

**BUILDING AN AGILE INTELLIGENCE COMMUNITY  
TO FIGHT TERRORISM AND EMERGING THREATS**

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**HEARING**

BEFORE THE

COMMITTEE ON  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

SEPTEMBER 8, 2004

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**BUILDING AN AGILE INTELLIGENCE  
COMMUNITY TO FIGHT TERRORISM  
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WEDNESDAY, SEPTEMBER 8, 2004

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:39 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Voinovich, Coleman, Specter, Bennett, Fitzgerald, Sununu, Shelby, Lieberman, Levin, Durbin, Carper, Dayton, Lautenberg and Pryor.

**OPENING STATEMENT OF CHAIRMAN COLLINS**

Chairman COLLINS. The Committee will come to order.

Good morning. First let me apologize for the late start for our hearing. Senator Lieberman and I were among a group of the Members of the House and the Senate who met with the President, Vice President, and Dr. Rice to discuss intelligence reform this morning, and as our two witnesses know better than most, you do not tell the President, "Gee, I have to go. I have another appointment." So Senator Lieberman is on his way back. He will be here very shortly to join us.

Today the Committee on Governmental Affairs holds its sixth hearing on the recommendations of the 9/11 Commission regarding the restructuring of America's Intelligence Community. I thank my colleagues for their dedication to the vital mission assigned to our Committee, and I welcome our distinguished witnesses whose testimony will help to guide us.

In just a few days we will pause to commemorate the third anniversary of a monstrous unprovoked act of war. September 11, 2001 was a day of unimaginable cruelty and inspiring heroism. It is a date all Americans, indeed all civilized people, will remember for all time.

For the purposes of this task before this Committee, however, it is what happened, or more precisely, what did not happen, 3 years ago today, that is instructive. In the chronology of events leading up to the terrorist attacks, September 8, 2001, 3 years ago to the day, was not a remarkable day. Rather, it was like far too many other days for far too many years, a day of missed opportunities.

On the night of September 8 one of the hijackers, Ziad Jarrah, began driving from Baltimore to Newark. Along the way he was

pulled over for speeding. The Maryland State trooper who made the stop had no way of knowing that Jarrah had been in violation of his visa for more than a year, a violation that should have rendered him inadmissible on each of his six reentries into the United States, a violation that should have brought an abrupt end to the flight training he received in Florida. Nor could that trooper have known that foreign governments had advised U.S. intelligence of Jarrah's suspected ties to terrorism, of his possible attendance at al Qaeda training camps in Afghanistan, and of the likelihood that he held two passports in order to disguise his travels. Without access to any of that information, the trooper had no reason to do anything but write him a ticket and send the motorist on his way. Three days later Ziad Jarrah took the controls of Flight 93.

Also on September 8, a memo received at FBI Headquarters outlined the concern of an agent in the Phoenix Field Office that Osama bin Laden had mounted a concerted effort to enroll al Qaeda recruits in American flight schools. The memo was not read that day, just as it had not been read since the agent sent it nearly 2 months earlier.

On September 8, Zacarias Moussaoui was in his third week of detention on an immigration violation. His extremist beliefs, his strong ties to al Qaeda, and his interest in flight training were known to field agents in several components of the Intelligence Community. Despite the continued urging of those field agents, September 8 was just another day in which this information was not shared. No top intelligence officials were briefed and no action was taken. The 9/11 Commission observes that a maximum effort to investigate Moussaoui might have brought investigators to the core of the September 11 plot.

Also on September 8, the CIA had in its possession what the Commission describes as the final piece of the puzzle, information linking Khalid Sheik Mohammed to an alias that he used in planning acts of terrorism. Had this piece been connected to other pieces possessed by various intelligence agencies, a clear picture might have emerged of a top bin Laden lieutenant who had been recruiting operatives to travel to the United States to carry out acts of terrorism and who had definite links to Moussaoui.

But September 8, 2001 was no different from the days before. The pieces remained unconnected. The puzzle remained unsolved.

Much has changed since that time. There have been many improvements. We have created the Department of Homeland Security. The Joint Terrorism Task Force Program has been expanded. The Terrorist Threat Integration Center is up and running. The cooperation and coordination among our intelligence agencies have never been better and have been vastly increased. The two agencies represented here today, the FBI and the CIA, have been leaders in this effort.

We have strengthened our defense against terrorism and we have gone on offense against the terrorists. But we have not yet transformed an Intelligence Community designed for the Cold War into one with the agility to respond to threats that range from nuclear missiles in North Korea to an al Qaeda operative on a highway in Maryland.

An important step was taken less than 2 weeks ago when the President issued a series of Executive Orders to strengthen our Intelligence Community, but as the President noted at that time, these orders are not an alternative to congressional action. They are a starting point. We need to institutionalize through law many of the reforms that have been implemented by the leaders before us today. We must continue the dramatic progress that has been made since September 11. The intelligence structure we create must be designed for the demands of the 21st Century, for the current war against terrorism and for new challenges that we do not yet even envision.

On September 8, 2001, America was a Nation asleep. Three days later we were jolted awake. Three years later, as we again prepare to reflect on the attacks on our country on that day, we must remain alert and committed to doing everything we can to provide a more secure future for our country.

Senator Lieberman.

#### **OPENING STATEMENT OF SENATOR LIEBERMAN**

Senator LIEBERMAN. Thanks very much, Madam Chairman, for that excellent statement, and for the leadership of this Committee that you have shown with such perseverance and steadfastness. I really feel as we convene this hearing, as the Congress reconvenes, that thanks to your leadership we have set a pace and also pursued a course of substantial inquiry that puts our Committee with this hearing and at least one, maybe two more that we will hold next week, in a position to meet, in fact, to beat the deadline that the Senate leadership has set for us, which is to mark up a bill and report it out to the Senate in response to the 9/11 Commission Report before October 1. I cannot thank you enough for that, and I would also like to express my continuing pleasure in working with you on this critically important task.

I extend a good morning to our witnesses, Director Mueller and Director McLaughlin. Thank you both for literally decades of public service, and for standing strong on this particularly critical post-September 11 era of American history in working so well together to improve our security. I look forward to your testimony this morning.

