation against. This extraordinary authority given to us by the President didn't look left or didn't look right. It was al-Qa'ida and affiliates.

Senator HATCH. And you had specific rules and specific restraints, specific guards.

General HAYDEN. Yes, sir.

Senator HATCH. OK.

Now, the distinguished Senator from Oregon said that you admitted you were wiretapping Americans. That's a pretty broad statement.

General HAYDEN. Yes, sir.

Senator HATCH. It certainly isn't true.

General HAYDEN. Sir, we were intercepting the international calls entering or exiting the United States which we had reason to believe were associated with al-Qa'ida, is how I would describe it.

Senator HATCH. And if I understand it correctly, when you could, you went to FISA and got warrants.

General HAYDEN. There were other circumstances in which clearly you wanted more than coverage of international communications. And under this authorization, you would have to go to the FISA Court in order to get a warrant for any additional converge beyond what this authorization authorized.

Senator HATCH. And FISA was enacted over 30 years ago.

General HAYDEN. Yes, sir.

Senator HATCH. And so FISA did not apply to some of the work you were doing.

General HAYDEN. Well, the way I would describe it, Senator, is that a lot of things have changed since the FISA Act was crafted. It was carefully crafted in 1978. But it reflects the technology and—I need to add—and the threat as we knew it to be in 1978.

The technology had changed. The threat had changed.

The way I describe it, Senator, is I had two lawful programs in front of me, one authorized by the President, the other one would have been conducted under FISA as currently crafted and implemented. This one gave me this operational capability, this one gave me this operational capability.

Senator HATCH. You would have no objection if we could find a way of amending FISA so it would accommodate this type of protection for the American people.

General HAYDEN. Of course not, sir. Again, we've made it clear throughout, though, that we would work to do it in a way that didn't unnecessarily reveal what it was we were doing to our enemies.

Senator HATCH. Well, knowing what I know about it, I want to commend you, because I think you have really protected the American people.

When was the last time we had a major terrorist incident in this country?

General HAYDEN. Well, sir, I'd go back four and a half years.

Senator HATCH. There's no way we can absolutely guarantee that we won't have another one.

General HAYDEN. No, sir.

Senator HATCH. But you're certainly doing everything you know how to do it.

General HAYDEN. Well, sir, that was the commitment—everything under law.

I said earlier in the morning, we knew what this was about. Senator Levin asked me earlier if there were privacy concerns, and I said there are privacy concerns with regard to everything the National Security Agency does.

I said to the workforce, I'll repeat, we're going to keep America free by making Americans feel safe again.

Senator HATCH. So as I've asked the question about Senator Wyden's comments, you really weren't wiretapping Americans unless it was essential to the national security interests of this country?

General HAYDEN. Sir—and, again, it was international calls, and we had already established a predicate that that call would reveal information about al-Qa'ida.

Senator HATCH. And you have always been able to monitor foreign calls?

General HAYDEN. Oh, yes, sir.

Senator HATCH. And there's never been any question.

General HAYDEN. Foreign-to-foreign. And even in many circumstances, I suggested earlier this morning, a targeted foreign number that would happen to call the United States is incidental collection. There are clear rules that are created and approved by this Committee that tell us what it is we do with that information.

Senator HATCH. Now, as I understand it, you were not monitoring domestic-to-domestic calls?

General HAYDEN. No, sir.

Senator HATCH. That was not your purpose?

General HAYDEN. No.

Senator HATCH. And that was an explicit direction by you and others to not do that.

General HAYDEN. Oh, yes, sir. When we had the original conversations as to what NSA could do further, certainly that's what we talked about.

Senator HATCH. OK. Now, General Hayden, one of the responsibilities of the DNI, as required by the Intelligence Reform and Terrorism Protection Act of 2004, was to set guidelines for the pro-

tection of sources and methods. Did you participate in the requirement of the DNI?

General HAYDEN. Oh, yes, sir, we did.

Senator HATCH. OK. Are these new guidelines in effect for the community and for the CIA?

General HAYDEN. I do not know if they have been published yet. I'll have to get an answer for you.

Senator HATCH. All right.

What new approaches will you bring to protecting against illegal public disclosures from the CIA?

General HAYDEN. Sir, I said in my opening comments that we need to get the Agency out of the news as source or subject, and both of those are very important.

Let me tell you the really negative effects of it. I mean, obviously there are sources and methods effects, impacts. But you all asked me this morning about analysis and hard-edged analysis.

Do you know how hard it is to stop an analyst from pulling his punches if he expects or fears that his work is going to show up in unauthorized, unwarranted public discourse in a couple of days or a week?

Senator HATCH. That's right.

General HAYDEN. You keep the hard edge by keeping it private.

Senator HATCH. Let me just ask you one last question here. I've got a lot of others, but I think you've answered all of my questions well.

General Hayden, you've spent enough time in the military to deeply appreciate that the military is a learning organization. When soldiers, marines, air men, sailors, Coast Guardsmen are not in combat, they are in training. Even in combat, every engagement is followed by a lessons-learned exercise. When not in combat, the military is constantly studying and training. The military, in short, is a learning organization.

Now, do you believe that the CIA is a learning organization? Should it be? How often should officers be exposed to training and studies? What are the institutions of learning in the CIA? And do you foresee changing them?

General HAYDEN. Yes, sir, a couple of aspects to that.

No. 1, my experience in DOD has been a blessing, because DOD actually has a rotation base and allows folks who are not actually out forward in operations to be put into a training curriculum. And that almost feeds a demand for lessons learned.

Frankly, the intelligence community isn't in that model firmly yet. And we have got to look at the armed forces and see how they do lessons learned and embed that in our processes for improvement.

Senator HATCH. Let me interrupt you for just a second and ask you just another one before my time runs out. In several parts of your testimony, you allow that "lessons learned" exercises are distracting or demoralizing, "the archaeology of picking apart every past intelligence study or success."

Why would the CIA be any different from the military in the sense that you suggest?

General HAYDEN. Oh no, I'm sorry to interrupt, but I didn't mean we wouldn't do lessons learned. That's absolutely essential.

Senator HATCH. I understand. I'm just giving you a chance to make a comment.

General HAYDEN. Yes, sir. As I said in my opening remarks, there's a downside to being so prominent, so much in the news, and I even allege—from time to time—we're the political football. And I would ask everyone involved in this Committee and others to allow us to focus on the important work and not overdo the retrospectives.

Senator HATCH. Thank you so much.

Mr. Chairman, I would ask that this letter from Director Negroponte and all of these listed briefings be placed in the record.

Chairman ROBERTS. Without objection.

[The information referred to follows:]

SSCI# 2006 2103

Director of National Intelligence
WASHINGTON, DC 20511

MAY 17 2006

The Honorable J. Dennis Hastert
Speaker of the
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am responding on behalf of National Security Advisor Stephen Hadley to Ms. Pelosi's May 2, 2006 inquiry regarding the classification of the dates, locations, and names of members of Congress who attended briefings on the Terrorist Surveillance Program. Upon closer review of this request, it has been determined that this information can be made available in an unclassified format. The briefings typically occurred at the White House prior to December 17, 2005. After December 17, briefings occurred at the Capitol, NSA, or the White House. A copy of the list is enclosed.

Sincerely,



John D. Negroponte

Enclosure: As stated.

cc:

The Honorable Nancy Pelosi
The Honorable Jane Harman
The Honorable Peter Hoekstra
The Honorable Pat Roberts
The Honorable John D. Rockefeller IV

Event date	Congressional Members briefed	Name
25-Oct-01	Chair HPSCI Ranking Minority Member HPSCI Chair SSCI Vice Chair SSCI	Porter J. Goss. Nancy Pelosi. Bob Graham. Richard C. Shelby.
14-Nov-01	Chair HPSCI Ranking Minority Member HPSCI Chair SSCI Vice Chair SSCI	Porter J. Goss. Nancy Pelosi. Bob Graham. Richard C. Shelby.
4-Dec-01	Chair Senate Appropriations Committee, Defense Subcommittee. Ranking Minority Member Senate Appropriations Committee, Defense Subcommittee.	Daniel K. Inouye. Ted Stevens.
5-Mar-02	Chair HPSCI Ranking Minority Member HPSCI Vice Chair SSCI	Porter J. Goss. Nancy Pelosi. Richard C. Shelby.
10-Apr-02	Chair SSCI	Bob Graham.
12-Jun-02	Chair HPSCI Ranking Minority Member HPSCI	Porter J. Goss. Nancy Pelosi.
8-Jul-02	Chair SSCI Ranking Minority Member SSCI	Bob Graham. Richard C. Shelby.
29-Jan-03	Chair HPSCI Ranking Minority Member HPSCI Chair SSCI Vice Chair SSCI	Porter J. Goss. Jane Harman. Pat Roberts. John D. "Jay" Rockefeller IV.
17-Jul-03	Chair HPSCI Ranking Minority Member HPSCI Chair SSCI Vice Chair SSCI	Porter J. Goss. Jane Harman. Pat Roberts. John D. "Jay" Rockefeller IV.
10-Mar-04	Speaker of the House Majority Leader of the Senate Minority Leader of the Senate Minority Leader of the House Chair HPSCI Ranking Minority Member HPSCI Chair SSCI Vice Chair SSCI	J. Dennis Hasten. William H. Frist. Tom Daschle. Nancy Petosl. Porter J. Goss. Jane Harman. Pat Roberts. John D. "Jay" Rockefeller IV.
11-Mar-04	Majority Leader of the House	Tom DeLay.
23-Sep-04	Chair HPSCI	Pete Hoekstra.
3-Feb-05	Chair HPSCI Ranking Minority Member HPSCI Chair SSCI Vice Chair SSCI	Pete Hoekstra. Jane Harman. Pat Roberts. John D. "Jay" Rockefeller IV.
2-Mar-05	Minority Leader of the Senate	Harry Reid.
14-Sep-05	Chair HPSCI Ranking Minority Member HPSCI Chair SSCI Vice Chair SSCI	Pete Hoekstra. Jane Harman. Pat Roberts. John D. "Jay" Rockefeller IV.
11-Jan-06	Speaker of the House Majority Leader of the Senate Chair HPSCI Chair SSCI Vice Chair SSCI	J. Dennis Hastert. William H. Frist. Pete Hoekstra. Pat Roberts. John D. "Jay" Rockefeller IV.
20-Jan-06	Minority Leader of the Senate Minority Leader of the House Chair SSCI Ranking Minority Member HPSCI	Harry Reid. Nancy Pelosi. Pat Roberts. Jane Harman.
11-Feb-06	Chair SSCI	Pat Roberts.
16-Feb-06	Speaker of the House Chair HPSCI	J. Dennis Hastert. Pete Hoekstra.
28-Feb-06	Chairman, House Appropriations Committee, Defense Subcommittee. Ranking Minority Member, House Appropriations Committee, Defense Subcommittee.	C.W. Bill Young. John Murtha.
3-Mar-06	Vice Chair SSCI	John O. "Jay" Rockefeller IV.

Event date	Congressional Members briefed	Name	
9-Mar-06	Chair SSCI TSP subcommittee	Pat Roberts.	
	Vice Chair SSCI TSP subcommittee	John D. "Jay" Rockefeller IV.	
	Member SSCI TSP subcommittee	Orrin G. Hatch.	
	Member SSCI TSP subcommittee	Mike DeWine.	
	Member SSCI TSP subcommittee	Dianne Feinstein.	
	Member SSCI TSP subcommittee	Carl Levin.	
10-Mar-06	Member SSCI TSP subcommittee	Christopher S. "Kit" Bond.	
	Member SSCI TSP subcommittee	Christopher S. "Kit" Bond.	
13-Mar-06	Chair SSCI TSP subcommittee	Pat Roberts.	
	Member SSCI TSP subcommittee	(Dianne Feinstein.	
	Member SSCI TSP subcommittee	Orrin G. Hatch.	
14-Mar-06	Member SSCI TSP subcommittee	Mike DeWine.	
27-Mar-06	Member SSCI TSP subcommittee	Carl Levin.	
29-Mar-06	Chairman HPSCI TSP group	Pete Hoekstra.	
	Ranking Minority Member HPSCI TSP group	Jane Harman.	
	Member HPSCI TSP group	John McHugh.	
	Member HPSCI TSP group	Mike Rogers (MI).	
	Member HPSCI TSP group	Mac Thornberry.	
	Member HPSCI TSP group	Heather Wilson.	
	Member HPSCI TSP group	Jo Ann Davis.	
	Member HPSCI TSP group	Rush Holt.	
	Member HPSCI TSP group	Robert E. "Bud" Cramer.	
	Member HPSCI TSP group	Anna G. Eshoo.	
	Member HPSCI TSP group	Leonard Boswell.	
	7-Apr-06	Chairman HPSCI TSP group	Pete Hoekstra.
		Member HPSCI TSP group	John McHugh.
		Member HPSCI TSP group	Mike Rogers (MI).
Member HPSCI TSP group		Mac Thornberry.	
Member HPSCI TSP group		Heather Wilson.	
Member HPSCI TSP group		Rush Holt.	
28-Apr-06	Ranking Minority Member HPSCI TSP group	Jane Harman.	
	Member HPSCI TSP group	Heather Wilson.	
	Member HPSCI TSP group	Anna G. Eshoo.	
11-May-06	Chairman, House Appropriations Committee, Defense Subcommittee.	C.W. Young.	
	Ranking Minority Member, House Appropriations Committee, Defense Subcommittee.	John Murtha.	

Chairman ROBERTS. Senator Warner, with your indulgence and my colleagues' indulgence, I misspoke earlier and I'd like to set the record straight, if I might. I think I indicated that I had been present during the briefing since the inception of the program. Obviously, that is not accurate. I was not Chairman until 3 years ago. I'd like that to be corrected.

But the thought occurs to me, as you go down the list of people who were briefed—and I'm just going to mention a few here: Ted Stevens, Dennis Hastert, Nancy Pelosi, Bob Graham, Dick Shelby, Jay Rockefeller, John Murtha, Harry Reid—these are not shrinking violets.

These are pretty independent people. And they say what is on their mind.

So my question to you is, basically, when you were doing the briefings, did anybody—it's my recollection, at least, that this did not happen, but I want to rely on yours because there were some there during the earlier times of this program. And I want to ask you this question. Did anybody express real opposition to this program?

General HAYDEN. Sir, again, I don't want to get into private conversations, but, to generalize, questions asked and answered, concerns raised and addressed—and I can tell you, in my heart of

hearts, Senator, I never left those sessions thinking I had to change anything.

Chairman ROBERTS. Well, did anybody say, at any particular time, that the program ought to be terminated?

General HAYDEN. No, sir.

Chairman ROBERTS. That it was illegal?

General HAYDEN. No, sir.

Chairman ROBERTS. There was, as I recall, a conversation on the necessity of, perhaps, to fix FISA—if that's not an oxymoron—to improve FISA, to reform FISA. And that is an ongoing discussion in this Committee and in the Judiciary Committee.

And my memory is that it was Members of Congress who gave you advice not to do that. Is that correct?

General HAYDEN. Sir, that was in the large group in March of 2004. And there were discussions. FISA was considered to be one of the ways ahead. And my memory of the conversation is that there were concerns, I would say, almost universally raised, that it would be very difficult to do that and maintain the secrecy which was one of the advantages of the program.

Chairman ROBERTS. There was in fact, during these briefings, pretty much a unanimous expression of support. Is that correct?

General HAYDEN. Sir, again, I'm reluctant to characterize Members. But, again, the issues raised, any concerns answered, questions answered—we all left knowing we had our jobs to do. And I came away with no course corrections.

Chairman ROBERTS. Now, these are the private conversations that went on with the briefings?

General HAYDEN. Yes, sir.

Chairman ROBERTS. Were you surprised at the public statements expressing concern and opposition and other adjectives and adverbs that I won't get into?

General HAYDEN. Sir, I was—I'm reluctant to comment, Senator.

Chairman ROBERTS. Seems like there's a little bit of disingenuous double-talk going on here for some reason, and I'll just leave it at that.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

May I say I think this has been an excellent hearing thus far, and the Chair and others should be commended.

General, I have the privilege of knowing you for so many years, have worked with you. You have my strongest support. And I wish you and your family well. I know how important family support is to our U.S. military, but the people in uniform across this country, both those now serving and those retired, take great pride in seeing one of their own selected to this important post.

General HAYDEN. Thank you.

Senator WARNER. The fact that you will continue in uniform certainly doesn't in any way, I think, denigrate from your ability—if anything it enhances it—as you continue your work. People who say that the intelligence should be headed by a civilian are reminded that the DNI is a civilian.

General HAYDEN. Yes, sir.

Senator WARNER. General, I awakened this morning, as others, to listen to the early, early reports on this proceeding. And there

was a gent on there, I think he was with the 9/11 Commission, talking about how the morale is at the Agency has just hit rock bottom.

Well, I'm proud to say that in my 28 years here in the Senate, and 5 years before that in the Pentagon, now over 30 years of public service working with the CIA—and I visit regularly—I've been twice this month, briefings on Afghanistan, Iraq, meeting with Director Goss, I don't find that morale at rock bottom.

Do you have any assessment of it?

General HAYDEN. Sir, I would say it's been a difficult time for the Agency. Just, you know, go back through the headlines of the past week, month or 3 months.