I want to say, just looking back quickly over the several hearings that we have held since the 9/11 Commission Report, that my own initial positive reaction to the Commission's recommendation of a National Intelligence Director has in fact been strengthened by the testimony we have heard about the way the Intelligence Community's budget is developed, and particularly about the respective roles of the Department of Defense and the Director of Central Intelligence.

It seems clear to me at least that this partnership has not been as equal as we would want it to be, nor has it really in fact mirrored what the law seems to ask of and give to the Director of Central Intelligence. That begins with the fact that though the law gives the DCI certain authority, 80 percent of the Intelligence Community's budget is under the Department of Defense. The DCI is then held responsible for any intelligence failures that occur, leading to a situation with accountability but a lack of authority. That

never works. I think one of our main goals here should be to give authority where it belongs, to a strengthened DCI, which we now call the NID, the National Intelligence Director.

We have also heard concerns expressed that creating a strong NID will make it more difficult for our war fighters in the field to receive the intelligence they depend on to prevail. But we have heard ample evidence that the NID will, indeed must, continue to make sure that the National Security Agency, the National Reconnaissance Office, the National Geospatial Agency, and all the other national assets serve the needs of the troops in the field, but to do so while also ensuring that the other critical national intelligence and security priorities we have are being met. That is the function of the new NID.

Personally I conclude that the Director of Central Intelligence today lacks the budget and personnel authorities necessary to achieve the kind of unity of effort that we did not have prior to September 11, as the examples that Senator Collins has just given make amply clear. For example, while the present DCI has authority on paper to transfer personnel or funds between agencies, we have heard testimony that with so many qualifications and approvals necessary, that process can and usually does take as long as 5 months. That is no way to run a national intelligence operation in a time of war.

I believe that our hearings have thus far also answered several critics of the Commission's recommendations who contend that the intelligence failures that did occur prior to September 11 were solely at or between the FBI and the CIA. As more than one witness has stated, when George Tenet, the Director of Central Intelligence declared war on al Qaeda, as far back as 1998, the heads of the other major intelligence organizations, including some of the national assets that the DCI does not have effective budget authority over, did not respond. I think the lack of real authority by the head of the Intelligence Community is clear and is a major problem that we must address.

That was not the only example. We have heard other examples of times in the National Security Agency when there was a tug, justified understandable, between the Intelligence Community and DOD for National Security Agency assets, and because of the strength of DOD too often DOD wins those struggles, when in fact there are times that the DCI and the National Intelligence Community, in the national interest, serving the President, should win them. I think the balance we are talking about will change that.

Madam Chairman, as you said and we are all aware, there have been some very important improvements and advances in cooperation among the different agencies, particularly the two represented before us today, the FBI and the CIA. I know that some have been led by that to argue that the Commission's recommendations are based solely on the pre-September 11 situation, and do not take into account progress since then. Chairman Kean and Vice Chairman Hamilton have testified to us otherwise. The men and women who work in our Intelligence Community, in the CIA, in the FBI, and the many agencies that we have considered, are working to overcome the institutional barriers that have been revealed that made us vulnerable on September 11 and to keep the American

people safe. But it is clear from the many hearings we have had in this Committee and other committees that we have made progress but we still have a long way to go, and the best way to get there is through the kind of statutory change that this Committee is in a position to recommend to the full Senate.

I just add very briefly that Senator Collins and I, and Senator Levin and others, both parties in both houses, had the privilege of being at the White House today for a meeting with the President. I think the President made a very significant announcement, which is that the administration will support strong budgetary authority for the National Intelligence Director, certainly over what is called the National Foreign Intelligence Program, which constitutes well over half, in fact well beyond that, of the intelligence budget of our government. That is a very significant step, including an endorsement of the concept in the 9/11 Commission Report of the centers that are proposed to make sure all parts of our Intelligence Community are working together.

This position taken by the President this morning gives me certainly high hopes that we will do what I know Chairman Collins and all of us want to do which is to adopt strong bipartisan reform and reorganization of our Intelligence Community, which builds on the strengths that we have now as represented by the two strong leaders who are before us, but improves to the point that history has shown us we must improve, and we can do so soon. I think we all know that in this case, I believe, the phrase "proceed with caution" could just as easily mean "move slowly at your own peril," and I do not believe this Congress is going to allow that to happen.

Thank you, Madam Chairman.

Chairman COLLINS. Thank you, Senator Lieberman.

I would now like to introduce our two distinguished witnesses. Each of them has devoted a considerable part of their lifetime's work to public service and we are very grateful for their service to our country.

Robert Mueller became Director of the FBI on September 4, 2001, just 1 week before the terrorist attacks. He immediately became responsible for spearheading what is perhaps the most extensive reorganization of the FBI since its inception in order to strengthen the Bureau's antiterrorism efforts.

John McLaughlin became Acting Director of Central Intelligence on July 12 of this year. He had been Deputy Director of Central Intelligence since October 2000, but I would note that he is a long-time intelligence professional. I believe his career with the CIA actually started in the 1970's, if I remember correctly.

I want to thank you both for sharing your experience and expertise and judgment with us today, and Director Mueller, we will start with you.

**TESTIMONY OF HON. ROBERT S. MUELLER, III,<sup>1</sup> DIRECTOR,  
FEDERAL BUREAU OF INVESTIGATION**

Mr. MUELLER. Thank you and good morning, Madam Chairman, Senator Lieberman and other Members of the Committee.

<sup>1</sup>The prepared statement of Mr. Mueller appears in the Appendix on page 57.

I appreciate the opportunity to be here today to provide the FBI's views on intelligence reform. I would like to start by expressing my gratitude for the efforts of so many inside and outside of government, and particularly the 9/11 Commission and this Committee, who have worked to ensure that our national intelligence capability is postured for success against the adversaries of the 21st Century, and the overarching objective must drive all efforts for reform.

To understand our views on Intelligence Community reform it is perhaps important to first understand how we, in the FBI, believe intelligence should be managed and how it should be produced. We believe that the management of intelligence should be centralized, the management centralized, but that its production should be distributed. For the FBI that means that the Office of Intelligence provides guidance to ensure that we focus intelligence collection and production on intelligence priorities and on filling gaps between what we know and what we do not know. This centralized management overlays our headquarters divisions and our field offices, which themselves remain responsible for intelligence collection, operations, analysis and reporting. The result of this approach is that intelligence and operations are integrated, that the users of intelligence, not the producers, are the judges of the intelligence value. These principles have guided the development of our intelligence program at the FBI since September 11.

The FBI's Office of Intelligence manages intelligence production based on requirements, apportions resources based on threats, and sets standards of intelligence cadre training, source development and validation and collection tasking. The actual production of intelligence occurs within our 56 field offices, 400 resident agencies, our four operational headquarters divisions and perhaps most importantly, by our 800,000 partners in State, local and tribal law enforcement. The Office of Intelligence continually monitors performance through embedded intelligence elements in the field and in headquarters and adjusts tasking and resources based on nationally directed intelligence requirements. The authorities and responsibilities of our Office of Intelligence allow it to carry out two broad areas of responsibility: Management of the FBI Intelligence Community Component; and direction to it to ensure that its activities are in keeping with the priorities established by the President and the needs of the users of intelligence.

Turning to the proposals for intelligence reform, there is widespread agreement now existing as to the necessity of creating a National Intelligence Director as the manager of intelligence production across the 15 Intelligence Community components. We also think that the National Intelligence Director should not be directly responsible for the conduct of operations. The role of the NID should instead be to ensure that appropriate activities and operations are conducted by the constituent elements of the Intelligence Community.

Given the model above, we believe that the NID should have a mechanism by which the principals of the National Security Council and the Homeland Security Council, and the Directors of the CIA, the FBI, and other relevant departments and agencies, are charged with ensuring the responsiveness to the direction of the NID in managing implementation of that direction. These individ-

uials represent in large measure the users of intelligence, and will bring to the National Intelligence Director the views of the users as they set priorities and evaluate Intelligence Community performance. In reality, the principals would delegate that responsibility to a subordinate, and in our case in the FBI it would be to Maureen Baginski, the Executive Assistant Director for Intelligence.

Madam Chairman, the model I have outlined incorporates three core principles for intelligence reform that we think this Committee should consider as it seeks to enact legislation. These three principles are: First, providing analysts transparency into sourcing; second, understanding the value of operational chain of command; and third, protecting civil liberties.

Turning to the first principle, we believe it is important that analysts be provided transparency into intelligence sources. Just as agents need to question the background, motivation and access of their sources, analysts must also examine the credibility of sources who provide intelligence information. FBI analysts do not blindly receive source information and then develop intelligence reports and threat assessments based on that information. Instead, our analysts have transparency to our sources, and the result is a high quality intelligence product.

Historically, individual FBI agents would collect information, analyze that information in the context of their particular case, and then use that analysis to guide their investigation. But the FBI, as an institution, had not elevated that analytical process above the individual case or investigation to an overall effort to analyze intelligence and strategically direct intelligence collection against threats in all of our programs. Today we are doing so, and I believe are doing so successfully. Not only does the FBI remain among the best collectors of information in the world, we now have enhanced our capability to exploit that information for its intelligence value. Ensuring that our analysts, not just our agents, have access to information about our sources plays an important role in the development of thorough and reliable intelligence products.

In the ongoing debate regarding intelligence reform, some have suggested that a new entity composed of analysts be created, as well as a separate entity for the intelligence collectors. We believe that creating such stovepipes would be a step backward in the progress we have made since September 11. Our success has been enhanced by co-locating our analysts with those who must act on the intelligence. The physical and logistical proximity of the analysts to the collectors results in increased transparency for the analysts, which in turn, in my mind, results in better analysis.

The second core principle to consider in reforming the Intelligence Community is the value of the operational chain of command. The 9/11 Commission Report recommended the establishment of a National Counterterrorism Center as the logical next step to further enhance the cooperation between intelligence, national security and law enforcement agencies. That was first initiated by the Terrorist Threat Integration Center subsequent to its establishment in the wake of September 11. As you know and have referred to, Madam Chairman, the President recently issued an Executive Order establishing the National Counterterrorism Center.

Among the provisions of the Executive Order is the directive that the NCTC assign strategic operational responsibilities to lead agencies for counterterrorism activities that are consistent with the law. The Executive Order also explicitly states that: "The Center shall not direct to execution of operations." This directive, which comports with the recommendation of the 9/11 Commission, recognizes the importance of leaving operational control in the hands of the agencies.

At least one of the pending legislative proposals for intelligence reform would transfer the Counterterrorism and Counterintelligence Divisions out of the FBI and into a new entity. We believe that such a proposal fails to recognize that most of the FBI's investigative work is accomplished not at headquarters but by its 56 field offices and 400 satellite offices located throughout the country. An interdependent relationship exists between FBI headquarters divisions and our geographically field offices, both in terms of operational coordination of investigations and a routine exchange of personnel. This interdependent relationship and chain of command between field offices and headquarters divisions cannot be disrupted and still continue to be effective.

The FBI's components, particularly the Counterterrorism and Counterintelligence Divisions are not distinct and severable entities. Rather, they are fluid combinations of a variety of personnel. They include long-term professional employees such as analysts, who have spent decades developing a subject area expertise, mid-career field agents serving 2- or 3-year tours of duty to expand or hone their counterterrorism or counterintelligence experience before returning to management positions in field offices, and senior FBI executives who have proven themselves in leadership roles in the field or in other headquarters components.

If the operational divisions are removed from FBI Headquarters as some have proposed, a large portion of the FBI's counterterrorism and counterintelligence program will still effectively remain within the FBI in the form of the counterterrorism, counterintelligence squads, and task forces in field offices, as well as designated counterterrorism and counterintelligence agents in our various satellite offices. Separating our counterterrorism and counterintelligence leaders from the information collectors and investigators would result, in my mind, in less effective coordination and a less safe America.

In addition, it is important to understand that the FBI's intelligence capabilities are enterprise-wide. Intelligence is integrated into all of the Bureau's investigations, not just counterterrorism and counterintelligence. Some of the reform proposals would carve out sectors of the FBI, but fail to take into account that our counterterrorism and counterintelligence efforts benefit enormously from the intelligence garnered through our criminal investigations, our cyber crime investigations, the work of the FBI laboratory and many of our other programs. Altering the operational chain of command for any FBI program would impair the integration of intelligence that is proven effective in our national security efforts since September 11.