I do find that the folks in the field are very highly motivated, operationally focused. And in a way we unfortunately can't describe to the public, some great successes are going on.

Senator WARNER. No question about it. And having had this long association with them, it is clearly one of the most remarkable collection of professionals, dedicated professionals, to be found anywhere in Government service.

But are there some steps you feel you're going to have to take when you hopefully cross the threshold here in a matter of days?

General HAYDEN. Yes, sir. I mentioned some things with regard to analysis and collection and S&T this morning. I think most important is to just get the Agency on an even keel, just settle things down. With all the events, Lord knows, of the past several weeks, it can't be a pleasant experience for the folks out there despite, as you point out, their continued dedication.

So I actually think, if I'm confirmed and I go out there, I would intend to spend an awful lot of my waking moments for some period of time just getting around and seeing and being seen.

Senator WARNER. I commend you on that. Stick with that even keel. For an Air Force general, to use a naval term—

General HAYDEN. Yes, sir.

Senator WARNER. I like the idea of getting around. When I was privileged to serve in the Department of Defense, I used to take a little time almost every week to go to the remote offices in the Pentagon where the Navy and Marine Corps personnel were. And it paid off great dividends.

I agree with you. The morale is strong and they are doing their job, and they'll continue to do it. And you provide that strong leadership.

That brings me to the next question. It's a little tough. But our national security, as it relates to the executive branch, of course, as the President and his team, the Secretaries of State and Defense, Homeland Security, the Department of Justice, and then there's the department, now the Department of DNI, Negroponte's outfit, of which you will be a part.

And I really think your opening statement was very well done. You paid respect to Porter Goss, which I think was highly deserving. We've all known him, worked with him through the years. The Chairman served with him in the House.

He and I set up a commission about a dozen years ago, at a time when the Congress was looking at possibly abolishing the CIA. And

that commission I think successfully reddiverted that action, and we're where we are today with a strong CIA.

And you said, in a word, the CIA remains, even after the Intelligence Reform Act, central to American intelligence and other statements in here which I was very pleased to read.

But we cannot lose sight of the fact that—I was visited by Director Goss in the month of April, by Director Negroponte, just talking general things with him—and then we awakened one morning to this resignation, at a time when this country is at war, and one of the major pillars of our security team, now the Director stepping down.

What can you tell us about—I'm not going into all of the perhaps differences in management style and so forth. But was there something that the DNI and yourself—you were the deputy; presumably he shared with you—felt that wasn't going right? And what steps are you going to take to correct that?

I read through your opening statement about all the things you intend to do. But I go to the narrower question, there had to be some actions which said tilt and the President had to step in and make his decisions.

General HAYDEN. Yes, sir.

Senator WARNER. What is it, when you hit that deck, that you are going to do that was not being done, in your judgment, either according to law or otherwise?

General HAYDEN. Well, Senator, I mean, Director Goss had a tremendous challenge. He had transformation that everyone's talked about within an agency, and then he had to adjust that agency's relationship with the broader intelligence community. That's really heavy lifting.

He was moving along both tracks. And I'm not privy to decisions that were made a few weeks ago and announcements that were made and so on, but was asked by the President would I be willing to serve as Director.

The next Monday the President made that announcement in the Oval Office, and I said a few words at that time along the lines of standing on the shoulders of those who went before me.

I mean, I'm not Porter; I'm different from him. I'll probably end up doing some things differently. But I'm not going out there repudiating him or what he was trying to do. Frankly, I just want to look forward. I'll assess the situation and move on.

Senator WARNER. We need not be concerned because, under the Constitution, we are acting, on the President's request, on your nomination to fill that vacancy. And we want to rest assured, when we do fill that vacancy, whatever omissions, commissions or otherwise were taking place to justify this, are corrected.

And you'll assure us that that will be done.

General HAYDEN. Yes, sir.

Senator WARNER. Perhaps in closed session, you can amplify on that.

The distinguished Chairman of the House Armed Services Committee said the following the other day with regard to Iran. And it really caught my eye. And he'd said there—the question was, “How close is Iran to actually developing a nuclear weapon?” “I'd say we really don't know. We're getting lots of mixed messages. Ob-

viously, we're getting lots of different messages from their leadership, the stuff they say in public."

Then he went on to say, "Hey, sometimes it's better to be honest and to say there's a whole lot we don't know about Iran that I wish we did know. As we and the public policymakers need to know that, as we're moving forward and as decisions are being made on Iran, we don't have all the information that we'd like to have."

Now, I'm not asking you to agree or disagree, but that's a very forceful public statement and acknowledgment.

Yesterday, a group of us had a chance to speak to the DNI. And that question was addressed by the DNI. But America's greatly worried about Iran. It poses, in my judgment, the single greatest risk, not just to this country but to a whole region and indeed much of the free world.

What can you tell us, in open, will be some of your initial steps to strengthen that collection of intelligence as it relates to Iran?

General HAYDEN. Yes, sir, and you chose the right word. It's strengthening, rather than some sharp departure. The Ambassador has appointed a mission manager for Iran, Leslie Ireland. Leslie has that task as her full-time job. And what she's doing is not just inventorying what we're doing as a community, but actually re-directing our emphasis as a community.

And in closed session, I'll give you a few more details. But she's narrowed it down from everything there is to know to four key areas that will best inform American policy. And we're moving additional resources into those areas.

Senator WARNER. Fine. I just wanted to have the public hear that you're going to put that down as your top priority. I misspoke. Of course, Hoekstra is the Chairman of the House Select Committee on Intelligence there.

Let's turn to another issue. And that is, do you plan to have any significant large numbers of transferred personnel from CIA to the DNI?

General HAYDEN. Sir, the only thing that's on the table—and thank you for asking this, because there are a few urban legends out there that need to be scotched.

The only thing on the table is a redistribution of our analytic effort with regard to terrorism. So the stories out there that the DI is going to be dismantled or the DI is going to be moved, there are no thoughts, let alone plans, to do that.

And the amount of movement within the counterterrorism analytical forest is going to be measured in doubled digits, not triple digits.

Senator WARNER. In other words, less than 100 people.

General HAYDEN. Oh, yes, sir.

Senator WARNER. Well, you said in your opening statement that, "The CIA must remain the U.S. Government's center of excellence for the independent all-source analysis," and I agree with that.

Now, my understanding that our distinguished colleague and former colleague, Mr. Goss, Porter Goss, was endeavoring to retain a strong counterterrorism analysis capability internally to the CIA. Do you intend to continue that initiative?

General HAYDEN. Yes, sir. But, frankly, that's the friction point that generated your previous question.

Senator WARNER. The question being his resignation.

General HAYDEN. No, sir. No, not that. With regard to—

Senator WARNER. Because I know it was an issue.

General HAYDEN [continuing]. Moving analysts.

Yes, sir, an issue. It's something we have to resolve.

Right now, in the counterterrorism center at CIA, you have a wonderful group of people performing magnificently. By legislation and, I think, by logic, the National Counterterrorism Center, however, has been given the task of strategic analysis with regard to terrorism.

What we're trying to do is shift our weight—and this is not going to be a mass migration—but shift our weight of some analysts from CIA's CTC and some other points around the community so that the NCTC, the National Counterterrorism Center, can do its mandated tasks and do that without in any way cracking the magnificent synergy we now have between DO and DI inside the CIA, with analysts in direct support of operations.

That's the problem, Senator.

Senator WARNER. That's a very helpful clarification.

And in that context, you have, I think, only one reporting chain, and that's the DNI? Is that correct?

General HAYDEN. Yes, sir, that is correct.

Senator WARNER. No other reporting chains directed to the White House?

General HAYDEN. No other—I'm sorry?

Senator WARNER. No other reporting chains directed to the White House?

General HAYDEN. Sir, there is a little bit with regard to the additional activities in the legislation. In terms of all the intelligence functions, it's unarguably through Ambassador Negroponte. With a few other things, it's with Ambassador Negroponte. Porter, for example, would be there at the White House with the Ambassador explaining things. It's a comfortable relationship. I don't think there will be any problems.

Senator WARNER. So you have a direct chain to Negroponte, and at times you work in conjunction with him?

General HAYDEN. Yes, sir, that's how I would describe it.

Senator WARNER. And that's a workable situation?

General HAYDEN. Yes, sir.

Senator WARNER. On the question of the chiefs of stations, they're are remarkable individuals all over the world. And I think most of us who travel make a point of visiting with the chiefs of station on our various trips. Are the chiefs of station abroad representatives of the DNI or the Director of Central Intelligence?

General HAYDEN. Senator, all of the above.

Senator WARNER. Do they have a dual reporting chain?

General HAYDEN. They do. For community functions, they report to the DNI. For Agency functions, they report to the Director of CIA.

Senator WARNER. And that won't pose any problems for you?

General HAYDEN. It should not, no, sir.

Senator WARNER. We hope that will be the case.

Now, the relations with the Federal Bureau. How many times, Mr. Chairman, did we sit in this room at the time we were working on this new law and addressing this issue?

Now, the Silberman-Robb report, which is a very good report, I've gone through it, and they have a whole section in here relating to ending the turf war between the Bureau, FBI, and the CIA.

Can you bring us up to date on where you are in assessing that issue?

General HAYDEN. No. 1, we've created the National Security Branch inside the FBI. And the funding and the tasking for that come from the DNI, come from Ambassador Negroonte. So that's one reality that's different since the publishing of the report.

Secondly, the Ambassador has assigned to the Director of CIA the function of national HUMINT manager. So with regard to training and standards and deconfliction and coordination, the national HUMINT manager does have a role to play with human intelligence as conducted by the FBI and as conducted by the Department of Defense.

Senator WARNER. Do you have a liaison from the Bureau in your office out at the Agency?

General HAYDEN. Senator, I am a little unclear whether he is there or is about to get there, but the deputy—

Senator WARNER. But it is being done.

General HAYDEN [continuing]. Of the community HUMINT office, the senior there is a Marine two-star, the former head of the Defense HUMINT Service. And the expectation is, if it's not the reality, his deputy will be from the Bureau.

Senator WARNER. I recommended that, because I think that they should have access, a free flow of that information.

Now, there was a memorandum entered into in 2005 by Director Goss. Are you familiar with that memorandum?

General HAYDEN. Yes, sir.

Is this the one with the Bureau or the one with the Department?

Senator WARNER. With the Bureau.

General HAYDEN. With the Bureau, yes, sir.

Senator WARNER. You intend to continue that?

General HAYDEN. Yes, sir.

Senator WARNER. That covers that subject.

On the question of the national HUMINT manager, now, look here, we had a discussion earlier today about the Army Field Manual. And I and Senator McCain and Senator Graham and others have worked on that issue for some time. We're continuing to work on a regular basis with the Department of Defense as to the promulgation, the procedures and so forth.

But there's a question of how the Agency intends to presumably continue its interrogation process, and indeed perhaps get into detainees.

Now, if I understand it, earlier in this testimony you said that you fully intend—that is the Agency—to comply with the basic standard of not involving in any cruel or inhuman or degrading treatment. I understand that.

But there's a whole manual out here guiding the men and women in uniform. Should there not be a companion manual guiding the civilians who will be performing much of this task?

General HAYDEN. Senator, speaking in generalities now and perhaps more detail in a closed session, absolutely.

I mean, one of the key things that—I used the line in this report about creating the conditions for success—in my opening statement.

That’s one of the conditions for success—that anything the Agency does—let me put it that way—anything the Agency does, that the people of the Agency understand what is expected of them, that the guidelines are clear, that they meet those standards and that, obviously, there are consequences if any of them were unable to meet those standards.

Senator WARNER. That’s clear.

General HAYDEN. So it’s got to be clear, specific, written for all the activities.

Senator WARNER. Understood. But will there be any differences in how these interrogations are—

General HAYDEN. Yes, sir. I don’t want to—

Senator WARNER. Either uniform side or the civilian side.

General HAYDEN. Yes, sir.

I don’t want to go into any great detail here in open session, but just say that even in the Detainee Treatment Act itself, it talks about the Army Field Manual applying to DOD personnel with regard to detainees under DOD control.

The “cruel, inhuman, degrading” parts of the statute apply to any agency of the government.

So I think even the statute envisions that there may be differences.

Senator WARNER. All right. Well, we’ll be looking at that very carefully, because we’ll have to explain to our constituents and others if, in fact, there is a significant difference, the basis for it.

I happen to be a great champion of the science and technology. I think few people realize that you have a magnificent setup out there that are devising all types of devices to not only do the work of your agency, but they have parallel uses by other departments and agencies. Indeed, some of it may be incorporated in the advancements we’re going to take in the border security.

So tell us about the emphasis that you’ll put on that. I look upon that as one of the four stools of the Agency.

General HAYDEN. Yes, sir. Absolutely.

A remarkable record of success, maybe enabled by legislation that gives the CIA a bit more freedom of action when it comes to these kinds of things, not quite—I don’t want to say rule-bound, but let’s say administrative-burden-bound.

And I need to learn more about it, and what their current focus might be. I said in my opening comments, though, job one is that S&T activity supporting two of the other key pillars of the Agency—the human collection and the analysis.

Senator WARNER. All right. Well, I’m delighted to hear you’ll put emphasis on that.

Lastly, in your statement you said, “We must set aside the talent and energy to take the long view and not just chase our version of the current news cycle.” I agree with that.

What steps will you do to impress on the Agency they need that? You see how these people have followed a course of action which was extraordinary for many years throughout the history, and

you've got to change, I suppose, some of the old, entrenched beliefs and work styles. And this is one of them.

General HAYDEN. Yes, sir.

In fact, I actually think it might be worse now than it has been historically; that this is a particular problem with the current age. I mentioned the CNN effect this morning, where our customers seem to want us to have the same kind of pace that you get on Headline News.

The other aspect is, we're engaged in war in several major theaters. And that's just pulling energy into current operations. And it's understandable. It's legitimate.

So I think, left to itself, there will be so much gravitational pull to the close term that you'll really have to expend energy to push the field of view out. And that's what's going to be required.

Senator WARNER. Good luck.

General HAYDEN. Thank you, sir.

Senator WARNER. Take care of those people out there.

General HAYDEN. Yes, sir.

Senator WARNER. Or I'll be knocking on your door.

General HAYDEN. Yes, sir, I know.

Senator WARNER. Thank you very much.

Chairman ROBERTS. Senator Hagel.

Senator HAGEL. Mr. Chairman, thank you.

General Hayden, welcome. We are most grateful to you and your family for your almost 40 years of distinguished service to this country. And we look forward to many more years of this same quality of service. And we are not unmindful of the toll it takes on a family. So thank you. And thank you for your family being here today.

I was impressed with your opening statement, General Hayden, because I think it reflects clearly the kind of world that we live in today. It is a world of grand transformation.

As you have catalogued, not only your priorities—and I'd like to explore some of these points that you made in a little more detail, as has been done already for the past few hours here today—I think it encompasses and frames the larger picture of what you will be dealing with as the new CIA Director. But also it pulls, like all of us, from our experiences and our conditioning and our molding and shaping and the product that we have before us in a four star Air Force general who is the preeminent intelligence officer in our government.

And that accumulation of experience and knowledge and mistakes in judgment has brought you to this point.

It has been my belief, and I think it's reflected in the polls—people read the political polls sometimes with only the politics in mind—but the polls today in America say to me, General Hayden, that Americans have essentially lost confidence in their government.

They've lost confidence in us, those who govern, those who have the privilege and responsibility.

When the President's poll numbers are as low as they are, when the Congress' approval ratings are lower than the President's—I don't know if that comforts the President or not—but nonetheless it is beyond politics, because politics is the avenue that we use to

arrive at leaders and the shaping of policy and therefore the direction of a country.

And that's what these poll numbers are telling us—that America has lost confidence in the leadership of this country. We all have some responsibility, Democrats, Republicans, the White House, all of us.

So I was particularly struck by one of your points in your testimony about emphasis on trust. And you and I had a very good conversation in my office last Friday about this issue and others.

And at a time when I believe we are still reeling from what happened on September 11, 2001, trying to find that new center of gravity, technology, 21st-century threats have overtaken all of our laws. They've overtaken institutions and structures. That's not unusual; it is that way every 50 or 60 years in the world, a dynamic world.

So our task here as policymakers and your task as the new leader of the premier intelligence agency in the world will be to address these 21st-century threats with 21st-century structures and solutions.

And that was, to me, very clear in your testimony this morning. And I'm particularly grateful for that, because we do tend to get lost in the morass of the underbrush and the technicalities of leaks and who said what to whom and all the details that actually veer us away from the center of purposefulness, some consensus of purpose that we strive for all the time here—or we should—to try to govern.

But more to your point, you have a very clear center of purpose in your job, in the intelligence agency, and you, in response to some of the questions here, talked about—if I have it about right—“We will not defeat international terrorism without a very clear relationship with our international partners”—something to that extent.

So let me begin there, because I happen to believe that it is not a matter of how many Marines and infantrymen we can place around the world that will defeat extremism and terrorism and these threats of the 21st century—proliferation, which I will get to in a moment.

But the core of this, the hub of this is what you are about and what the intelligence community and our country and the world is about—a seamless network that you mentioned, not only within our community here in the United States, but that same kind of seamless network with our international relationships, to stop these things before they occur, to start picking them off where it counts, really counts.

And then, of course, you get into the next, outer circle of that, which you all have some responsibility for, too, but can't find solutions to all of it, and that is what causes these kinds of things, what is the underlying cause—not simple, complicated—despair, poverty, endemic health issues. We know how those accumulate to bring us to the point we are today.

If you could enlarge upon your comments and your testimony and some of the answers you gave here on what you intend to do as the new CIA chief to, in fact, address a closer relationship with our friends and our allies in knitting together those seamless intel-

ligence networks, as well, as you noted in your testimony, within the intelligence community.

General HAYDEN. I think the first requirement is just a sense of focus, I mean, just paying attention to it.

I learned in my job at NSA—and we have friends around the world—you pay attention, you spend some time, you understand. There are a lot of allies out there who are not only looking to assist us in the global war on terrorism, in some ways they're looking for—and I don't want to overstate this because it sounds too arrogant—but they're looking for some sense of leadership, some sense of direction, some sense of direction around which they can organize their own sovereign efforts.

I think you just plain have to pay attention to them, listen to them and understand, and although in most cases there will be great disparities of resources and power, to afford them the treatment as an equal in some respect.

So I think that can be done. I think that's absolutely valuable. And I think our friends and allies would enthusiastically welcome that. And so I'll just try to reinforce what we already have.

Inside our government, we've probably got two concentric circles to worry about. One is the intel community itself. And I actually think we've made some good progress there, but as I think Senator DeWine mentioned earlier this morning about sharing and technology and it's really policy, and, frankly, I think I responded you just have to get on with it. So that's the second.

And then the larger concentric circle is between the intel community and the other parts of the U.S. security establishment—DOD, especially Homeland Security, the law enforcement aspects of the FBI and so on.

I kept using sports metaphors in my prepared comments, but I really do mean it. You have to play team ball here. And that requires everyone to play position and not crowd the ball. You know, the ball will come to you directly, just play your position. And then focus on the scoreboard, not on individual achievement, an individual agency or Cabinet-level department.

Sorry, Senator, that sounded more like a sermon than a work plan, but that's the approach. And I think a lot of it is attitudinal.

Senator HAGEL. I happen to believe everything is about attitude.

You might recall that when you were before this Committee when we held a confirmation hearing for the current job that you have, the Deputy Director of National Intelligence, I asked you about your plans for bolstering the energy, strength, teamwork and culture of excellence in the organizations that make up the intelligence community.

And I want you to address that, if you will. And I know you have alluded to it in your answers to some of the questions today, but specifically, the culture of excellence—you have used that term; I happen to agree with that term—within our intelligence community, within the CIA, how do you, not necessarily resurrect that; I don't think we've lost that, but I think it's been tarnished. And there is a corrosive dynamic, and you've alluded to that. It's as a result of many things.

But I want you to also focus on the next generation. What will you particularly be going to focus on this next generation of CIA leaders that this country and the world is going to need?

General HAYDEN. Yes, sir.

We really have an opportunity here, in fact, so much of an opportunity that it's a real challenge. We have so many folks at the Agency who have fewer than 4 years service. They now make up a significant portion of the population.

So here's a group—if we pay attention to the lessons-learned studies and your WMD review and all the other things—these are folks who are not going to have to unlearn something. They'll be coming into this with a tested approach, one that's been improved. So there's the opportunity.

Now here's the bad news: For every individual—and I'll use the Agency's analytic force and I'll just have to use comparisons rather than absolute numbers because of classification—for every 10 individuals we have in the analytic force with 1 to 4 years service, we only have one with 10 to 14 years of service.

We don't have any shop stewards or foremen. We've got senior leaders and we got workers, but that middle layer of management is very, very thin.

Senator MIKULSKI. Mr. Chairman, excuse me, could the General repeat those numbers? I had a hard time hearing those numbers.

General HAYDEN. Yes, ma'am.

Again, I can't get into the specific numbers because at CIA, unlike NSA, they're classified population numbers.

But for every—I'm talking about the analysts, all right. For every 10 analysts with fewer than 4 years service, we only have one experienced analyst between 10 and 14 years of service.

So what you end up with, again, is you don't have any shop stewards that should be doing the coaching and mentoring. And so here we have this great opportunity, new population, lessons learned, but the demographics are all wrong. And that's just going to take a lot of work and a lot of energy to turn the advantage into true advantage with this new population.

It's very interesting. This is the youngest analytic workforce in the history of the Central Intelligence Agency. Put in more disappointing language, this is the least experienced analytic workforce in the history of CIA.

Senator HAGEL. But what a marvelous opportunity, as you note, at a time when the world has changed, is shifting at an incalculable rate. And we're all trying to not just catch up, but stay even. And to have that kind of opportunity to shape and mold these bright new young leaders is, to use your point, a big advantage.

General HAYDEN. Yes, sir.

Senator HAGEL. A huge advantage, and we must not squander that.

General HAYDEN. Sir, if I could just add a point, we weren't able to create that demographic at NSA until after 2001. And although that's a real challenge, it's a lot better than the other challenge, which is you don't have many folks coming through the front door.

Senator HAGEL. Let me ask a question on—in fact, you were responding to one of Senator Warner's questions about this—the National Counterproliferation Center. In light of, for example, the

agreement that the President signed with India—and I was just in India last month and spent some time, as well as Pakistan, with the government leaders and private industry leaders—explain to this Committee, in your view, how this center will impact and help shape future arrangements, not just using the India-U.S. agreement, but proliferation of weapons of mass destruction.

I don't have to tell you, no one has to tell you that that represents really the greatest threat to mankind in the 21st century. So how are we going to use the center?

General HAYDEN. Here are a couple of thoughts I'd share with you that I think will really put this into context.

First of all, let me tell you what it's not; it's not NCTC, National Counterterrorism Center, which has its own analytic function and so it's a workforce numbered in the hundreds.

These guys are numbered at about 60, 65. They're not a source of independent analysis. They're the mission managers. They're the guys on the bridge, and not the folks shoveling coal.

And so what you've got there with a very experienced senior leadership team is the ability to shape the efforts of the community in a more coherent way, back to that team ball metaphor, than we've had in the past.

One other additional thought—we've got four mission managers right now. Two are topical, two are geographic—counterterrorism, counterproliferation, Korea, Iran.

Well, you quickly do the math, you're going to have some intersections. And so who's the final word on Iranian WMD? Who's in charge, the Iranian mission manager or the NCPC, the counterproliferation mission manager?

Because of what this Committee has—in addition to what other sources have told us about the Iraq analysis, which was, I will say, perhaps culturally deficient and technologically heavy—that's a cartoon, and probably unfair to a lot of people, but there's an element of truth in there.

Because of what we learned there at those intersections, it's the area mission manager that gets the final call. That's kind of the dynamic that we've set in place for NCPC, Senator.

Senator HAGEL. Thank you.

Let me get to a point, I believe in a response to a question that Senator Wyden asked, you if I have this about right, you said, "Help me understand where to draw the line between liberty and security." And this was in the broader framework line of questioning that we've heard a lot about today, important, as you have recognized many times.

And I appreciated that statement for many reasons. The Chairman just talked a little bit about rewriting the FISA law. I don't think there's anyone who questions that. We do need to give the intelligence community a new framework to work within, assuring that what you and all the professionals are doing, you don't have to go to the attorneys every hour—"Is this legal or not legal, can we do it, can we not do it?"—but let you do your jobs.

That's our responsibility as policymakers, to give you that new framework. We're going to need input from you—

General HAYDEN. Right.

Senator HAGEL [continuing]. As to how we best do that, doing exactly what you said, that constant balance of protecting constitutional rights of Americans, as well as protecting the security interests of this country. We've done it pretty well for over 200 years.

I think it's one of the most significant policy challenges we have here in this Congress, with the President, this year. It has to be done. And we are paying attention to it.

But we're going to need some guidance from you. Here's an opportunity, General Hayden, to lay some of that out, if you care to give us some of your thoughts on how do we rewrite a law that does what you need to do and protects the interest of our country as well.

General HAYDEN. Yes, sir. Let me not get into specifics. If we need to, we can share some ideas in closed session.

A couple of, let me just say, factors bearing on the problem—and there are two. One is nature of the enemy. When FISA was first crafted, it was the cold war. And if you look at the legislative, as I've looked at sometimes and my lawyers at NSA have told me, an awful lot of the language for FISA was drawn from the criminal side of the U.S. Code.

So we need to just reassess what is it we're trying to achieve here in a foreign intelligence way against what kind of threats. And so that would be one approach.

The other one is technology. I've actually said publicly, and I'll just repeat it here, that the reach of FISA, the impact of FISA, is well beyond what any of its original crafters could have possibly intended because they could not possibly have known the dramatic changes in technology.

Again, Senator, just a factor bearing on the problem, not an iron-clad solution. It may be that the best way to craft FISA is in terms of not trying to predict all the changes, possibly, in technology over time but setting up processes by which those changes can be accommodated to a fairly constant standard of what constitutes privacy so that, when communications change from going out of the air to going into the ground that all of a sudden the impact of the law is completely different without any context as to how that affected privacy.

So that's a little obscure, but—

Senator HAGEL. No, I get it. And we're going to, obviously, be calling upon you and your colleagues for more detail.

But let me ask one last question while I've got a couple of seconds. There's been some reference made today, and you referenced it, to what happened with intelligence and why and how it was used, misused, leading up to Iraq. And we're not here to replay all that. But here's what I would like to hear—because we had some gaps, let's put it that way.

And by the way, I'm not one who blames the intelligence community for the decision to go to war in Iraq. That's an easy way out, as far I'm concerned. And there was other contradictory alternative analysis out there. It was within our own government. Those who chose to make the decisions they did based on their own selective reading of it— that's not what you said; it's what I said.

I say that because I'd like to hear from you what your ideas are about alternative sources of intelligence analysis so that we don't

get ourselves back into invading Iran, not knowing what we're doing or not paying attention to consequences or whatever else what may be down the road here with options for policymakers and the President.

General HAYDEN. Yes, sir. The approach of alternative analysis, obviously, has great value. We've done that; it's under way. We do see that.

Here's the magic spot. How do you institutionalize that without destroying it? I mean, once you institutionalize thinking outside the box, you know, it turns to dust in your hand. I think it's more about process than structure. It's more about insisting on considering alternative views rather than boxing off—a this is my “alternative view” office. It's just simply demanding that.

Look, Senator, this is four-square in our mind now, everybody in the community. We understand. We know when we're good and when we're not so good.

Those lessons will have a tendency to wear off as we age off from the WMD, National Intelligence Estimate and so on. The challenge for leadership is not to let that happen, is to keep that focus on this enriching and challenging aspect of our analysis.

Senator HAGEL. You're going to be one of America's best CIA Directors, General. Thank you.

Mr. Chairman, thank you.

Chairman ROBERTS. Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman.

First, General, congratulations on your nomination, on your obvious abilities, your tremendous experience and distinguished career of public service, and also on your manner. I want to say as one Senator that I find it very easy to work with you and talk with you.

General HAYDEN. Thank you.

Senator FEINGOLD. And I admire some of the remarks you've made today in candor with regard to Iraq and some of the comparisons that one might make as we look at the Iran situation, that maybe we'd now want to handle it in the same way, so I appreciate all of that.

Before I turn to you, let me just say generally, yesterday, 4½ years after the President authorized a program to wiretap Americans without a warrant and almost 5 months after the program was revealed in the press, the Administration finally began describing the program to this Committee.

This long overdue briefing, hastily arranged on the eve of this nomination, in my view, does not provide enough assurance that the Administration's general contempt for congressional oversight has diminished. But Mr. Chairman, it is nonetheless welcome. And I look for more.

Mr. Chairman, I came away from that briefing yesterday, more convinced than ever, first, that the program is illegal, and second that the President misled the country in 2004 before the revelations about this program became public, when he said that wiretapping of Americans in this country requires a warrant, and third, that there was absolutely no reason that the Administration could not have told the full Committee about the program 4½ years ago, as is required by law.

Now, the question before us today is the nomination for the Director of the CIA of General Hayden who directed and vigorously defended this illegal program.

Again, General Hayden is highly experienced and I have enormous respect for his many years of service.

But it is our responsibility to ask what kind of CIA Director would he be? Will General Hayden follow the law, not the law except when the President says otherwise? And will General Hayden respect Congress' statutory and constitutional oversight role and not just when the President deems it politically convenient?

Let me be very clear, and I don't think there's any distance between me and General Hayden on this, al-Qa'ida and its affiliates seek to destroy us. We must fight back and we must join this fight together as a Nation.

But when the Administration ignores the law and refuses to involve Congress, I think it actually distracts us from our enemies and weakens us and weakens what the general and everybody else is trying to do. Our greatest strength as a Nation lies in a few basic principles—that no one is above the law and that no one may operate outside of our constitutional system of checks and balances.

So, General, there are many intelligence matters that cannot be discussed publicly. But I think the American people have a right to know that what they are told publicly is in fact neither inaccurate nor misleading. And Senator Wyden was referring to a couple of statements that you've made in the past that may bear on this.

On October 17, 2002, you told the joint inquiry into the terrorist attacks of September 11, 2001, that persons inside the United States "would have protections as what the law defines as a U.S. person and I would have no authorities to pursue it."

Given that the President had authorized the NSA to wiretap U.S. persons without a FISA warrant, how do you explain this statement?

General HAYDEN. Senator, let's go back and look at the context in which I offered it. It is very clear to me, though, even under the President's authorization, that considerable legal protections would accrue to a, quote/unquote, "target in the United States affiliated with al-Qa'ida that would affect the ability of the NSA to track that target, compared to that target being in any other place on earth outside the United States."

I also said that—and that was in a totally open session, as I recall—and I prefaced my remarks that day by pointing out that I had briefed the Committee in more detail and that my remarks that day were necessarily limited.

Senator FEINGOLD. Well, General, I respect what you just said. But you specifically referred in that session—I have the transcript here—to U.S. persons in the context of FISA. In other words, you weren't talking about a different program. You weren't talking about some of the other protections that might be there.

And to the American people and to Members of Congress, when they're talking about FISA, that means a warrant. So I'm wondering how you can reconcile that.

General HAYDEN. Again, Senator, I knew in my own heart and mind that we were not talking about domestic to domestic.

If my language could have been more precise, I apologize. But it was not an intent to mislead; it was to describe the limitations under which the Agency worked and continued to work inside the United States.

I think that was the speech where I talked about Usama bin Ladin crossing from Niagara Falls, Ontario to Niagara Falls, New York, and saying all of a sudden, U.S. law kicks in, and my freedom of action against him is suddenly very limited, so that even though the President's program would, as we all now know, allow me to catch Usama when he called back to Waziristan, I couldn't catch the call from Buffalo to Pittsburgh.

Senator FEINGOLD. And I appreciate that example. And I take you at your word that you did not intentionally mislead. But it was misleading. And I think when you say you had no authority to pursue the target, the average person who knows enough about this would have concluded otherwise.

But let me move on.

As you know, there is now a vast body of legal scholarship that says that the warrantless surveillance of Americans violates the FISA law. And of course you said that your lawyers told you it was legal. But you are an intelligence professional with many years of experience conducting surveillance within FISA. Then one day, you're told that FISA doesn't apply—and by the way, don't tell the full Intelligence Committee.

Forget for the moment, General, what the lawyers said. Have you ever had any doubts that when this change in approach was made, that there may be a concern about not following FISA?

General HAYDEN. Senator, obviously, there were concerns. I mean, I had an agency that for decades, well, since the mid-1970s, had frankly played a bit back from the line so as not to be close to anything that got the Agency's fingers burned in the Church-Pike era.

And so, this wasn't done lightly, and it wasn't done automatically.

Senator FEINGOLD. But did you have any doubts about the legality of doing this?

General HAYDEN. Personally, no, I did not. And that was cemented with my conversation with the lawyers I knew best, the lawyers at NSA. It probably would have presented me with a bit of a dilemma if the NSA lawyers had said, "No, we don't think so," but they didn't.

And there was no pressure on me. It was, "I need to know what you think."

Senator FEINGOLD. So were you frustrated prior to 9/11 that this kind of authority, which I take it you believe derives from Article II, the President's powers, was not being used, that only FISA was being followed? Did you think that was endangering American national security?

General HAYDEN. Well, actually, there was an interesting article today—yes, it was today, in the Baltimore Sun, that talked about some NSA activities. And without getting into the fine print of the article and confirming or denying anything about it, it talked about discussions at my agency on the millennium weekend as to what

we could or could not do inside the United States when we thought we were under great threat.

And, according to the article, and just staying within the context of that, Senator, I made some decisions there that made some of our operators unhappy, in order to stay within the confines of statutes, because I had no other legal recourse to do something other than the FISA statute and Executive Order 12333, neither of which—

Senator FEINGOLD. Article II of the Constitution was in place at that time.

General HAYDEN. It was.

Senator FEINGOLD. So why didn't you have legal recourse to that?

General HAYDEN. Because the President had not exercised any of his Article II authorities to authorize the Agency to do that kind of activity.

Senator FEINGOLD. Did you urge him to do so?

General HAYDEN. No, we did not at the time, no, sir. This happened very quickly.