The third, and for us perhaps the most important core principle, is a need to protect civil liberties. As former DCI George Tenet

stated in a hearing earlier this year, the way the CIA conducts operations overseas is very different than the way the FBI conducts operations at home. Concentrating domestic and international counterterrorism operations in one organization represents a serious risk to American civil liberties. It is difficult to expect an agent trained in conducting operations overseas to fully appreciate the necessary legal constraints placed on operations conducted within the United States when we are conducting operations that would and could and often does adversely affect the privacy rights of our citizens.

Let me turn for a moment to the words of the 9/11 Commission's Report, which stated, "The FBI does need to be able to direct its thousands of agents and other employees to collect intelligence in America's cities and towns—interviewing informants, conducting surveillance and searches, tracking individuals, working collaboratively with local authorities, and doing so with meticulous attention to detail and compliance with the law. The FBI's job in the streets of the United States would thus be a domestic equivalent, operating under the U.S. Constitution and quite different laws and rules, to the job of the CIA's operations officers abroad."

The legal limitation, the oversight mechanisms and self-regulatory practices of the Bureau effectively ensure that our operations are carried out within the Constitution and statutory parameters. Indeed, a number of outside entities, including the Government Accounting Office and the Office of Inspector General, have looked at our operations since September 11 and found that we have conducted them with full regard to civil liberties. I might also add that just last month the President issued an Executive Order creating a board on safeguarding American civil liberties. That effort will be launched this month, and the FBI will be a participant in that board.

Recognizing the significant progress the Bureau has made in the past 3 years, the 9/11 Commission recommended that the counterterrorism intelligence collection in the United States remain with the Bureau. We are pleased with the progress that we have made since September 11, and I have spent some time testifying on that in the past. Today I would like to spend just a moment in giving you a brief update on some of our most recent efforts. I will not cover all of those that are included in my statement, I will just touch on a few of them.

We are moving within the Bureau to the creation of a FBI Directorate of Intelligence, a service within a service, as recommended by the Commission and recommended by some Members of Congress.

We have established field intelligence groups in each FBI field office to integrate analysts, agents, linguists and surveillance personnel in the field to bring a dedicated team focus to intelligence operations.

We have set unified standards, policies and training for intelligence analysts, and as part of a new recruiting program, veteran analysts are attending events at colleges and universities throughout the country, and we are offering hiring bonuses to analysts for the first time in FBI history.

We are establishing an intelligence officer certification program for agents, analysts, surveillance specialists, and language analysts. Once established, intelligence officer certification will be a prerequisite for advancement, thus ensuring that all FBI senior managers will ultimately be fully trained and experienced intelligence officers.

We are establishing a career path in which new special agents are initially assigned to a small office and exposed to a wide range of field experiences, and after approximately 3 years agents will then be transferred to a large field office where they will specialize in one of four program areas: Intelligence, counterterrorism/counterintelligence, cyber, or criminal, and will receive advanced training tailored to their area of specialization. In our special agent hiring, we have changed the list of critical skills we are seeking in candidates to include intelligence experience and expertise, foreign languages, and technology.

We have placed reports officers in our Joint Terrorism Task Forces to ensure that vital information is flowing to those who need it, and since September 11, where we had 34 Joint Terrorism Task Forces, we have now expanded that number to 100.

We have issued the first ever FBI requirements and collection tasking documents to our field offices. These documents are fully aligned with the DCI's National Intelligence Priorities Framework, and we have published unclassified versions for our partners in State, local, and tribal law enforcement. This year we are on course to triple the volume of intelligence reporting that we disseminate to the Intelligence Community as well as to State, local, and tribal law enforcement.

In conclusion, Madam Chairman, the FBI's combined mission as an intelligence, counterterrorism, and law enforcement agency gives us the singular ability to exploit the connections between terrorism and criminal activity. Now that the Patriot Act has removed the wall between intelligence and law enforcement investigations, the FBI has a unique capacity to handle both the criminal aspects and intelligence gathering opportunities presented by any terrorism case, giving us the full range of investigative tools. We are concerned that some pending proposals would erect new walls between our law enforcement and our intelligence missions. We also would hope that Congress would renew the Patriot Act because no matter how the organizational charts are drawn, we will continue to need these vital tools in both the law enforcement as well as the intelligence arena to prevent acts of terrorism against the American people.

Over the past 3 years the Bureau has made great strides, yet I am the first to say there is a great deal of work that remains to be done. We have a plan in place to get to where we need to be, and we have the hard-working, dedicated men and women of the FBI to take us there.

Madam Chairman, I thank you and the Members of the Committee for your support and your advice. I look forward to working with you to develop legislation to strengthen our intelligence apparatus and better ensure the protection of the American people. As always, I welcome any suggestions you have for improving our counterterrorism efforts in strengthening our national security.

Thank you again for the opportunity to appear before you today, and I am certainly happy to answer any questions you might have.

Chairman COLLINS. Thank you for your testimony. Director McLaughlin.

**TESTIMONY OF HON. JOHN E McLAUGHLIN,<sup>1</sup> ACTING DIRECTOR OF CENTRAL INTELLIGENCE, CENTRAL INTELLIGENCE AGENCY**

Mr. McLAUGHLIN. Madam Chairman, Senator Lieberman, Members of the Committee, thanks for the opportunity to be here today and to talk to you about all of these matters and to answer your questions. It is very important to us, and I appreciate that opportunity.

As you consider reorganization proposals by the President, the Kean Commission and the Congress, I would like to take a few minutes to talk about the capabilities of the Intelligence Community as it is today, not as it was in 2001. And I do this not to suggest that there is no further need for change, but to emphasize that the foundation you have to build on is stronger than many people realize as they look at the Intelligence Community today.

That said, we can still do better, and I am going to close with some suggestions on how that can be accomplished.

Three years of war have profoundly affected the Intelligence Community. Since September 11, our capacity and effectiveness have grown as our resources have increased and as we have addressed issues highlighted by our internal reviews, by the Commission, and by others. We have adjusted to new challenges, we have built on successes, and we have learned from errors. This has been the most dramatic period of change for intelligence in my memory, and you alluded to some of the changes, Madam Chairman. Some further examples:

Our priorities, the Nation's, and the Intelligence Community's, have changed dramatically since September 11. As you said, Madam Chairman, we are on the offensive worldwide against terrorists, and many of the most dangerous are captured or dead.