Senator FEINGOLD. Well, of course my concern here, naturally, is what is the limit to this Article II power and where does it leave the role of Congress in this area? And I was struck by your comments that you had had a conversation with Senator DeWine where you talked about—earlier, not today, but an earlier occasion where you talked about the tension between liberty and security and what do the American people want.

What I would submit to you, General, is that the American people have expressed what they want through the laws that are on the books now. And there can be helpful discussions, such as the one Senator Hagel just conducted with you about whether it should change.

But at this point, it's the law. And you know as well as I do that no one, and not even the President, is above the law. And I want to remind you with all respect, General, because I have great respect for you, that no one can force you to break the law.

General HAYDEN. Senator, I'm well aware of that. And our Uniform Code of Military Justice talks very clearly about the lawfulness of orders in order for the orders to be effective.

Senator FEINGOLD. Thank you, General.

General, if you're confirmed, there will likely come a moment when the President turns to you and asks whether there is more the CIA can do under the constitutional authority that he has asserted under Article II. What would you tell him? Is there more?

General HAYDEN. Well, obviously a hypothetical, but let me just imagine the hypothetical in which, not unlike the NSA situation, there are additional things that could be done.

Senator, I'd consult my lawyers and my conscience, just as I did in 2001. In this particular case, Senator, let me be very clear, all right, the White House counsel, the Attorney General, the Department of Justice's lawyers and my own lawyers at NSA ruled this to be a lawful use of the President's authority.

Senator FEINGOLD. You're referring back to the wiretapping.

General HAYDEN. Yes, sir.

Senator FEINGOLD. I'm asking you whether there are additional things you'd like to see. You just indicated to me in a helpful response that prior to 9/11 you thought some things maybe should have been done pursuant to Article II, even though they were not permitted by FISA or perhaps some other statute.

Are there other things that you believe now we should be doing that are not covered by statute that would fall under this category?

General HAYDEN. No, sir. None that I'm aware of.

Senator FEINGOLD. Take another example in this area.

The law states that the Director of the Central Intelligence Agency shall have no police, subpoena or law enforcement powers or internal security functions. If the President told you that he felt he had power under Article II to override that, would you be bound by the statute or would you follow the President?

General HAYDEN. Again, Senator, it's a hypothetical. But the statute is clear, and unless there was a compelling legal argument as to why that was a legitimate exercise of Presidential authority, of course not.

Senator FEINGOLD. Under this theory, could the CIA conduct covert action inside the United States?

General HAYDEN. Again, Senator, a hypothetical, and I wouldn't even know how to begin to address that.

Senator FEINGOLD. I'm just trying to figure out what it is that would limit the President from saying that to you and if he gave that order, or he made that statement, based on your answers it seems to me you believe he has that inherent power to do it.

General HAYDEN. No, no, sir.

And what I believe is important but not decisive. There has to be a body of law from people whose responsibility it is to interpret the law for someone like the position I was in at NSA, or, if confirmed, at CIA who would say that this, indeed, is lawful and a lawful exercise of authority.

And like I recommended and was quickly granted in the case in October 2001, we informed our oversight bodies.

Senator FEINGOLD. I appreciate that answer very much. And I just have to say, for the record, that the body of law that supports this wiretapping program, I think, is exceptionally weak compared to the other authorities that have been discussed. But you and I have been back and forth on that. But I think it's terribly important to realize, because you are acknowledging that you would have an independent obligation to look at whether that law is sufficient to justify the President's claim under Article II.

General HAYDEN. Again, Senator, it's a hypothetical. But, you know, 4½ years ago it was very important to me that the lawyers I knew best personally, that I trusted, and who knew best the National Security Agency were in agreement.

Senator FEINGOLD. Why wasn't the President's warrantless surveillance program briefed to the full congressional Intelligence Committees until yesterday?

General HAYDEN. Sir, it was not my decision. I briefed fully to whatever audience was in front of me. And I wouldn't attempt to explain the Administration's decision, but it was the decision of the Administration.

Senator FEINGOLD. You weren't given any explanation of why the decision was made not to allow it?

General HAYDEN. There were discussions—

Senator FEINGOLD. What were you told?

General HAYDEN [continuing]. In terms of—I believe it's section 502 and 501 within the phrase “with due regard” in both of those sections—the one that has to do with general intelligence activities and the one that has to do with covert action. In both cases, the paragraphs talk with “due regard to the protection of sources and methods.”

Beyond that, sir, I—

Senator FEINGOLD. So it was the sources and methods the point that was made.

General HAYDEN. There was, I believe, a strong desire to keep this program as close-hold as possible because of its value—

Senator FEINGOLD. Fair enough.

General HAYDEN [continuing]. While at the same time informing those who needed to be informed.

Senator FEINGOLD. Fair enough. On that point, and on the sources and methods justification, the National Security Act states that, “Nothing”—nothing—“in this Act shall be construed as authority to withhold information from the congressional Intelligence Committees on the grounds that providing the information to the congressional Intelligence Committee would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.”

General Hayden, the congressional Intelligence Committees handle sensitive sources and methods every day.

General HAYDEN. Yes, sir.

Senator FEINGOLD. What was it about this program that was different, other than the Administration knew that it would be politically and legally contentious?

General HAYDEN. Senator, I wouldn't attempt to describe the background to it. I know what the decision was. I was heartened that I was able to brief the senior leadership of both intel Committees and the senior leadership of the Congress. And I was heartened that I was able to do it multiple times.

Senator FEINGOLD. Well, in fairness to you, I got the feeling that you probably did want to tell more people. So I want to be fair about that.

I got that feeling, but do you see the distinction between sensitive sources and methods which are part of a known program and an entirely new surveillance program whose existence would likely surprise, if not outrage, many Members of Congress? I mean, isn't there a distinction, as we look forward, in that regard?

General HAYDEN. Sir, I apologize. I don't see the distinction in law. And I do know that practice has been, for activities, for example, like covert action, that only the senior Member and the Chairman are briefed.

Senator FEINGOLD. General, in January, you stated that you would, “Take no view on the political step of going to Congress for an amendment of the FISA Act.” But the question of seeking a statutory basis for conducting surveillance in this country, in my

view, is not a political question. It's fundamental to our constitutional system of government.

General, if you saw that our country's statutes did not provide the authority you thought was necessary to combat terrorist organizations, would you seek that authority from Congress?

General HAYDEN. If I had no lawful authority to conduct something that I believe needed to be done to protect the Nation, of course, I would. But in this case, Senator, just to make sure I'm not misleading by half, by not being complete, in this case, I believe I did have a lawful authority.

Senator FEINGOLD. Can you explain to me why it is that we even need to pass laws in Congress in this area that relates to Article II, given the claims that are being made by this Administration of its power in this area?

General HAYDEN. Senator, again, if you look at the three pillars on which this program was based—its lawfulness, its effectiveness and then the care with which it was carried out—I'm kind of crew chief for two and three, its effectiveness and the care with which it was carried out.

And I think I suggested earlier today, the founding fathers intentionally put tensions between Article I and Article II. And I don't think I can solve those.

Senator FEINGOLD. Senator Bond asked you whether, under the warrantless surveillance program, any Americans had been targeted who were not associated with al-Qa'ida.

And you replied only that you didn't see how that could occur within the NSA's culture. The question remains: Has it happened?

General HAYDEN. In each case, when NSA has targeted a number under this program, there has been a probable cause standard met, in the judgment of our analysts and those who oversee them, that there is reason to believe—a reasonable person with all the facts available to him or her at the time has cause to believe that this communicant is associated with al-Qa'ida.

Senator FEINGOLD. But that's not my question. And that wasn't Senator Bond's question.

It's whether it's ever happened that any Americans have been targeted who weren't associated with al-Qa'ida. As a matter of fact, has it happened, despite the cautions?

General HAYDEN. Sir, I'll give you a detail in closed session, all right?

Clearly, I think logic would dictate that if you're using a probable cause standard as opposed to absolute certitude, sometimes you may not be right.

Senator FEINGOLD. Has there been a thorough and ongoing view of this question?

General HAYDEN. Oh, yes, sir. Yes, sir.

Senator FEINGOLD. And will these reviews be submitted to this Committee?

General HAYDEN. Sir, I think they're available to this Committee during your visits at the Agency and in response to the questions that you've asked.

I think by review you mean what's been targeted, what have been the results, how long they last.

Senator FEINGOLD. Are there documents and will they offer us the answer to my earlier question relating to whether people that were not associated with al-Qa'ida have been trapped in this sort of thing?

General HAYDEN. Well, how long targeting has gone on, why targeting is ceased.

Senator, let me make something very clear, though. Speaking in the abstract a bit, OK, to put someone on targeting under NSA anywhere in the world—obviously we're talking about this program—and then at some point end targeting doesn't mean that the first decision was wrong. It just means this was not a lucrative target for communications intelligence.

Senator FEINGOLD. I respect that, but you know, this is exactly why, it seems to me, that FISA had it right by having some oversight of this under a court. And you obviously are doing everything you can to avoid any mistakes in this area.

General HAYDEN. Yes, sir.

Senator FEINGOLD. But if the FISA Court were involved, we wouldn't have to be discussing this. And based on the comments of Senator Feinstein and others, I still believe that this could be done within that construct, within that statute.

As you know, General, the law allows for congressional notifications to be limited to the so-called gang of eight, only in cases of covert action. Even in those cases, the President must determine that it is essential to meet extraordinary circumstances affecting vital interests to the United States.

In your view, what kind of circumstances would justify failing to notify the full congressional Intelligence Committees of covert action?

General HAYDEN. Senator, I'm sorry, could you just say the last part again?

Senator FEINGOLD. Yes. An example of a situation that would somehow take the Administration or you out of the responsibility of informing the full Committee.

General HAYDEN. That was not a covert action?

Senator FEINGOLD. What kinds of circumstances would justify failing to notify the full congressional Intelligence Committee of covert action?

General HAYDEN. Senator, I apologize, that's a very difficult question for me to answer. And as I said in my opening comments, all right, this is a long war, and it's going to require broad political support over a long period of time.

Senator FEINGOLD. You can't give me a hypothetical, something that might fit that category, so I can imagine what it would be?

General HAYDEN. Senator, I'm sorry. I just really can't.

Senator FEINGOLD. OK.

General HAYDEN. It's a bit beyond my experience level.

Senator FEINGOLD. Will you notify the full Committee after the covert action has begun?

General HAYDEN. Senator, I'd have to refer myself to the laws in terms of who gets notified and when. I do know that there is a requirement for speedy notification, and we, of course, would do that.

Senator FEINGOLD. Will you provide to the full Committee information on all past intelligence activities, including covert action that has been previously provided only to the gang of eight?

General HAYDEN. Senator, I'm sorry, I'm just not familiar with the requirements under the law for that.

Senator FEINGOLD. Mr. Chairman, I would simply ask that you review that question, if you would. And I do request, unless you have an objection, that that be provided.

Chairman ROBERTS. We'll be happy to review it.

Senator FEINGOLD. Thank you, Mr. Chairman.

Chairman ROBERTS. You bet.

Senator Chambliss.

Let me say that we are expecting votes at 4:15, two or three stacked votes. We still have 4 Members under the 20-minute rule. It may well be that we'll have to go back to regular order in terms of the timeframe for a follow-up on Members that wish to continue questioning the General during an open session. I would like to get to a closed session as soon as we can, and I know the General would as well. And I think a lot of Members have questions that can be better answered in regards to a closed session.

Senator Chambliss.

Senator CHAMBLISS. Thank you very much, Mr. Chairman.

General Hayden, having had the privilege of working with you for about the last 6 years or so in your position at NSA, as well as more recently as the Deputy at DNI, I want to congratulate you on this appointment as you enter this next phase of your intelligence career.

And I know, 35 years ago or so when you joined the military, it was a commitment not just to Mike Hayden, but of his family. And I'm very pleased to see your family here today continuing in that great support of you as you make your presentation here today.

Now it's truly a great country we live in when we can have differences of opinion, particularly public differences of opinion, relative to something as sensitive as intelligence and whether programs conducted by intelligence agencies are right or wrong.

I happen to have a significantly different opinion than some of my colleagues that have expressed disappointment or made statements regarding the programs that have been under your leadership.

I happen to think that you've done a very good job, a very professional job, of carrying out your duty as Director of the National Security Agency. And I think that I am very comfortable in saying—and I want to be careful how I say this—but the programs that have been carried out by the professionals that worked under you for the last several years have been carried out very professionally.

And it's because of the folks at your agency, as well as other folks in the intelligence community, that we have not had another domestic attack since September 11th. And it's because of your leadership and the folks under you, as well as the intelligence community team, General Hayden, that American lives have been saved, both domestically as well as abroad.

And I suspect that, knowing the way this town is about leaking things, that maybe some of the good things that are happening will get leaked out too one of these days. And it's unfortunate that it

seems to be just the sensational and negative things that get leaked.

Now, as you know, General, you and I have discussed your nomination privately on several different occasions, and I have had some concerns relative to your nomination that have absolutely nothing to do with your qualifications.

I went back and I looked at a lot of the history regarding the Director of Central Intelligence and whether or not that individual ought to come from the civilian side or whether they ought to come from the military side. And as you know, this is one major concern that I have had from day one regarding your nomination by the President.

In the original 1947 Act, it was pretty clear that Congress intended that this be a civilian agency. But there was no limitation on whether or not the individual as Director ought to come from the military side or from the civilian side.

But in the Act that we passed in 2005, we set up the Director of National Intelligence, we also set up a principal deputy position. And we specifically stated in that legislation that not more than one of the individuals serving in the position specified in this paragraph “may be a commissioned officer of the armed forces in active status.”

That means either you in your position as the deputy or the position of the DNI, both of them could not be coming from the military side. And so there was a lot of discussion about that issue, as to whether or not they ought to be military civilian. That’s my point there.

In the bill that we passed out of this Committee last year, the report language under section 421 reads as follows: “The considerations that encourage appointment of a military officer to the position of DNI or PDNI”—principal deputy—“do not apply to the leadership of the CIA.

“Indeed, given the CIA’s establishment in 1947 as an independent civilian agency with no direct military or law enforcement responsibilities, the Committee—this Committee—does not believe that a similar construct of military leadership is appropriate at the Agency. And accordingly, the Committee recommends that both the Director and the deputy Director of the CIA should be appointed from civilian life.”

Now that is the problem that I have been wrestling with, General, and the issue that you and I have had extensive conversations in private about. I also went back and looked just to see what the statute said regarding the differences in the role and mission in the intelligence community on the military side versus the civilian side.

And under the 1947 Act, it’s not real specific as to the responsibilities except that it does say, in the Act of 1947, that the National Security Agency is primarily responsible for the conduct of signals intelligence activities.

However, under Executive Order No. 12333, it specifically states that the National Security Agency, whose responsibilities shall include establishment and operation of an effective, unified organization for signals intelligence activities—and it goes on to talk about that.

And the issue relative to the responsibility of the Defense Intelligence Agency is also set forth in Executive Order No. 12333. And it says, as follows, that the DIA, whose responsibilities shall include collection, production, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs and other Defense components.

Now, that's what creates my problem, General. And I just simply want to ask the question and give you the opportunity, publicly, to tell the American people how you're going to go from 35 years of this military intelligence mindset to heading up an agency, the CIA, that has a different role and function, a role primarily of gathering intelligence from a human intelligence standpoint abroad or outside the United States.

General HAYDEN. Sir, I guess it's, kind of, a four-corner matrix here. Let me take each pair.

I think the first issue is national and DOD.

Senator CHAMBLISS. All right.

General HAYDEN. I mean, the CIA is a national intelligence organization. And you make the point quite correctly that DIA is a Defense intelligence organization.

Now, those lines get blurred—I mean, clearly. DIA actually does a lot of things for Ambassador Negroonte right now. And I already said earlier today, the CIA's doing an awful lot of tactical things for the Department of Defense. But fundamentally, one's a national agency; one's a Defense agency.

Senator, NSA is a national agency. It's on the same line as CIA in terms of its functioning. I know it resides inside the Department of Defense. But its tasking, even under the old law, came from the DCI, not the Secretary.

And under the new law, you've strengthened Ambassador Negroonte even more in terms of his direct control over NSA.

Defense, when I was the Director of NSA, Defense was our biggest customer, but it wasn't our only customer and it wasn't our most important customer. I feel like I was running a national agency, and that that experience should be able to translate, if I'm confirmed, to my ability to do something at Langley, at CIA.

The other aspect you bring up, Senator, the other pair in this matrix is human intelligence and signals intelligence. And I understand that. I've spent a lot of time at NSA, 6 years, but I do have HUMINT experience. I was an attache. I went through language training for a year in preparation for being an attache. I've crawled in the mud to take pictures of MIG-23s taking off from Bulgarian airfields, so I could understand what type of model it was. Had sources, as an overt collector, not a covert collector, but had sources, asked questions, made reports.

So I do think I have a sense of that.

And at the NSA job, as Director Tenet, as George, was very fond of pointing out, there was a convergence between the science and art of SIGINT and the science and art of HUMINT. They were getting very close to one another.

So I actually think I'm not badly prepared. I wouldn't be so arrogant to say my career has guided me to this job. Not at all. But I don't think I'm badly prepared for this—running a national agency, responsive to the DCI, broad experience in the intelligence com-

munity, and answering not tactical military questions throughout my career, but a fair mix of both strategic, operational and tactical.

Senator CHAMBLISS. The focus at the CIA has got to be on improving on HUMINT collection.

General HAYDEN. Yes, sir.

Senator CHAMBLISS. And you feel comfortable with your intelligence background that you have that you're ready to focus almost purely on HUMINT collection at this point?

General HAYDEN. Yes, sir. I would add, not meant to correct, but just to be inclusive, the HUMINT collection and the analysis. I think they both have to be dealt with.

But in terms of CIA as a collection agency, yes, sir, it's HUMINT collection.

Senator CHAMBLISS. OK. And let's talk about the analysis just a minute, because the CIA was always intended to be an independent agency. And even under the new structure within the framework of the new organization that we have, all of the agencies still have to be somewhat independent.

And you have been the No. 2 guy under the DNI, Director Negroponte. You now are being asked to move over to an agency that sometimes is going to come into conflict with what the DNI may think about the intelligence world.

Now, we've already talked about your relationship with Secretary Rumsfeld, and knowing you like I do and having worked with you, I know that you can be a very independent individual, and that's good. I think you have to be. You're going to have to be even more independent in this position.

Now, I don't know all the ins and outs of what happened, but I do know, just because of what you have said and what I know previously from conversations with folks within the community over the last couple of weeks, that there was some independence expressed by Director Goss relative to the removal of certain analytic capability out of the CIA over to NCTC.

Now, when those things happen, are you prepared to face conflicts with the DNI when the situation arises, to sort of stand your ground for the CIA?

General HAYDEN. Yes, sir. That's a lot better question than the GI heritage and how it'll affect things, because I have a great deal of respect and admiration and good friendship with Ambassador Negroponte.

But the answer to your question is of course. I mean, there is no right and wrong in these kinds of scrums. And you're right, there was a bit of a scrum over counterterrorism analysis, and I went into detail about that an hour or two ago.

You clearly need to represent the interests of your agency because you've got your lane and you've got to perform well in your lane, but you also have to understand—and this doesn't have anything to do with the fact that I'm working for the Ambassador now—you could do it when I was Director of NSA. At the end of the day, though, you've got to accept the decision that's best for the community.

After having major points of view, as long as that boss knows the cost he's imposing on you for your particular, unique function, as long as he understands that and has come to the conclusion, "Yes,

but this decision is better for the overall functioning of the community as a whole,” and then it’s time, I think, to get on and do it and do it well.

Senator CHAMBLISS. Well, let me tell you why this issue particularly concerns me. I felt all along that the position of DNI—and I still feel—that person does not need to be an expert in intelligence. And Ambassador Negroponte is not an expert in intelligence. He has good people around him who are. And you’re one of those people. You are an expert in intelligence.

And when it comes to knowing what’s best for the community, I trust your judgment impeccably, and I certainly hope that he does. But I know that there are going to be times when the conflict is going to occur. And we’re going to know that.

General HAYDEN. Yes, sir.

Senator CHAMBLISS. From an oversight capacity, it’s our responsibility to know that. And we expect you, General, to stand up for what you think is the correct thing to do for the Central Intelligence Agency because it’s at a critical juncture right now.

General HAYDEN. Yes, sir.

Senator CHAMBLISS. It’s an agency that’s always been a very stable agency. And here we are with our third Director in the last 2 years. We’re coming off of two major intelligence failures that happened on the watch of one of those Directors. And we can’t afford for that to happen again.

So I know you’re independent, I know you can and I assume you will stand up every day for what’s right for the Agency.

General HAYDEN. Yes, sir.

Senator CHAMBLISS. But know that we’re going to be making sure you do.

There’s also another issue that we have discussed within this Committee any number of times, and we’ve seen some recent activity at the Agency regarding how the Directors dealt with leaks and individuals who may or may not be responsible for leaks at the Agency.

You’ve had some experience at NSA. You’ve had experience as the deputy for the DNI. What is going to be your approach to leaks and those responsible for the leaks at CIA?

General HAYDEN. Yes, sir.

Senator, obviously I know how we all abhor leaks. And there’s the usual mantra: It puts at risk sources and methods and so on. But beyond that, it really has a corrosive effect on the integrity of the community. You can’t expect people to make tough decisions and hard-edged assessments and then have that pushed into public debate in ways it was never intended.

And so this is a problem, and I meant what I said in the opening statement—get CIA out of the news as source or subject so we can get back to business, back to basics and do what the Nation expects us to do.

I admire Director Goss for the action he took with regard to this last round of unauthorized disclosures. That is not to say that all circumstances in the future would demand the same kind of response. But you have the same kind of commitment from me that I know you had from him in terms of taking all appropriate and

effective action to not leak classified information to those who are not authorized to receive it.

Senator CHAMBLISS. General, one point that I have continuously made over the last several years regarding intelligence community and particularly after September 11th was our failure to share information properly. We've made great strides in the sharing of information, but we are still a long ways away from where we need to be.

One thing that was very positive that Director Goss did was, frankly, eliminating some people in positions who tended to encourage information to be held within the Agency so the Agency could get the so-called credit for the takedown or whatever it may be.

We've got to get away from that mentality. And I think he's moved us a long ways in the right direction. Same way with Director Mueller at the FBI.

Can you tell us what thoughts you have or what ideas you have about how to improve the information sharing between the folks in the community?

General HAYDEN. Yes, sir. You bring up a great point. I mean, the bottom line is results, not credit. And so we should view ourselves as contributing to an overall national effort. And there are legitimate reasons for making some kinds of information close-hold. Lord knows, we've talked about that this afternoon.

But they have to be legitimate reasons. And those reasons have to be examined and re-examined almost constantly, because you just can't get in the cultural habits of we haven't shared this, therefore we will not in the future share this.

Senator, I experienced it 6 years at NSA. It's a constant struggle. But progress can be made.

And the most intriguing and satisfying aspect is after you've made what seems like this dramatic break from the past, 2 or 3 months later, this new state of being you're in, where you're sharing at a different level, seems like it's been that way for 50 years. We just have to keep moving that line.

Senator CHAMBLISS. Last, General, Senator Warner is right. As we travel around the world, one of the things we do is to try to visit with as many government agents as we can in the field, including our CIA personnel.

And every time I do, it's interesting to hear the reaction of folks. But particularly over the last 6 months it's been interesting, because there's almost been a 180 degree change in attitude that I have seen out there. And it's because Director Goss came in and immediately mandated that agents in the field be risk-takers versus being risk-averse.

And they had a tendency to be risk-averse over the last decade. And that's part of the problem that we have talked about publicly and privately relative to our HUMINT capability.

And folks joined the Agency because they're excited about getting into that world. They certainly don't come into the Agency to make a lot of money. But they enjoy what they're doing. And the more risks they're asked to take, the better they like it.

Director Goss is moving in that direction. And I hope you will continue to encourage and mandate to our agents in the field to be risk-takers as they gather intelligence.

General HAYDEN. Yes, sir. That would be my intent. Can I add an additional thought to that, Senator?

Senator CHAMBLISS. Yes.

General HAYDEN. We talked about two things today that, as a practical matter, it's going to be a challenge to get inside the same box. Everyone has recommended risk-taking.

And we've also talked and had a healthy dialog about accountability. And you need both. And clearly, you must hold people accountable for wrongdoing.

But do you see the leadership challenge, in terms of getting both a culture of risk-taking and a culture of accountability into the same place?

There was just a phrase in my opening remarks that said something about top cover for people in order to enable them to be more free to take risks. We'll have both, Senator. But we'll probably have long dialogs with the Members of the Committee to balance the things that we both desperately need.

Senator CHAMBLISS. It's interesting you mentioned that. I didn't write it down, but three things you said—and one of them was the right top cover, which is critically important.

Thank you, General. Thanks, Mr. Chairman.

Chairman ROBERTS. Senator Mikulski.

Senator MIKULSKI. Thank you, Mr. Chairman. General Hayden, I want to echo the remarks of my colleagues to welcome not only you but, of course, your family, to Mrs. Hayden and your children who are here and those who aren't.

We know that you couldn't do what you've done for the last 35 years without the support of your wife and your children. And we need to express that appreciation to them.

I've known you for more than 5 years, as the Director of the National Security Agency and then as the Deputy DNI, and know, like all, that you've really distinguished yourself over these 35 years and your background is impressive.

You bring those old-fashioned blue collar values of being a Duquesne man, forgiving you for being a fan of the Steelers—

[Laughter.]

Senator MIKULSKI [continuing]. Things along those lines—but also, as you said, willing to be in the mud in Bulgaria, to being at the National Security Council.

So today, as we listen to your testimony, know that as I sit here to render my independent judgment, when I have to choose in voting for you or not, here and on the floor, I'm going to use five criteria—my questions—and I use them for everyone.

No. 1, are you competent? No. 2, do you bring personal integrity? No. 3, are you independent? No. 4, are you committed to the Constitution—not to a President, but to the Constitution—and, No. 5, are you committed to the core mission of the department that you are asked to lead.

Clearly, you bring competence—everything about your background shows it. I think we would agree, you're a brainy guy, you've had years of experience in the field of intelligence.

I do believe you're a man of personal integrity, and know that, with the work that you've done, that you've transformed an analog agency to a digital one, you've concentrated on changing the NSA,

being really a big help to having the DNI set up this new agency and so on.

Independence is one of the areas that I'm going to be asking about, because I've known you since 1999 and I've known you as a candid reformer. What I'm concerned about, though, is the history of when one goes to the CIA, they go from being reformers to being cheerleaders, often, for an agency.

One of our questions, of course, as we've looked at the warrantless surveillance program, the data-mining and others, is in your presentations, are you still the candid reformer or have you moved to cheerleader? And these are no-fault, but these are there.

And then, the other is, given the pressures of being at the CIA, how do you retain an independent voice?

As I said to you in our private conversations, there are issues that are going to be asked of you in the Committee, as Senator Chambliss and others have said, that have nothing to do with you personally. But we've watched what's happened to CIA.

I go back to the Clinton years. We had that revolving door with the fiasco of Woolsey and the disaster of Deutch. Then in comes George Tenet, who we thought had it together. We had the COLE incident. We had the World Trade Center, No. 1, didn't follow up on that. World Trade Center, No. 2. "Slam dunk, Mr. President."

And then we get Porter Goss. I don't share what's been said here about what a great guy Porter Goss was. I think he brought in a partisan ax and nearly destroyed the Agency. And it's not about saving his face; I worry about saving the Nation.

So to all who are watching this on C-SPAN, including the bad guys, we want them to know we want to get it right, so that this next Director of the CIA is the best we have to offer to be able to protect the Nation. So that's why this very grueling hearing, and we thank you. I know you must be exhausted. We want to acknowledge that.

But I want you to know why we're all so obsessed, because we've watched in two Administrations what happens to our Directors of CIA.

So this, then, takes me to following on with what Senator Chambliss raised about the military. In my private conversation with you, I raised even my own concerns about a military person heading it. I have great respect for military officers, and they have a unique role. But should that person head up the CIA?

So let me ask a couple very specific questions. If you are confirmed as head of the CIA and remain an active duty officer in the United States armed services, what will be your chain of command and who is your supervisor?

General HAYDEN. Ma'am, unarguably, I report directly to Ambassador Negroponte, the Director of National Intelligence. And that's the only chain of command there is.

Senator MIKULSKI. And then, Ambassador Negroponte or whomever is head of the DNI, will continue to be your supervisor in that sense.

General HAYDEN. Absolutely. Yes, ma'am.

Senator MIKULSKI. Will there be statutory necessity for change? Senator Chambliss cited all kinds of laws.

General HAYDEN. Ma'am, I don't believe there's any requirement for changes in statute if I were to remain active.

Senator MIKULSKI. For you to remain independent.

General HAYDEN. I don't believe so. No, ma'am.

Senator MIKULSKI. Because, as you know, we worry about this power grab coming out of DOD. And this has nothing to do with you, but a lot of us think there's an intel power grab coming out of DOD. And we know you've got to be a team player, but we also don't think you should be subsumed.

Second, given your military career and current position as the Deputy DNI, can you assure the Committee that you will remain appropriately independent of both DOD and the Office of DNI, meaning the speaking truth to power?

General HAYDEN. Yes, ma'am.

Senator MIKULSKI. It's what I call the "ga-ga" factor in the Oval Office. So it's not the most precise term, but it's where through being mesmerized, wanting to serve a President, whatever, we get this so-called, "Yes, sir, Slam-Dunk, Mr. President," rather than speaking the truth to power, even when it is difficult.

General HAYDEN. Yes, ma'am. You've got my assurances to the best of my earthly and human ability, that's exactly what I'll do.

I talked a bit in my opening comments about that nexus of policymaking. And the purpose of intelligence is to draw those left- and right-hand boundaries of the discussion.

Senator MIKULSKI. Well, I appreciate those answers.

Now, let's go out to the CIA. Let's create a past scenario. I talked about the, "Slam dunk, Mr. President," but there was something else that happened when this Government took one of the most esteemed men in the world and put him before the United Nations and had him make the case for going to a preemptive war in Iraq.

Obviously, General Powell, then Secretary of State, gave flawed testimony that he himself feels is now a blight on his career. Something terrible happened out there. This is not the forum to dig in or drill down in that.

But my question to you is, if you were getting General Powell ready to go before the United Nations, what would you have done differently so whatever he did or whatever he said was accurate and truthful and spoke to the world?

General HAYDEN. Yes, ma'am. Right now in the current job, clearly, you know, White House speeches are cleared for language—and, frankly, I'm the one. I'm the funnel through which all intelligence community comments go.

So it is something not just for Secretary Powell's speech, but for all statements by our public officials that you can feel and sense this absolute commitment to accuracy and clarity in the language. It is really present and, frankly, I think what we need to do now is just sustain that; don't let that effect wear off as we go forward in time. We have to be absolutely precise.

Senator MIKULSKI. Well, being precise is one thing, and I would agree with that. But here this man came out, he met with the CIA. They showed him all kinds of pictures, gave him all kinds of stuff. Obviously, some of it was enormously selective.

Would you have intervened and said, No. 1, "I don't think we ought to go to the United Nations," No. 2, "If we go to the United

Nations, these pictures are blurred and they're from 1989"? I'm making it up, I don't quite remember what the pictures were. But they were flawed.

General HAYDEN. Well, clearly, the conclusions were flawed. I mean, there were items of fact in there. And what went wrong was how we latched the items of fact together. You may recall, we played three intercepts, three communications intercepts, from Iraqi military officers during Secretary Powell's presentation.

Now, those are all correct. But what we didn't do was to put all those pieces together. The macro analysis didn't get to the right conclusion. As I suggested earlier, it was almost certainly because we took the data and leaned it against our known assumptions rather than using other or all data and challenging the assumptions that we had.

It was a mistake. We've learned from that.

Senator MIKULSKI. Let's go to your staff. How will you ensure that CIA analysts provide unvarnished intelligence assessments? And will you personally ensure that CIA analysts, that whatever analysis CIA presents to policymakers is independent of political considerations or the policy preferences of the customers?

General HAYDEN. Sure. I'm going to say something that's going to sound a little bit foolish, ma'am, but hear me out. I actually think that task is going to be easy.

The analytical function, getting the analysis right, that's challenging, that's tradecraft, that takes a lot of time. But I think the other task, the honesty in the assessment that you talk about, that's where they are. That's where all analysts are.

The job of the Director is to make sure nothing gets in the way of that, nothing prevents that from blossoming and presenting itself in their final analyses. So I think that's a natural state. What a Director has to do is make sure nothing interferes with that natural state.

Senator MIKULSKI. I appreciate that answer. I know in your testimony in answer to your questions, you talk about red teams to be sure that there is alternative analysis, which we didn't have, for example, in the National Intelligence Estimate going into the war in Iraq.

But in addition to that, for your employees at CIA, will you have some kind of dissent channel—in other words, where there employees who really feel strongly and want to offer dissent, that they have a channel to you?

I'm concerned that some of these leaks came out of frustration and temper tantrums. I don't know where those leaks are. I'm sorry about those leaks. I'm sorry about the damage caused by those leaks.

But what about essentially having both something you might need to hear or a real safety valve for employees?

General HAYDEN. Sure. I believe there are those channels now. Obviously, I need to make sure of that. And if there are, I just need to reinforce that they are to be used if they aren't, to set them up.

Ma'am, from the NSA experience, we had a pretty free-wheeling, open e-mail policy to the Director. And that's something that, I think, worked at Fort Meade and is an approach that I would follow at Langley if I'm confirmed.

Senator MIKULSKI. Well, I look forward to ongoing conversations. I raised this with the DNI, even for the DNI. And I know that's under way.

My last question. Others have asked about data mining and the surveillance. We'll talk more about that in closed session.

But in the 5 years that we've known each other and have talked about privacy versus security and the inherent tension, why didn't you come and ask for reform, either to any Member of the Committee or the Committee and say, this, gathering from what you've said—and I don't want to put words in your mouth—but FISA, in some ways, is dated. It's klutzy; it has choke points; technology has changed; the threat has changed.

Why didn't we get a request for reform, with all these investigations and commissions that went on?

General HAYDEN. Sure, I'll be happy to answer. Right. To be very candid, ma'am, when it began, I did not believe—still don't believe—that I was acting unlawfully. I was acting under a lawful authorization.