Our practices have changed. Intelligence, law enforcement and military officers serve together and share information in real time on the front lines in the war on terrorism at home and abroad. Here in Washington, I chair an operational meeting every day with Intelligence Community representatives, military and law enforcement elements there. At that meeting we review and act on information that arrives in real time. We follow up earlier streams of reporting. We ensure that someone has the responsibility to follow up and get the job done, and we have gotten important results.

Our worldwide coalition had changed. It is broader, deeper and more committed. Where terrorists found sanctuary before, they now find our allies working against them, and we are seeing the results around the world.

Our laws have changed. Director Mueller referred to the Patriot Act. It has given us weapons in the war that we did not have before. It has given us access, critical access, that we did not have before in the foreign Intelligence Community.

<sup>1</sup>The prepared statement of Mr. McLaughlin appears in the Appendix on page 70.

Our institutions have changed. The Terrorist Threat Integration Center enables us to fuse intelligence collected abroad with law enforcement information collected here at home. Twenty-six different data networks now flow there, and they are shared there by officers from the widest array of foreign and domestic agencies ever assembled in one place. People who think we cannot break down the so-called stovepipes ought to visit TTIC, and I know a number of you have.

Now, here are a few real-world effects for those changes:

Many of al Qaeda's pre-September 11 leadership are dead or detained. In almost every case, the take down was a result of aggressive clandestine human and technical operations involving effective cooperation among various intelligence disciplines and with law enforcement.

It was imaginative operations and analysis, CIA officers working with the U.S. military, that helped drive armed forces operations and ousted the Taliban from power in Afghanistan, destroying the al Qaeda sanctuary in the process.

CIA, FBI, and Treasury officers, working together as partners at home and abroad, are starving al Qaeda of its financial lifeblood.

CIA worked with the FBI as it took down extremists in Lackawanna, Columbus, and New York City.

One area of crucial change for the Intelligence Community is its dramatically increased support to the war fighter, especially in Afghanistan and Iraq, where the terrorist challenge remains substantial. I believe such support can and will be preserved in any option that we consider. Everyone in the Intelligence Community understands that NSA and NGA in particular, both integral parts of the National Intelligence Community, have a vital role to play in supporting combat, as does the CIA, and that role would have to be preserved regardless of who they report to or how this community is ultimately structured.

In short, the situation has changed pretty dramatically since September 11, where the 9/11 Commission left off. Two things however are still true: Al Qaeda and other terrorists remain very dangerous; and there is still room for improvement in the Intelligence Community. But the caricature that many seek to perpetuate of a community that does not share information or work together, a community of turf-conscious people competing for influence, that frankly, is not the community that I see and lead today.

Looking ahead now, it is important to note that the threat from terrorist organizations is not stagnant. These organizations learn and adapt. It is not enough for us to keep up. We must anticipate and stay ahead. As we seek to build on the improvements we have made in recent years, we should keep in mind a few of what I would call first principles, just as Director Mueller referred to a few core principles.

First, speed and agility are the keys to winning in the war on terrorism, and profoundly important to the Nation's other intelligence challenges. Speed and agility are not promoted by complicated wiring diagrams, more levels of bureaucracy, dual-hatting, or uncertainty about who is in charge, but speed and agility are promoted by having the right tools to do the job, such as the essential tools provided by the USA Patriot Act.

Second, form should follow function. The functions intelligence must perform today are dramatically different than during the Cold War. Back then we focused heavily on large strategic forces and where countries stood in the bipolar competition of that day. Contrary to what is often said, we long ago moved on to the new challenges of today, locating people, tracking shipments of dangerous materials, and understanding politics down to the tribal level in a world where the only constant is change.

Third, most important to knowing how and what to change is a consensus on what we actually want from our intelligence agencies, along with constancy in resources and moral support for them through good times and bad.

Fourth, some competition is good. Because intelligence reporting can often be interpreted in many different ways, we want all interpretations on the table and an Intelligence Community that facilitates rigorous debate.

Fifth, our foreign partnerships are absolutely critical and serve as a force multiplier in the global war on terror. Changes in our structure must ensure that there is no harm done in how we build, manage, and strengthen these invaluable relationships.

As you know, on August 27, the President signed four Executive Orders and two Presidential Directives intended to address several recommendations of the 9/11 Commission. The President's actions strengthens the foundation upon which you can build. In those Executive Orders there are some significant changes.

First, the DCI will have access to all relevant intelligence relating to transnational terrorism and weapons of mass destruction, including information from the FBI and the Department of Homeland Security.

Second, the President made clear that the DCI must be able to determine—and that is the key word in that Executive Order, determine—the annual and consolidated national foreign intelligence program budget, with the advice of heads of departments or agencies that have an organization within the Intelligence Community. This clarifies significantly the DCI's authority over the national foreign intelligence program.

Third, in establishing the National Counterterrorism Center, the President underscored the government's commitment to create a central and shared knowledge bank on known and suspected terrorists. For the first time, strategic planning for counterterrorism activities, integrating all elements of national power and integrated all-source analysis will occur in one place, overseen and orchestrated by a director reporting to the DCI, and should you create a National Intelligence Director, ultimately to that person.

Regarding the leadership of the Intelligence Community, I have argued and continue to believe that a significantly empowered DCI could fulfill the spirit of the 9/11 Commission recommendations. Nonetheless, now that the President has committed to create a National Intelligence Director, my sole interest is ensuring that this person, this individual can succeed, and I think this will require new authorities and structures. Ideally, a single person responsible for all national intelligence activities should, for example:

Maintain independence and objectivity as the President's principal intelligence advisor; have full authority to determine, repro-

gram and execute all funding for the core national intelligence agencies, principally, CIA, NSA, NGA and NRO; have clear authority to provide strategic direction to these agencies and drive their collection and analytic priorities; have the authorities necessary to reorient intelligence capabilities to meet emerging threats and priorities; have direct access to substantive experts to help fulfill his or her responsibilities as the Nation's principal intelligence officer; have the authority to bridge any remaining divides between foreign and domestic intelligence activities in the area of policy and particularly information technology; have the authority to determine education and professional development standards and personnel management policies and incentives; and finally, to ensure the continued synergy that results from the close interaction of operators and analysts at a number of places now in our Intelligence Community.

All of this, of course, would involve major changes for our intelligence system. It would require additional legislative changes such as a separate appropriation for the national foreign intelligence program, and some organizational realignment that you are considering. Given the heavy reliance on intelligence by the Defense Department, I believe it would be important to codify the National Intelligence Director's responsibility for meeting military intelligence requirements. At the same time, these national intelligence agencies must support the missions of all the other foreign and domestic organizations, such as the State Department, the FBI, Treasury, and Homeland Security. All of them have vital roles to play in protecting our people here at home. I believe though that a fully empowered National Intelligence Director would be able to strike this important balance.

Let me close by saying that no matter how successfully we anticipate future challenges, we will not foresee them all. So we will need the ability to adapt our organizations to change easily and quickly. We will need flexibility in shifting resources, people, and money, to respond to shifting priorities. The new Executive Orders and Directives are a significant and important step in the right direction, but cannot effect all of the changes necessary to adapt our Intelligence Community to the challenges of the 21st Century.

Thank you, Madam Chairman, and I am prepared to take your questions.

Chairman COLLINS Thank you.

I would tell my colleagues that I hope to do two rounds of questioning today, so if everyone could adhere to the 6 minutes in the first round, we will do a second round.

Director Mueller, I very much appreciate your listing as a core principle of the FBI for intelligence reform the need to protect civil liberties. Oftentimes in the debate on the reforms I think that issue, which is so critical, has been slighted, and I appreciate your listing it front and center as one of your most important principles. Some, such as former CIA Director Bob Gates, have expressed concerns that the establishment of a National Intelligence Director and a National Counterterrorism Center, with authorities that would bridge the foreign and domestic divide, would erode the separation between domestic law enforcement and foreign espionage. As we know, when the CIA was first created back in 1947, Presi-

dent Truman, among others, took great pains to make sure that the lines were clearly drawn.

Do you have any suggestions for safeguards that this Committee could incorporate into our legislation to ensure that the protection of our safety in the war against terrorism does not result in an erosion of civil liberties?

Mr. MUELLER. I think, as the drafters go about looking at the language, that the drafter should be very careful to distinguish between strategic planning and specific tasking. In other words, I believe that a National Intelligence Director, or under the National Intelligence Director, the head of the National Counterterrorism Center, should play a role in coordination of our efforts across the agency lines, whether it be the FBI, the CIA, or the Department of Homeland Security, coordination, planning, establishing collection requirements, but how you go about responding to that dictate should be the responsibility of the individual agencies.

If you are clear in drafting the language, then it is clear that the FBI, reporting through the Attorney General, collects the intelligence according to the guidelines established by the Attorney General and according to the statutes that guide our collection of intelligence, and you maintain that division.

One of the things I believe in is the importance of continuously attempting to integrate the analytical side of it as opposed to the collection side, but also when you have something I will call a transnational intelligence investigation, where you have information or intelligence gathered overseas about a threat in the United States, and we have to investigate some persons in the United States, and the CIA has to investigate persons outside the United States, there has to be an exchange of information, there has to be a coordination of those investigations. But how those investigations are carried out should be left to the discretion of either the Director of Central Intelligence or the Director of the FBI.

Chairman COLLINS. Thank you. We look forward to working closely with you on that very important issue.

Director McLaughlin, in your testimony you alerted us to concerns about parts of the Commission's plan about which you have reservations. You talked about dual-hatting, for example, and I agree with you that that raises uncertainty in the chain of command. You say, and you have said this time and again, that speed and agility are the keys to winning the war on terrorism. What authorities do you think that the National Intelligence Director should have in order to improve the speed and agility of the Intelligence Community? I know you would prefer to have more authority vested in the DCI, but since we are headed towards a NID, how can we achieve your goal of improving the speed and agility of the Intelligence Community?

Mr. McLAUGHLIN. I think a National Intelligence Director would need the authority to move money and people quickly. We have talked in other committees, and I have spoken with you personally about some of the hurdles you go through as you try and do those things today. So those are the principal things.

In today's world, unlike the world of the Cold War, issues come and go with blinding speed, and sometimes your chance to exploit the opportunity to attack that issue, to pool resources on it, to get

your best heads together, both collectors and analysts and operators is quite fleeting, and so a National Intelligence Director needs to be able to say to his or her operating agencies, "I need five from you and five from you and five from you, and I need them in 2 or 3 days, and they need to be up and running in this room with these computers and these systems, with these databases flowing to them in order to move with maximum agility and speed." Those are the kind of things you need.

Chairman COLLINS. Thank you. Your example that you have previously given to me in a private meeting of it taking 5 months for you to reprogram money, I think lends credence to what you are saying, and we want to make sure that there is sufficient authority for the new NID, so that he or she can be truly effective.

Senator Lieberman.

Senator LIEBERMAN. Thank you, Madam Chairman. Thanks again, gentlemen.

One of the more interesting and in some ways important recommendations of the 9/11 Commission that has not received a lot of public discussion but is something that this Committee will have to reach a judgment on is their recommendation "to combat the secrecy and complexity we have described, the overall amounts of money being appropriated for national intelligence and to its component agencies should no longer be kept secret. Congress should pass a separate appropriations act for intelligence, defending the broad allocation of how these tens of billions of dollars have been assigned among the varieties of intelligence work."

So I take it to be their recommendation based on, in part, what they describe as our failure, Congress' failure, to exercise appropriate oversight of intelligence. I would bet, though I certainly have not done a survey, that the great majority of Members of Congress, in both Houses, could not tell you what the bottom-line spending today on intelligence is, let alone what appropriations are going to individual agencies. And it is hard to do real oversight or talk about budgets and accountability and authority if you do not have those baseline numbers.

Now, let me say a final word there. I think the Commission argues that change will allow Congress and the American people to make judgments on if we are giving too much to one agency and not enough to another. Perhaps it will help inform this question that has gone on about whether we have spent too much on technological assets, SIGINT, and not enough on human intelligence. But it will also allow another kind of comparison, which is to compare what we are spending on intelligence with what we are spending on health care or agriculture or environmental protection, that kind of balance.