And you recall, when I gave—well, actually, when Keith gave the briefing yesterday—

Senator MIKULSKI. I know you believe it was lawful. And you cited examples, with the five different legal opinions.

General HAYDEN. Right.

Senator MIKULSKI. But then you've consistently said that one of the ways you operated—and even in your famous Press Club speech, in the Q&A, you indicated a frustration with some aspects of FISA.

General HAYDEN. Right.

Senator MIKULSKI. And again, along the line that I've said—klutzy, choke points.

Senator MIKULSKI. Those are my words.

General HAYDEN. The phrase I used, "FISA, as currently crafted and currently implemented, gives a certain level of operational effectiveness. And here's where we were with the President's authorization."

No. 1, beyond the belief that we were doing something that was lawful; second, an attempt to change the legislation was a decision that could not be made by the National Security Agency alone. Clearly, that had to be made more broadly by the Administration, including the Department of Justice.

There were clear concerns, in which frankly I shared, that attempts to change FISA would reveal important aspects of the program, eliminating key secrets that enabled us to do the kinds of things we were doing to an enemy whom I'm certain felt that this space was a safe haven for him.

And, finally, in that March 2004 meeting that the Chairman and Senator Hatch had mentioned where we had the senior leadership of the Congress there in addition to the leadership of the two intelligence Committees, there was discussion about changes to FISA.

And without getting into the details of the conversations, ma'am, there was a powerful and general consensus that an attempt to change the legislation would lead to revelations about the nature of the program, and thereby hurt its operational effectiveness.

Senator MIKULSKI. Well, I'd like to talk more about that when we're in the closed hearing.

General HAYDEN. Sure.

Senator MIKULSKI. Particularly what I'll call the klutzy part, the chokepoint part, et cetera.

Mr. Chairman, in the interest of time, I yield back what time I might have, and look forward to further discussions in the closed hearing.

Chairman ROBERTS. I thank the Senator.

Senator Bayh.

Senator BAYH. Thank you, Mr. Chairman.

General, thank you. I'm grateful for your patience today. We've been at this for slightly more than 6 hours now.

General HAYDEN. It's flown by, Senator.

[Laughter.]

Senator BAYH. You have a different sense of time than I do. I admire your cheerfulness in the face of great scrutiny.

I also appreciate your service to our country. You've had a very distinguished career. And we've personally had a good relationship and I've been grateful to you for being forthcoming and responding to my inquiries from time to time.

I'd like to follow up on two or three lines of inquiry. And let me begin with something that you said in your opening statement about the need to strike the right balance between America's security interests but also our interests in the liberty, the freedoms of this country.

Let's start with the security aspect of that. You had addressed in response to one other Senator's question the following—that if this program had been in place before 9/11, in all likelihood two of the hijackers would have been identified. Is that correct?

General HAYDEN. That's right.

Senator BAYH. Since this program has become operational, have we identified any individuals or networks attempting to attack America that we would not have known about otherwise, without this program?

General HAYDEN. I can guarantee you we would not have known otherwise. The attempting to attack, I will not make the claim, Senator, that we intervened with the sniper on the roof with the round in the chamber kind of thing. But we have located, identified and taken action against people affiliated with al-Qa'ida working against the United States and moving in the direction to threaten the United States.

Senator BAYH. Well, that takes care of the security part of the balance. I don't think there's a member of this panel who would disagree that if we have a program that could have identified two of the 9/11 hijackers or other individuals who are malevolent and at some point in the process of attempting to harm this country and our citizens, that we shouldn't be intercepting their conversations and doing what we can to stop them. I think we have unanimous agreement on that.

So let me shift to the liberty side, which is where I think most of the point of emphasis has been here today, and how we go about striking that right balance and giving the American people confidence that we have done so.

You've spoken to this a couple of times, too. And I apologize, it's tough being the last questioner after 6 hours and not being somewhat redundant. So I give you my apologies for that.

But you've spoken a couple of times about the burden of proof, if that's the right term, required before we can access communications, conversations. And you've used the phrase "probable cause." And then I think it's equivalent to what a responsible person would conclude was that they had reason to believe that the subject was affiliated with al-Qa'ida in some way. Is that, my understanding, correct?

General HAYDEN. Yes, sir.

Senator BAYH. Let me ask you this question then, General. Isn't that also the same standard that would apply under FISA?

General HAYDEN. Yes, sir.

Senator BAYH. So why not use FISA then?

General HAYDEN. I can get into—

Senator BAYH. Don't you have to meet the same burden of proof no matter what?

General HAYDEN. Yes, sir. I can get into more detail in closed session and point out some additional difficulties.

But that decision is made by someone operationally involved in the problem. And the movement from that decision to coverage is measured—and a carefully considered decision, and one that meets the standard, one that has its own kind of oversight—the movement from that decision to coverage is measured in minutes.

And that is not what happens—

Senator BAYH. Can you say that again, General? Which decision is measured in minutes?

General HAYDEN. That the analyst has come to conclusion and has gone to the appropriate levels of—

Senator BAYH. There is probable cause to acting on that probable cause?

General HAYDEN. From that decision to coverage is measured in minutes.

That is not what happens in, let me just say, FISA as currently crafted and currently implemented.

Senator BAYH. So it's a question of timeliness and, therefore, efficacy?

General HAYDEN. I would use "efficacy" and there are other aspects that undergird the efficacy point, but I prefer to talk about that a bit in closed session.

Senator BAYH. Well, let me get into that a bit without getting into the specifics that would have to be raised in a closed setting.

Senator Mikulski was asking about the need to update the FISA statute, and you responded that that would be difficult to do without revealing the nature of the program and, therefore, undermining the reason that we would be pursuing this anyway.

General HAYDEN. A position that I held very firmly back in March of 2004, Senator, but things have changed.

Senator BAYH. Couldn't that have been said when the original FISA statute was drafted as well? I mean, any time we're going to write a law in the criminal justice area, particularly when we get into this, we're sort of saying in some ways what we're doing—

General HAYDEN. I think you're right, but if you look at the world of both threat and technology in which FISA was crafted, the impact of that revelation, I think, is dramatically different when your objective is not a long-term law enforcement or a long-term foreign intelligence stare but when your objective is merely to detect and prevent actual physical attack.

Senator BAYH. Well, at some point, General, we're going to need to update the statute. At some point, we're going to need to try write into law, and it's going to be for the whole world to see at that point where the parameters are and how we're trying to strike the balance, and with all that's been revealed to date.

Here's the point I want to make—

General HAYDEN. I take your point about all that's been revealed.

Senator BAYH. Well, I know.

And here's the point I want to make. The nature of this city in particular—and our society, to a certain extent—is that eventually things tend to come out; hopefully not the things that will imperil lives and that sort of thing. But, eventually, in broad parameters, things are revealed. And you and I have discussed this a little bit in private, and I just want to get your on-the-record assessment here for everybody to hear.

It's my conviction that it's in your best interests and the Agency that you are about to head, their best interests, and this Administration's best interests, as much as possible to bring this under the operation of a specific statute that the American people can look at and have some confidence that it's being carried out appropriately.

The whole Article II authority, which I gather is the—and I take your statements at absolute face value, that you believed you were operating legally and you were advised that way by all the lawyers. And I assume that the basis for that was the Article II powers, the inherent powers of the President to protect the country in time of danger and war.

General HAYDEN. Yes, sir, commander-in-chief powers.

Senator BAYH. That power is so nebulous and so broad. One of my colleagues tip-toed up to asking you, and I guess I'll just go ahead and ask it. One of the advantages you bring to this is perhaps that you're not a lawyer, but you are, because of the legal implications of all this, in close consultation with them.

So one of my colleagues—I think it may have been Senator Feingold—was on the cusp of asking, that power is so broad and general, what would not be authorized under Article II power?

General HAYDEN. Senator, you correctly characterized me as not being a lawyer.

But clearly the Article II does not empower the President to do those things that are constitutionally prohibited. And now I will punt here very quickly.

But as you then step back down into statute, I know very well arguments are made with regard to statutes and their ability to constrain the President, and do those statutes in and of themselves conflict with the President's inherent authority. And then I'll stop there because I know that's where the field of conflict is in terms of limiting or delimiting the President's authorities.

Senator BAYH. And I don't want to get you off into the legal weeds here. But by definition, the Constitution can't authorize what is unconstitutional.

General HAYDEN. Right. Yes, sir, that's right.

Senator BAYH. So in this case the question is, did the Constitution authorize the President and the executive branch to do things that a statute, the FISA statute, did not authorize? And the legal advice you got was yes, it did.

General HAYDEN. Sir, I need to make very clear that that's an argument that's wholly based in the Article II portion of the argument. In the AUMF, to use military force, there's a whole separate series of line of reasoning that I know the Attorney General has talked to the Congress about.

Senator BAYH. Well, what worries a lot of people about this is the whole slippery slope argument, and that while in the present case perhaps it's been reasonably applied, what kind of precedent is it setting for the future?

And if the asserted Article II powers can justify activities that would not be authorized under statute, I go back to my question—I don't ask you to answer it again—here's the concern: What would it not authorize? Does it authorize the President to do anything that in his discretion and in the judgment of the people who work for the President is necessary?

And then that gets to the whole checks and balances question and the social contract that you referred to and your desire, which I think is understandable, to keep the Agency out of the press. And the problem with that is that when there is not a perception that there is a robust check and balance, well, that's when the contract begins to fray.

And that's when you end up on the front page. And so it's in your best interests to be as forthcoming as possible.

And then this gets me into the second thing I'd like to explore here. Ordinarily in our society, you'd accomplish that check and balance by being as transparent as possible. But in your line of work, that's kind of hard to do.

So we make up for that by having judicial oversight under FISA or congressional oversight under the authorization of this Committee in Congress. And so there's someone else serving as a check and balance, because the public themselves can't fulfill that role.

And so I get back to the question I was, you know, attempting to ask. Is it your belief that, eventually, it would be helpful—in your best interests—to try and bring this under an amended FISA statute of some kind so that you wouldn't have to rely on a general authority which leads to all the suspicions, because some people are just going to assume the worst and it's not in your best interests to have them doing that?

General HAYDEN. Yes, sir. And as I pointed out earlier, there are already actions under way. I know that Members here have asked NSA for their technical views. And those views have been exchanged with the Department of Justice. The President's already stated he's willing to discuss bringing this under FISA.

And again, let me just stay agnostic to the legal discussion you and I had with regard to the lawfulness of the President's authority. As I stated in my opening statement here, this is going to be

a long war. And our activities in this war have to be sustained by a broad national consensus. Anything that would add to that consensus would be of value, Senator.

Senator BAYH. Let me shift, General, if I could, to something else you said about your belief that the CIA is the gold standard of intelligence. And we want it to be exactly that—the best the world has to offer.

And I'd like to ask you a couple of things about what we need to do—and some of this has been touched upon before—to improve the quality and the reliability of the intelligence that we've been getting.

And I think Senator Hagel touched upon this, and you said at least one thing in response to him. But I'd like to kind of put it up here once again. And perhaps Senator Mikulski touched upon this as well.

What specifically can we do to try and prevent the kind of mistakes that were made with regard to the assessments of weapons of mass destruction in Iraq? Do you have anything specific that we could do? I mean, we're red-teaming things now. You talked about that a little bit with Senator Hagel.

But it's such a tragic thing when you have a war—as Senator Mikulski mentioned—a statesman, the Secretary of State going before the U.N. and relying upon information that just turns out to not be so.

General HAYDEN. Sure. Senator, let me offer this, not in any way of an excuse, but maybe just modest mitigation.

This was almost a perfect storm. You had a regime that was very secretive, a regime that had cheated and lied before, a regime that had kicked out U.N. inspectors, a regime in which, someone suggested earlier this morning, we had low-balled the estimate with regard to weapons of mass destruction, a regime that was busting sanctions left and right and bringing in dual-use equipment for whatever purposes and a regime that wanted to act as if it had weapons of mass destruction in order to keep its head held high in the neighborhood.

That's a real tough problem. As I said, that's not an excuse, just modest mitigation.

But the way to do it is challenge assumptions, red-teaming, tolerance for ambiguity, tolerance for dissenting views.

Let me give you one more thought that I haven't shared earlier. But I saw it out at NSA and I'm going to look for it out at CIA if I'm confirmed and go out there.

When we first got into the grand national debate, "Did he or didn't he?" when we didn't find the weapons after the invasion and the occupation, I brought our analysts in, NSA. Now, they're not all-source; they just do SIGINT. And I said, come on now, we've got five things out there—chem, bio, nukes, missiles and UAVs. Give me your confidence level on each one. And they gave me a number.

And, actually, the numbers are pretty high.

Nuke was pretty low, about a 3, but the other ones were 5 and above in terms of they thought he had them.

As we went further into this, I had them back in a month or two later. Their whole tone and demeanor had changed. There was a

lack of confidence. Everything was being marshmallowed to me—a lot of “possibles” and “could ofs” and “maybes” and so on.

We don’t need that either. There’s a sweet spot there where you’ve put all the rigor in you need to put in, but you’re not afraid to call the ball and strike on the black of the plate on the outside corner, you actually do make the call. It’s a challenge for leadership.

Senator BAYH. Well, let me address that, too. And it’s a question I asked your predecessor in this post, and here’s the question I have. I asked him, and I’ll ask you, compared to the quality of the assessments, the reliability of the assessments with regard to what weapons of mass destruction in Iraq, how would you clarify our assessments and understanding of the nuclear program in Iran?

And before you answer that, I then asked him—and I want you to answer that—but I then asked—he kind of perked up, I said, “Are they more reliable, less reliable or about the same?” And he perked up and he said, “Oh, they’re much more reliable.” And I said, “Well, really?” I was kind of encouraged by that initially. I said, “Really.” And he said, “Oh, yes.” He said, “We’re now admitting what we don’t know.”

General HAYDEN. Yes, sir.

Senator BAYH. And I paused and I said, “Well, then what you’re saying to me is that our assessments are more reliable but no more illuminating.” And he said, “Well, yes, that’s exactly right.”

Well, that, as you know, is ultimately not the place we need to be.

General HAYDEN. Also true.

Senator BAYH. So those two questions—compare the quality and the accuracy of WMD in Iraq to what we know in Iran, and then what do we need to do to make them actually more illuminating in the long run and not just admitting what we don’t know?

General HAYDEN. Yes, sir.

In open session let me just say, I think our data is better, not night and day better, but our data is better, and our judgments are far more clear. And I wouldn’t throw that one away, that clarity of the judgment—what we know, what we assess, what we don’t know is very important. But a lot more to be done in terms of getting information to be, like you described, illuminating as well as honest.

Senator BAYH. One final thing, General. Some people have suggested and I want to ask you about the relationship at least as you perceive it between Central Intelligence Agency and the FBI for working well together and that kind of thing.

And then I’d like to ask you this. Almost every other Western nation has the equivalent of what the British have, MI5. Why are we different?

General HAYDEN. Yes, sir.

Senator BAYH. And should we be different?

General HAYDEN. I don’t know that one.

In my current job, I actually have a chance to talk about this because creating that National Security Branch inside FBI is one of the very major muscle movements in the new intelligence structure that you all legislated and the Ambassador is attempting to carry out.

And my usual stump speech goes along the lines of: “And look, that’s a domestic intelligence function, but that’s OK. There are a lot of really good, functioning democracies out there that have this. You’ve got CSIS in Canada, you’ve got BSS or MI5 in Great Britain.” And then I’ll usually pause and say, “But we’re the only ones that try to put it inside our Federal law enforcement agency.”

That was a decision made by the Congress. I think the decision was that, not unlike the dilemma that Senator DeWine brought up this morning about putting NOCs—nonofficial cover folks—in a separate agency, that may be theoretically pure, but it is incredibly disruptive. And so the decision was made: Let’s give this a shot putting it inside the FBI.

That gives you stability. That allows you to borrow from things that already exist. But it also gives you what I would call cultural challenges, making sure this baby gets a chance to grow up to full manhood inside an agency that has been historically somewhat different.

That’s a challenge. I won’t undercut that at all. That’s a challenge.

But I have, in the current job, visited FBI field offices—spent a day at the office in Pittsburgh, spent another day at the office in San Antonio. There’s a lot of enthusiasm out there for this mission. I was really heartened to see that.

I think CIA has a lot to offer the Bureau in terms of tradecraft and standards and training and so on. And that would certainly be something I would move to effect. I was very heartened that after the President’s announcement one of the first persons to call me was Director Mueller.

Senator BAYH. My final comment, General, is just to revisit what I had said previously. I would encourage you, and those that you’re working with, as soon as you can without feeling like you’re jeopardizing the efficacy of our efforts to protect the country, try and propose some specific revisions to statute.

General HAYDEN. Yes, sir.

Senator BAYH. Since this is an area where we can’t be terribly transparent, at least then we’ll have the judicial oversight function.

And also to encourage you to, as much as possible, have more robust briefings for the Committee as we had last night. You’ve heard that from some of my other colleagues as well.

General HAYDEN. Yes, sir.

Senator BAYH. And the reason for that, again, is just finally it’s in your best interest and the Administration’s best interest and the country’s best interest to not have people feel as if this is being handled by surprise or by leak or, in some cases—and I’m not referring to you or the more senior Members of this Committee—but too often it’s a game of hide and seek by the Administration, sharing as little as possible and then it’s—you don’t want people assuming the worst.