So I think as a general principle, it is a very interesting and important idea to consider. Obviously, none of us want to do that in a way that will compromise our national security, and just before I invite your response, the Commission deals with this concern about American enemies learning about our intelligence capabilities by tracking top-line appropriations figures. But they say, they answer, that the top-line figure by itself provides little insight into U.S. intelligence sources and methods. In fact, the government already readily provides copious information about spending on its

military forces, including military intelligence. The Intelligence Community should not be subject to that much disclosure. But when even aggregate categorical numbers remain hidden, it is hard to judge priorities and foster accountability.

So, Director McLaughlin, and then Director Mueller, I would welcome your counsel to us on this important question.

Mr. McLAUGHLIN. Well, this is a difficult question and I think there are very divided views on this. I will give you my personal view. I think we do not keep secrets well enough as a government, so I start with that proposition given that we are up against an enemy that keeps secrets very well and compartments those secrets down to a handful of people in a remote area somewhere in a cave.

That said, I come out a little differently on this question. If there is a separate appropriation for the foreign intelligence program, the national foreign intelligence program, as distinct from the current arrangement where that appropriation is buried in the larger Defense Department bill, I think it would make some sense to declassify the overall number for the foreign intelligence program. I would not go so far as to declassify the numbers for the individual agencies. I think that gives too much opportunity for adversaries to understand how we are moving our money from year to year, from technical programs to human source collection and to other objectives.

But establishing an overall number and acknowledging it publicly for the national foreign intelligence program does a couple of things. I think first it reinforces responsibility and accountability on those receiving the money because you can see whether it is going up or down and so forth. It also does the same thing for Congress because it is then apparent whether Congress—I have a phrase in my testimony that talks about constancy of resources. One of our problems over the years is that resources have gone up and down. We have lived on supplementals. Programs that require year-to-year constancy have not had that. And so I think this would be one way to maybe address some of those issues, and I do not think that declassifying the top line would be a major security threat. My personal view.

Senator LIEBERMAN. I appreciate that answer.

Director Mueller, I invite your response, and I suppose specifically on the matter, if I get it correctly, the counterintelligence budget of the FBI is part of the national foreign intelligence program budget. Certainly I would hope that it would be part of what is given now to overall authority to the new NID. Would you have concerns specifically if that number became public?

Mr. MUELLER. Let me see if I can address the two issues.

Senator LIEBERMAN. Please.

Mr. MUELLER. One is I think you raise a consolidation of a budget that is understandable to persons—in other words, one budget. I myself find the Federal budgeting practice an arcane science. I do not purport to have grasped it.

Senator LIEBERMAN. It may be one intentionally so.

Mr. MUELLER. But putting in one place all elements of the Federal intelligence budget makes some sense to me, whether it be in having the NID as that person who is responsible for that and then

having a committee in Congress that is fully—has transparency into that makes a great deal of sense.

In terms of the portions which you then publicize, I think it depends on what you ultimately end up with, and having a bottom-line figure is a lot different than having certain categories I think everybody in this room would agree should not be made public.

Senator LIEBERMAN. How would you feel about the Intelligence Directorate that you are forming now having its bottom line made public?

Mr. MUELLER. I would have problems in having that budget publicized. It would immediately be perused by our enemies, whether it be terrorists or other countries in terms of how many agents we have in our counterintelligence program, where they might be, what their support is. I would have real problems on that. I do not think we should be giving out that kind of information to our enemies. They will sit there. They peruse the budget figures. They can discern from the budget figures what the implications are, and I think that is something we have to be very concerned about.

Senator LIEBERMAN. Thank you both. Thanks, Madam Chairman.

Chairman COLLINS. Thank you. Senator Coleman.

#### OPENING STATEMENT OF SENATOR COLEMAN

Senator COLEMAN. Thank you, Madam Chair.

First, gentlemen, thank you for your service. It is greatly appreciated. I would like to explore, if I can briefly, the relationship between the changes at the top—we are talking about major changes here at the national level, but the interrelationship with those at the local level, because those are the guys that are going to be making the stops. Madam Chairman, in her opening statement, talked about an opportunity, a local stop being made for a speeding violation, and had there been the right connection, something might have happened.

Can we talk a little bit about that, about what is happening down at the local level? For instance, Minneapolis and St. Paul both have, as I understand it, local ordinances that prohibit, tell their local law enforcement not to ask about immigration status. Can you talk to me a little bit about the impact of specifically that kind of ordinance, what impact it would have, and any other things like that that are out there that would hinder our ability at the local level to interact with the things that are going on in our national counterterrorism effort? Director Mueller.

Mr. MUELLER. Well, there may be local ordinances out there in various cities indicating that you cannot on a stop ask about immigration status. Nonetheless, we have made substantial strides since September 11 in putting in our databases and in NCIC information on those who have outlasted their visas, those who are in dereliction of their responsibilities with the Immigration Service so that there now is a mechanism that a person who is out of status and deemed to have been out of status will be picked up, and that status of the person will become known to the officer.

So while, yes, in those cities where there are such ordinances it can hamper the ability of State and local law enforcement to identify those who come from outside this country and are illegally in-

side this country, we have other mechanisms in place to identify those persons once they have been deemed illegally here.

We have made since September 11, I think, substantial strides in working with State and local law enforcement to gather intelligence such as this. We have one consolidated watchlist. It is in NCIC. Contributors are the State Department, Customs, and the CIA. If it is international terrorism, it goes through TTIC for placing on the watchlist. If it is domestic terrorism, it goes there also. And, consequently, if there is a name on that consolidated watchlist which is in NCIC and a person stops somebody there throughout the United States, there now is the ability to understand and recognize that that person's name is on that watchlist for some purpose.

The Joint Terrorism Task Forces now, going from 34 to 100, give us an intersection with State and local law enforcement that we did not have before. And while there may still be gaps, as you have pointed out, in our ability to gather information in certain communities, we have made substantial strides in eliminating many of the other gaps that were there prior to September 11.

Senator COLEMAN. Director McLaughlin, I am not sure whether you want to get into this, but I do know that the CIA before was out of the domestic, and now you are there. Is there anything from your vantage point that you see that would hinder your ability to effectively interact with folks at the local level?