And that, too often, happens when the oversight—judicial or congressional—is not as robust as it might otherwise be. That is what will retain that contract that you care about and keep you out of the front pages, which I know you’d really love.

General HAYDEN. Thank you.

Senator BAYH. Thank you, General.

Chairman ROBERTS. We will now go to regular order for a second round. And by "regular order," I mean 5 minutes.

I apologize in that I had already said each person would have 20, but we have scheduled votes, and I would like to at least have an opportunity for ample time for a closed session after those votes, and perhaps even before them, to get started.

So we can see how that goes. We have five—Senator Bond, Senator Levin, Senator Wyden and Senator Snowe. I don't know about Senator DeWine. And so, consequently, we will start with Senator Bond.

Senator WYDEN. Mr. Chairman, parliamentary inquiry.

Chairman ROBERTS. Yes.

Senator WYDEN. Many of us thought we were going to have 40 more minutes, because that's what we were told last night, that we would have three 20-minute sessions. Now we're going to have 5 minutes and that will be it?

Chairman ROBERTS. If the gentleman wishes another 5 minutes and another 5 minutes, I will stay with him, and I know the General will. But we will have stacked votes sometime between 4 and 4:15.

And so, consequently, to come after that, the closed session is going to go until about 7 or 8 tonight. And I think the witness has spent 7 hours, and I think if we can be more concise, if the Senator wishes to have an additional 5, an additional 5, I will certainly honor that.

Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

And my sincere thanks to you, General Hayden. You show unbelievable perseverance in staying with it. I support the Chairman's idea that we move quickly to get into closed session, because many very important questions have been raised that can be answered only in the closed session.

I want to hit very quickly on the question of whether CIA should rid itself of community-coordinating functions and focus solely on clandestine human collection and analysis, maybe even move the Directorate of Operations out of Washington.

Can you explain what you believe the proper role should be for the CIA and what you believe are fallacies in the position of those who want to trim down the CIA and make it solely operations-centric?

General HAYDEN. Yes, sir, Senator.

I've heard the stories out there. In fact, I've been warned that it's caused a bit of nervousness out at Langley that even further drastic changes will be forthcoming. I think that the structure out there right now is just fine. You know, in a theoretical universe, you want to draw boxes in a different way—that's up to anybody to do.

But in the practical world, this is what we have. It's functioning. And we ought to take advantage of it, and there's no reason we can't use it the way it's currently constructed.

One idea out there is to somehow pull the Directorate of Intelligence out of the CIA and just leave the clandestine service behind, and tuck the Directorate of Intelligence up under the DNI,

because he's the one, obviously, representing the community in the morning intelligence briefings.

As soon as we do that, Senator, we have just created the DCI. We have just gone to a world in which the guy who is running the community is also now going to be responsible for running a large agency. I just don't see the wisdom in that.

So I think the structure is about right.

I didn't quite understand one of your earlier comments. I think you were talking about the CIA having some community functions. And on behalf of the DNI, it does have that national HUMINT manager function, which I think is very critical. And that's the right spot.

Senator BOND. As one who has sought to give the DNI more power, while I appreciate your willingness to stand up to the DNI and present your views, the question is, when the DNI, for example, brings more analysts in to do the community function in the NCTC, things like that is what I believe the DNI should do if we're to have effective coordination. And I, for one, would look for you to present your viewpoints.

General HAYDEN. Oh yes.

Senator BOND. But we have had, in the past—to be honest—instances where the CIA had been less than forthcoming in dealing with other agencies on areas of mutual interest. And I trust that you will break that down, but the DNI will see that that will happen.

I have a couple of administrative things. I just want to bring to your attention very briefly three areas.

First, I've heard, as I've talked to CIA people around the world, about the less-than-laudable efforts in recruiting and clearing ethnic personnel—in other words, when we're sending somebody against a target, it's helpful to have somebody who has a background in that target.

We may not be doing a good enough job.

And I've heard problems about the administrative support the Agency provides its officers.

And finally, the one thing that bedevils all of us—I have spoken about this with the DNI, I believe when you were there—the tremendous time lag in getting security clearances, often when somebody is into and back out of the Agency or perhaps even a confidential or a classified contractor who's doing IT work, for example, from one agency to another agency, another agency may have to wait 6 to 9 months for new clearances each time.

Those are administrative problems, but I think they are a significant problem. I just want to know if you've got any thoughts.

General HAYDEN. I've heard all three of them, Senator.

Senator BOND. And I assume that you will—we can help you work on those?

General HAYDEN. You bet. They're all hard, but they all have to be addressed.

Senator BOND. They are. None of them are easy.

Thank you very much, General Hayden.

Thank you, Mr. Chairman.

General HAYDEN. Senator.

Chairman ROBERTS. Senator Levin?

Senator LEVIN. Thank you, Mr. Chairman.

General, I want to follow up on the Army Field Manual question that I asked you this morning, or that Senator Warner asked you recently. And that had to do with whether under the Detainee Treatment Act there's a requirement to follow the Army Field Manual that applies beyond DOD personnel. And I think your answer was it applies only to DOD personnel.

General HAYDEN. My understanding of the legislation, Senator, is that it explicitly applies to the treatment of personnel under DOD control.

Senator LEVIN. The language says that it will apply to "treatment or technique of interrogation under the effective control of the Department of Defense or under detention in a Department of Defense facility."

General HAYDEN. That's correct. Yes, sir. That's my understanding.

Senator LEVIN. So it could be a CIA interrogation at a Defense Department facility.

General HAYDEN. But the language is very, very explicit. If it's in a DOD facility or under—I think I said under effective DOD control.

Senator LEVIN. I just want to clarify that.

General HAYDEN. Yes, sir. You're correct.

Senator LEVIN. On February 5th, you said on Fox News that, "When NSA goes after the content of a communication under this authorization from the President, the NSA has already established its reasons for being interested in that specific communication."

General HAYDEN. Yes, sir.

Senator LEVIN. That's the probable cause.

General HAYDEN. Yes, sir. And, sir, as you point out, I was careful to use the word "content."

Senator LEVIN. Right.

And that's what I want to ask you about. Do you use the word "content" in that interview in the way that FISA defines content?

General HAYDEN. No, sir, I do not. I use "content" in the normal usage in normal discourse—the conversation itself, everything between hello and goodbye.

Senator LEVIN. So you don't use the FISA—

General HAYDEN. I was not—in that context, I was not using the FISA definition of content, no, sir.

Senator LEVIN. And how long, on the average, does it take the staff at NSA to reach that point after they get the lead, let's say?

In other words, does that normally take a week, 2 weeks, 3 weeks for that whole process to get to the point where you say, "Hey, we think we have probable cause"?

General HAYDEN. Yes, sir. It varies.

Senator LEVIN. What's the range?

General HAYDEN. It's kind of in the range that you just discussed. It could be as quick—and in closed session I will give you specific examples of how quick it is, and that's 90 minutes.

Senator LEVIN. To get to that point.

General HAYDEN. In 90 minutes. And other times it does take a considerable period of time because—you've been out there and vis-

ited, Senator—there's a lot of due diligence. This is not done randomly.

Senator LEVIN. So it could take 2, 3, 4 weeks.

General HAYDEN. In some cases.

Senator LEVIN. Or it could take an hour and a half.

General HAYDEN. Yes, sir. That's right.

Senator LEVIN. All right.

Now, when we chatted in the office, I believe you indicated in the current circumstances that there are more terrorists apparently being created than are being eliminated. I thought that was a very interesting observation. I wonder if you would just expand on that.

General HAYDEN. Yes, sir. I gave a speech in Texas 2 or 3 weeks back, when I was very steady in my old job and before all this started to happen. And what I tried to point out—and it actually ties into the discussion we just had earlier with Senator Bond about shifting our analytic weight from CTC to NCTC—an awful lot of our analytic firepower right now is tied up in current operations to kill or capture those who are going to do us harm, and that's wonderful. And there really is a wonderful record of success that the American people will learn about someday.

But this is a broader war. I actually said in the speech a war of ideas. And the war has got to be fought with all elements of American power. And therefore this shift in weight from CTC and direct support to the DO, to NCTC and broader support across the U.S. Government and all elements of U.S. power is designed to win the war in the long term.

Senator LEVIN. You also indicated to me that at the moment, at least, that you believe there are more terrorists being created than are being eliminated. Is that a fair characterization?

General HAYDEN. I couldn't pull statistics out and say one is X and the other Y.

Senator LEVIN. Just in your judgment.

General HAYDEN. But if you look at the global terrorist threat, in number it looks as if there are more, in capability much reduced.

Senator LEVIN. The Executive order governing declassifying national security information establishes a uniform system. It's Executive Order 13292. And it says that in some exceptional cases the need to protect such information may be outweighed by the public interest in disclosure of the information. And in these cases, the information should be declassified.

When such questions arise, they shall be referred to the Agency head or the senior Agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to the national security that might reasonably be expected from disclosure.

Are you familiar with that language?

General HAYDEN. Senator, I've not read the EO, but what you've described is a process I'm familiar with.

Senator LEVIN. And how important would you say it is to follow that process?

General HAYDEN. Senator, you know, I understand the process. That was a process we used with Secretary Powell's speech. George had to call me to clear on the release of the three transcripts that he played in New York.

Senator LEVIN. Because in a recent letter to me, the Office of DNI wrote that the CIA was not asked to review the classified material that was involved in Scooter Libby's disclosure until 9 days after the President authorized that disclosure.

Were you involved in that discussion at all?

General HAYDEN. No, sir.

Senator LEVIN. Do you know why that process of the Executive order was not followed?

General HAYDEN. Sir, I'm sorry. I do not.

Senator, could I just add one footnote to this?

Senator LEVIN. Sure.

General HAYDEN. With the new legislation, we believe that the law—and this is not quite as clear as it might be—gives the DNI authority to declassify.

If you recall the Zawahiri-Zarqawi letter that was made public last October, we believed that Ambassador Negroponte would have the authority to release that, but because of the Executive order and lack of clarity, we did work with General Alexander and Mike Maples and the other heads of agencies to make sure we had everyone's concurrence.

Senator LEVIN. My time is up on this round. Thank you.

Chairman ROBERTS. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

General, I want to stay with the credibility issue again. This morning, you said that you had never read the Department of Justice memo signing off on the warrantless wiretapping program. That was in response to Senator Feinstein.

General HAYDEN. Yes, sir.

Senator WYDEN. Then you also said your lawyers didn't give you anything in writing on the warrantless wiretapping program.

I'm trying to square that with the statements you made at the Press Club that go on and on and on about all you did to make sure that there was a full effort to nail down that this was a legal program.

Tell me how you reconcile those two.

General HAYDEN. Sure.

Senator WYDEN. I mean, nearly everybody I know reads like a memo, I mean, at least to try to get started on it.

You said you didn't read a memo, and then I compare that to this speech. So reconcile those two for me.

General HAYDEN. Sure. Happily.

What I believe I said at the Press Club was that I had an order signed by the President, passed through the Secretary of Defense whose lawfulness was averred to by the Attorney General.

I knew from personal discussion that the White House counsel also agreed to its lawfulness, and I also knew that there was an opinion which I had not seen that was crafted in the Department of Justice, I believe by OLC at the time, the Office of Legal Counsel, that underpinned the Attorney General's opinion.

I then posed the question to NSA lawyers. And, Senator, it's a long time ago—we may have exchanged paper. I don't have a record of that. But they looked at it and came back serially. I did it to three, and I did it to three independently. And they all came

back independently believing, telling me, based on their understanding of the statute, of the Constitution that this was lawful.

Senator WYDEN. General, let me just move on.

I have many more examples. I mean, this past winter you were the public relations point man, in effect, for the warrantless wire-tapping program. Today, you say you want to keep the CIA out of the news. I'm going to go through more of those examples in closed session.

But let's see if we can get something on the record that would give you, if confirmed, a chance to get off to a strong start in terms of accountability; something Senator Roberts and I, as you know, have pushed for—and that is to make public the report done by the Inspector General on the activities of the CIA prior to 9/11.

I've read it. Obviously, I can't go into it here. I think it's very much relevant to making the kinds of changes to deal with a dangerous post-9/11 world.

Will you work with us, if confirmed, to make any appropriate redactions, if necessary, and finally get that report out to the American people and to the families who saw their loved ones murdered?

General HAYDEN. Senator, I absolutely commit to working with you, but let me—truth in lending here—talk just for a moment about factors bearing on the problem. It is classified. A declassification of it, I think, would not be fair without an equal declassification of the rebuttals that were made to the report.

I, frankly, am not all that familiar with it. I have reviewed the sections that talked about the DCI's relationship with NSA. And in closed session, I can give you my views on that.

And then finally, Senator, I would need to have an honest dialog with you and the Chairman to see, frankly, what effect we are attempting to create by making this public.

Senator WYDEN. In your testimony today you said, and I quote, "I will draw a clear line between what we owe the American people by way of openness and what must remain secret in order for us to continue to do our jobs as charged."

With all due respect, General, who gives you the exclusive authority to make that judgment? Did you mean to say, "I, in conjunction with this Committee and working in a bipartisan way"? And maybe you'd like to amplify it, but the way it's stated is, "I will draw a clear line."

General HAYDEN. Senator, could you just read the sentence to me again?

Senator WYDEN. I'll read it to you. I don't have the exact page in front of me. "I will draw a clear line"——

General HAYDEN. I have it. "I will draw a clear line between what we owe the American public by way of openness and what must remain secret in order for us to continue doing our jobs as charged."

Senator, you and the Committee are not on that stage. This is a discussion between what must remain secret and what could be made public, not unlike what Senator Levin just referred to in Executive Order 13292. Agency heads have an important role to play.

When I went to NSA, NSA didn't say anything about anything. And I found that to be a very unsatisfying place. And so I moved

to try to make more public the Agency's activities, putting a more human face on the Agency.

There is no intent, in that sentence, and I don't think it's even implicit, that I'm drawing a line in terms of the dialog I would have with this Committee.

Senator WYDEN. I would hope not. When you read it, though, it certainly, again, doesn't strike me as something that brings the Congress into a discussion. It sounds like something you've arrogated to yourself to make.

General HAYDEN. No, sir, I didn't mean that at all.

Senator WYDEN. One last question.

I'm pleased to hear that, General.

One last question. I see my light is on.

General, I think you know Senator Lott and I have worked on this in a bipartisan way that I happen to think that there's a huge problem with overclassification of government documents. Both political parties do it. I think it is more for political security than for national security, and I think we need an overhaul—an overhaul—of the way government documents are classified.

There have been some flagrant abuses. I mean, alcoholic beverage preferences of some politician or something gets classified.

What is your sense with respect to whether this is a significant concern?

General HAYDEN. Senator, I might argue with you with regard to the cause, political sensitivity and so on. I don't see that.

I do think we overclassify, and I think it's because we've got bad habits. We're just in a routine that just elevates information to a higher level.

Senator, I know you want to ask more questions in closed session, but I really want to set the record straight. You quoted me as talking last year during my confirmation hearing as saying, "A personal view now, looking backward, we overachieved," which is a quote you had for me with regard to the Trailblazer program.

In the context of the statement, though, what I was saying was, we made the strategic decision, with your support, and I think correctly, that we get out of the mode of building things ourselves. We were America's information-age organization during America's industrial age, but we're not in America's industrial age anymore. We could and should go outside and engage industry in doing this.

A personal view now, looking back, we overachieved. And what I was referring to there is, we moved too much of this business line out to private industry. We defined our relationship with industry as simply the definition of requirements and then expected industry to come back and deliver something. We learned within Trailblazer. And I go on to say that didn't work.

So when I said we overachieved, believe me, it wasn't about the Trailblazer program. It was in the strategy to rely too fully on industry to come up with a solution on their own, and that didn't work.

Senator WYDEN. General, my time is up. I'm only going to tell you that I'm looking at it, and when you said then, a personal view, now, looking back, we overachieved, that is wildly different—wildly different—than what Newsweek reports in their magazine this week.

And of course I can't get into it. And that's why I'm concerned about it, and that is important to this Senator because you've described this as one of your signature issues with respect to information technology.

General HAYDEN. Senator, I repeat, "I overachieved," a phrase I used to say went far too much with industry on this one, we should have had more government participation. I was explaining the failure of Trailblazer.

And I get down to the bottom of that page, and I would say it's about 60–40—60 percent of the difficulty in the program was just the raw difficulty of the challenge; the other 40 percent were things that were within our control.

Senator WYDEN. I think the gap between what Newsweek reports this week on the General's signature issue and the statement that we overachieved is something, again, that I'm concerned about. And we'll have more to discuss in closed session.

Chairman ROBERTS. Well, maybe we had the good fortune of having a Newsweek reporter in the audience.

Senator LEVIN.

Senator LEVIN. Thank you, Mr. Chairman.

General, you made reference to a level-of-confidence assessment that you had asked for from staff at NSA around the time we attacked Iraq, in five areas—I believe nuclear weapons, chemical, biological, UAV and missiles.

General HAYDEN. Yes, sir.

Senator LEVIN. I believe you said that the WMD one got a 3 and everyone else got a—

General HAYDEN. No, the nuke.

Senator LEVIN. The nukes got a 3, and the other ones got a 5.

General HAYDEN. No, above 5—7s, 8s. The missile one got a 10.

Senator LEVIN. Ten being the most confident in your level of assessment.

General HAYDEN. Yes, sir. Yes, sir. To frame it.

Senator LEVIN. Were these assessments, these levels of confidence, asked for before that particular occasion, like back in October during the NIE assessment?

General HAYDEN. Yes, sir. And let me just—45 seconds on the process.

What I asked the folks—and these are young folks, these are analysts—I say, "On SIGINT alone, 0–10, how confident were you on the day we kicked off the war, how confident were you that he had"—OK, nukes was lowest at 3, missiles was highest at 10, everything else was 5, 7 and 8.

Senator LEVIN. Had that kind of an assessment been requested during the October NIE or prior to the war?

General HAYDEN. Sir, these were the body of folks that prepared me to go to the National Intelligence Board that George—NFIB at that time, National Foreign Intelligence Board—I'm the one who raised my hand and voted for the NIE.

Senator LEVIN. I know those are the same folks, but had they given you that kind of a confidence level—

General HAYDEN. Did I have those numbers? No, I did not have those confidence numbers then.

What I had was a body of SIGINT, a body of SIGINT, that ran in this range, Senator. In terms of the conclusions in the NIE, the SIGINT I had ranged from ambiguous to confirmatory.

Senator LEVIN. I understand. And was there a request of that type made for the assessment about any link between Saddam and al-Qa'ida?

General HAYDEN. No, sir, because we didn't sign up to that in the estimate or any estimate.

Senator LEVIN. There have been two public statements I want to ask whether you agree with—both by Senators that have been briefed on the program.

One is by Senator Frist that the program itself is anonymous in the sense that identifiers, in terms of protecting your privacy, are stripped off. And as you know, the program is voluntary—the participants in that program. That was public statement No. 1.

Do you agree with that statement of the Senator?

General HAYDEN. Senator, I'd be delighted to answer that a little bit later in closed session.

Senator LEVIN. You won't answer it or can't answer it?

General HAYDEN. No, sir, I don't want to answer it in open session, sir.

Senator LEVIN. Why is that?

General HAYDEN. I am not in a position to confirm or deny the story that appeared in USA Today.

Senator LEVIN. No, I'm talking about Senator Frist's comment on CNN.

General HAYDEN. Yes, sir, but you're asking me to comment on Senator Frist, which would then—

Senator LEVIN. No, on the statement accuracy. I just wanted to—

General HAYDEN. I understand.

Senator LEVIN. And then the second one is a Member of this Committee who said the President's program uses information collected from phone companies. Are you able to say whether you agree with that?

General HAYDEN. No, sir, I'm not, not in open session.

Senator LEVIN. Same reason?

General HAYDEN. Yes, sir.

Senator LEVIN. Are you familiar with the second Bybee memo?

General HAYDEN. Yes, sir.

Senator LEVIN. You and I have talked about it.

General HAYDEN. Yes, sir, we have.

Senator LEVIN. Have you read the memo?

General HAYDEN. I went through it over the past several days, sir.

Senator LEVIN. OK. Is it your understanding that the second Bybee memo remains operative?

General HAYDEN. I'll get into further detail in the closed session. But in general—let me just take it in closed session so I can be precise.

Senator LEVIN. Even on that question? Even as to whether it remains operative or not?

General HAYDEN. There are additional legal opinions that are offered. But again, to give you the import of those, I would prefer to do that in closed session.

Senator LEVIN. And we've been denied access, all the Members of the Committee at least, apparently the leadership—I take it back. I believe all but perhaps two of us have been denied access to that memo.

Do you know whose decision it was to deny us access?

General HAYDEN. Sir, I'm sorry, I really don't know. But I am aware of the circumstances.

Senator LEVIN. Finally, you've made the statement again here today that, in your personal view, had the President's warrantless surveillance program been in operation prior to 9/11 that two of the hijackers, referring to Midhar and Hazmi, would have been detected.

Now, that's speculation, in my judgment, but nonetheless that's your speculation.

I have to point out the following—that the CIA knew that Midhar and Hazmi left Malaysia in January of 2000 with U.S. visas. The CIA knew in March of 2000 that Hazmi was in the United States soon after leaving Malaysia. Those two were never watchlisted as al-Qa'ida operatives, although the CIA knew they were operatives.

CIA failed to share critical information about them with the FBI, although asked by the FBI in June of 2001, when the meeting took place between the FBI and the CIA in New York City.

And that's all been set forth in a document which is part of the appendix to the joint inquiry of this Committee and the House Committee.

So the CIA knew these two guys were here in the United States. It wasn't something you have to speculate about whether or not the technology or whatever would find them.

Would you agree that there was a significant failure—

General HAYDEN. Oh, yes.

Senator LEVIN [continuing]. On the part of the CIA to track—

General HAYDEN. Sir, the record is clear, and we lost lock on these two individuals.

All I'm saying is if this program had been in place, I am almost near 1.0 in my confidence that the National Security Agency would have raised its hand and said, "Hey, these two guys are in San Diego."

Senator LEVIN. The CIA did not raise its hand, although it knew; is that correct? You've read the history.

General HAYDEN. I have read the history. I'm not familiar with what you just said, though, about their being there.

Senator LEVIN. I would ask, then, that this be made part of the record, and that the General be asked to comment on this for the record.

I would ask for the record, Mr. Chairman, that the letter from the Office of the Director of National Intelligence to me that I referred to in my question to the General, the date being April 27, 2006, also be made part of the record.

Chairman ROBERTS. Without objection.

[The information referred to follows:]

**CIA/FBI FAILURES IN REGARD TO TWO SEPTEMBER 11 HIJACKERS,
THE PHOENIX ELECTRONIC COMMUNICATION, AND THE MOUSSAOUI INVESTIGATION
(BASED ON CHART PRESENTED BY SENATOR CARL LEVIN AT OCTOBER 17, 2002 JOINT INQUIRY HEARING)**

CIA Failures	
al-Mihdhar 1. 1/15/00 - CIA acquires Mihdhar's passport information with multiple entry U.S. visa but does not watchlist him.	1. 1/19/00 - CIA has information to determine Hazmi's full name and learns that Hazmi left Malaysia with Mihdhar on 1/8/00 but does not watchlist Hazmi. Nor does it notify the FBI about the Hazmi travel.
2. 1/8/00 - CIA does not notify FBI when it learns Mihdhar has left Malaysia and, again, does not watchlist him.	2. 1/9/00 - CIA does not check U.S. immigration records to determine whether Hazmi, like Mihdhar, has a U.S. multiple entry visa (which had been used on 4/3/99).
3. 2/5/00 - CIA Headquarters does not read cable on Hazmi travel to U.S., so does not consider likelihood that Mihdhar traveled with him. CIA does not check to determine whether Mihdhar is in the U.S. until 8/21/01 - 17 months later.	3. 3/5/00 - CIA Headquarters does not read cable noting Hazmi travel to U.S., so does not watchlist Hazmi or notify the FBI that he is in the country.
4. 1/20/01 - CIA does not watchlist Mihdhar after learning he was in Malaysia with Khalilad, aka Tawfiq bin Altash, planner of the bombing of USS Cole.	4. 1/20/01 - CIA does not watchlist Hazmi after learning he was in Malaysia with Khalilad, aka Tawfiq bin Altash, planner of the bombing of USS Cole.
5. 6/11/01 - CIA analyst at NY meeting with FBI is aware of Mihdhar travel and visa information but does not pass it on to FBI because "it does not mean anything to [him]" and he does not have permission to reveal operational details.	
FBI Failures	
al-Mihdhar 1. 1/15/00 - CIA notifies FBI about Malaysia meeting, but FBI does not watchlist Mihdhar.	1. 1/18/28/01 - After Mihdhar and Hazmi are placed on watchlist, FBI opens investigation on Mihdhar, but not Hazmi. FBI does not check whether Hazmi extended his original U.S. visa (an extension applied for on 7/12/00, and granted on 6/18/01).
2. 8/28/01 - FBI NY agent request for full criminal investigation is denied by FBI Headquarters official. Agent decries the "wall" preventing the sharing of intelligence information with criminal investigators.	
Moussaoui Investigation, August - September 2001	
Phoenix 7/10/01 Electronic Communication 1. FBI RFU does not direct that FBI field offices establish liaisons with aviation schools around the country, as requested by the Phoenix agent who wrote the Electronic Communication.	1. FBI Headquarters and agents in Minneapolis misunderstand legal standard for obtaining a FISA order, believing they have to link Moussaoui to a "recognized foreign power." Minneapolis wastes time and resources trying to connect Chechen rebels, which FBI did not consider a "recognized foreign power," to al-Qa'ida.
2. FBI RFU fails to share the Phoenix Electronic Communication with other agencies prior to September 11, the FBI's analytical unit, or any of the FBI's field offices	2. On August 24, CTC alerts CIA stations worldwide about Moussaoui. FBI waits until September 4 to send teletype to Intelligence Community and other government agencies, noting that Moussaoui was in custody, but not describing any particular threat, i.e., that he might be connected to a larger plot. The teletype did not recommend that addressees take action or look for additional indicators of a terrorist attack.
3. FBI's New York field office receives the Phoenix Electronic Communication, but does not take action, although personnel there knew that al-Qa'ida had previously received flight training in the U.S.	3. FBI does not connect Moussaoui with heightened threat in Summer 2001, the Phoenix Electronic Communication, or Mihdhar and Hazmi's entry into U.S.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
DIRECTOR OF LEGISLATIVE AFFAIRS
WASHINGTON, DC 20511

April 27, 2006

The Honorable Carl Levin
United States Senate
Washington, DC 20510

Dear Senator Levin:

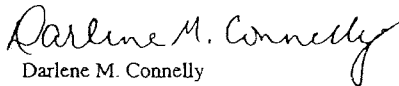
Thank you for meeting with Director John D. Negroponte earlier this week. Director Negroponte asked me to get back to you with the information you requested on the declassification timeline of the October 2002 NIE "Iraq's Continuing Programs for Weapons of Mass Destruction."

As you know, the Office of the Director of National Intelligence was not in existence at the time that NIE was published, or at the time of its declassification, but we have consulted with the CIA and the National Intelligence Council and provide the following:

- July 17, 2003: The National Security Council (NSC) requested the Director of Central Intelligence (DCI) undertake, on a priority basis, a review for declassification of portions of the October 2002 NIE, including key judgments.
- July 18, 2003: The DCI forwarded the declassified material to the NSC; it was released to the public; and, CIA's Office of Congressional Affairs notified the Intelligence Oversight Committees of the declassification of portions of the NIE.

If you require additional information, please contact the undersigned at (202) 201-1164.

Sincerely,



Darlene M. Connelly
Director of Legislative Affairs

Senator LEVIN. Thank you. Those are my last questions. Thank you.

Chairman ROBERTS. Senator Wyden, do you wish another round?

Senator WYDEN. I do. Senator Feingold is here. I think he was ahead of me.

Chairman ROBERTS. I'm sorry. We're going to go to Feingold.

Senator FEINGOLD. All right, thank you, Mr. Chairman. I don't have a lot.

But, General, thank you.

General HAYDEN. Sure.

Senator FEINGOLD. Several times this morning you said that the warrantless surveillance program could have prevented the 9/11 attacks. Did you ever say this in open or closed session to the joint Committee or the 9/11 Commission?

General HAYDEN. No, sir. And I need to clarify. I wouldn't have said that. And if I have, boy, that's badly misspeaking.

What I said was, it would have identified two individuals we knew to be al-Qa'ida, would have identified them as such, and would have identified them inside the United States.

Senator FEINGOLD. Did you tell that to either the joint Committee or the 9/11 Commission?

General HAYDEN. The four members of the joint Committee were aware of the program and its capabilities. I did not brief anyone else or staff, and did not brief it to the 9/11 Commission at all.

Senator FEINGOLD. Why not?

General HAYDEN. Because the program was heavily compartmented, and I was not at liberty to discuss it with the Committee. I would point out, though, that both Committees honed in on this lack of an ability to connect external and internal communications as one of the key failures prior to 9/11.

Senator FEINGOLD. General Hayden, I want to follow up on your statement to Senator Snowe that DOD takes actions that don't look much different than CIA activities. What are the respective roles of the DOD and the CIA?

General HAYDEN. Yes, sir, and I'm going to speak just slightly in general terms and I can go in more detail later.

What we're talking about here is what the Department of Defense calls operational preparation of the environment, OPE. It's the ability of Defense to get into an area and know it prior to the conduct of military operations.

An awful lot of those activities—getting to know an area, preparing the area for future operations and when you're watching them happening—are not, in terms of tradecraft or other aspects, recognizably different than collecting human intelligence for a foreign intelligence purpose.

The legal blood line, though, for this one goes back to title 10, and inherent military activities. The blood line for this goes back to the title 50, foreign intelligence activities. But here, in this melee here, they look very much the same—different authorities, somewhat different purposes, mostly indistinguishable activities.

My view is that, as the national HUMINT manager, the Director of CIA should strap on the responsibility to make sure that this thing down here that walks and quacks and talks like human intelligence is conducted to the same standards as human intelligence

without questioning the Secretary's authority to do it or the legal authority under which that authority is drawn.

Senator FEINGOLD. Does the comparative role of DOD and CIA vary by country? Does it depend?

General HAYDEN. I guess it would depend. I mentioned earlier that because of the press of the war—and this is recent learning for me, by talking to the folks at the Agency—they're doing things that are an awful lot more tactical than they have traditionally done. And so in that sense DOD's stepping up and doing these inherently tactical things. That's good news. It just has to be synchronized.

Senator FEINGOLD. Well, in terms of this idea of sort of doing this on a case-by-case basis, it concerns me. I mean, isn't it better to clarify these functions somehow now? In other words, why should our personnel out in the field have to operate under overlapping authorities? Why not try to resolve this now rather than wait until some critical mission is potentially paralyzed by some kind of interagency conflict?

General HAYDEN. Yes, sir. And that was the purpose of the MOU between Defense and CIA—oh, boy—late last summer, early last fall. And now we're in the process of implementing that, making sure it's implemented in all cases.

And I've talked to the folks at the Agency. They actually put a fairly happy face on this. They think this is going well. And they point out that when there are issues, it's largely attributed to inexperience rather than ill intent.

Senator FEINGOLD. Well, I wish you well with it, because obviously, we don't want people rather than fighting al-Qa'ida to be fighting each other in these situations—I know you want that as much as anybody, and that seems to me to be one of the most important things going forward.

Mr. Chairman, thank you.

And thank you, Senator Wyden.

General HAYDEN. Thank you, Senator.

Chairman ROBERTS. Senator Wyden.

Senator WYDEN. Thank you, Mr. Chairman.

General, to wrap up, my assessment of this is that people in this country see fighting terrorism and protecting privacy as not mutually exclusive. They feel that we can do both.

Right now, the American people cannot find the checks and balances. They don't know what the truth is. And they're very concerned about what's next.

Tell me, for purposes of my closing up in this public session, what can be done to break this cycle? You know, what we have is an announcement from the government about a program that sounds limited, it sounds like it strikes a balance, and then people wait for the next shoe to drop and there are all these revelations in the newspaper. What, in your view, can be done to break the cycle?

General HAYDEN. Senator, more broadly, and without confining my comments to the terrorist surveillance program, and particularly without commenting or verifying anything—

Senator WYDEN. General, I only interrupt you to be humorous. If you want to say we can be more forthcoming, then we can wrap up the topic.

General HAYDEN. Senator, as I said in my opening comments, all right, it is my belief that I will be as open as possible with this Committee. I'll make the caveat that I'm not going to solve the polynomial equation created in Philadelphia in terms of inherent tension between Article I and Article II authorities.

But my belief is that the way we get the comfort of the American people is by the dialog I can have with Members of this Committee, albeit in certain circumstances with the leadership and in other circumstances with the broader Committee.

Senator WYDEN. I will tell you, General, in wrapping up—because this is really how I want to close—for months and months as a Member of this Committee, I have gotten most of my information about the key programs from the newspapers.

I don't think that complies with the 1947 statute. I don't think that's what we need to have bipartisanship in intelligence. I don't think that's what we need to really prepare this country for dealing with a dangerous post-9/11 world.

I joke all the time, I'm only on the Intelligence Committee, what do I know? And, unfortunately, and this has been the case for years, most of this Committee has not been privy to getting the information that's so critical.

Senator Hatch, for example, read from that memo a variety of names and went on for considerable time. Before that New York Times story came out, as far as I can tell, only eight leadership positions and two others knew anything at all about what came out in The New York Times.

So I will tell you, when you say you're going to come to the leadership of the Committee, I will say for years and years—and this is a matter of public record—most of this Committee has not been able to get the sensitive information, the information that our constituents ask. And I think that is not how we're going to get effective intelligence oversight for our country.

Thank you for the extra time, Mr. Chairman.

Chairman ROBERTS. The open part of this hearing is now concluded and we will move immediately to the closed session.

General, thank you for your patience.

General HAYDEN. Yes, sir.

[Whereupon, at 4:40 p.m., the Committee recessed, to reconvene immediately in executive session.]