Mr. MCLAUGHLIN. Not really. The way it works now is that when something happens at a local level that has a foreign intelligence dimension, it migrates to us either through our interaction with the FBI or through TTIC. Of course, if it is a purely domestic issue, we do not get involved, nor should we.

Senator COLEMAN. Madam Chairman, are we going to have a second round?

Chairman COLLINS. Yes, we are.

Senator COLEMAN. Let me ask you then, Director Mueller, one other question on this round. In your testimony, you raised a concern that as we make these structural changes that we don't ignore the relationship between the basic FBI functions—laboratory, cyber crime, and our counterterrorism efforts—can you give me a little bit of sense, a little more detail of where you see potential problems in restructuring as to how they may negatively impact those relationships?

Mr. MUELLER. If you identify that portion of the FBI that is counterterrorism or counterintelligence and you try to pull that out, what I think one misses is that—and your main focus is terrorism. Let's just take terrorism for an example. You take out the Counterterrorism Division. Terrorists now increasingly have to rely on criminal organizations to travel from country to country for false identification, for smuggling, being smuggled in or through a country. They have to rely on other criminal organizations for money laundering. We have had a number of cases where Hezbollah in the United States, for instance, has utilized cigarette smuggling to generate revenues to support Hezbollah.

And so if you try to compartment terrorism and pull it out, what you are missing is that terrorists are criminals. And, increasingly, with the pressure that has been brought overseas by the great

work that the CIA has done, the military has done, we have done overseas and here, when the pressure is put on, they lose their facilitators, they have to go to others. And it is often our investigation of criminal enterprises that leads us to the terrorists, and I think that will increasingly do so.

And if you seek to split that out, I think you are doing a disservice to the effort on the war on terrorism.

Senator COLEMAN. And I would suspect then that the importance of the Patriot Act comes into play which gives you many of the same tools that you use for standard crime now to use in the war on terrorism?

Mr. MUELLER. Well, the Patriot Act breaks down the wall that inhibited our sharing of information from those criminal cases to the intelligence side and the information from the intelligence side to assist in our criminal cases. And in the past, we were inhibited, we were limited. We had one arm tied behind our back in terms of that sharing of intelligence and criminal information. And the Patriot Act has broken down that wall and gives us the ability to take the information from our criminal cases, bring it over to the intelligence side. And likewise, if we have on the intelligence side information as to statutes that have been broken, illegal activity on the intelligence side, we then can use it to wrap up somebody in this United States who has broken the laws.

Senator COLEMAN. Thank you. Thank you, Madam Chairman.

Chairman COLLINS. Senator Lautenberg.

#### **OPENING STATEMENT OF SENATOR LAUTENBERG**

Senator LAUTENBERG. Thank you, Madam Chairman, and I commend you for your excellent opening statement and clarification of the mission. And the thing that concerns me is that we tip our hat to a lot of the ideas. The question is: How long might it take to implement the changes as they are described? You have merged these various departments, and I say to each one of you, be proud of what your departments have done. There is no shame, because second-guessing is the easiest game to play, and when we talk about our offense against terrorists worldwide, I would ask you: Has the population of terrorists grown in your estimation?

Mr. MCLAUGHLIN. I have to give you one of those intelligence answers that starts with, "It depends." In other words, if you look at a discrete population of the terrorist movement, the original leaders of the September 11 era, al Qaeda, you have heard the figure often mentioned that three-quarters of those people, the original chart that we had, are either dead or in captivity.

If you go beyond that, we have had significant success, I believe in wrapping up al Qaeda leaders. In Pakistan alone, working with the Pakistanis since September 11, somewhere between 500 and 600 important al Qaeda figures have been taken out of business.

That said, there is a worldwide movement here that draws support and draws inspiration from the example and the ideology that bin Laden has propagated. And I think it is really impossible to measure whether that is growing or shrinking. But I would say it is still substantial and certainly growing in some parts of the world. So that as we are in this tactical phase of terrorism, we are

quite aware that we are taking down terrorist networks, but that new ones are popping up in their place.

Senator LAUTENBERG. So have the gains been sufficient to give us any comfort level? When I look at the people——

Mr. McLAUGHLIN. That is the important question.

Senator LAUTENBERG [continuing]. Who we identify as the principals, the bin Ladens, Zarqawi—when I was in Iraq, Senator Levin and I were there on the same trip, and we saw a screen identifying the parking place of Zarqawi's car and so forth. And the statement was made to us that they were not minutes but very close to a significant capture. Well, he is still on the loose, and——

Mr. McLAUGHLIN. Well, the successes that we talk about have had important consequences, and to answer your question directly, yes, they have made a difference in our degree of safety. If you look at someone like Khalid Sheikh Mohammed, the architect of September 11, when he was captured and detained, he was in the middle of at least two other major plots that would have had an impact on the United States. So that was interrupted, and we continue to follow ancillary aspects of those plots.

And that is true for just about every terrorist that we would talk about. If you look at the capture of Eisa al-Hindi in the U.K., who was the individual responsible for many of the casing reports that focused on structures in the United States, by having him in detention, whatever he was doing, which certainly was potentially injurious to people in the United States or the U.K., is now interrupted.

So it makes us safer, but to quote what everyone says, appropriately these days, we are still not safe. But we are safer.

Senator LAUTENBERG. We are safer than we were before. I think there is a question that arises, and that is, it looks like the zeal of those who hate us continues to attract people to their mission. It is very tough, and we have a huge job. And when I see what you require by way of skilled personnel, Mr. Mueller, in language and so forth and the period of time, 3 years to train people to be good analysts, if I read it correctly, and I look at the mission—and not that I do not want to do it. I want to do it. I want us to be totally safe, even though right now we are beginning to look more like a fortress. But the fact is that we have to respond to the threats against us.

I would ask a question here to see if either one of you or each of you has given thought to whether or not the person who fills the NID job ought to have a specific term for duty. I looked at the Federal Reserve, and I see that there is one person in command sort of that the branches report in. They have a lot of authority. And I have long been a believer that the further away we get from the political structure, the better off we are in our functioning. It more approximates a business environment which is something that we would like to see happen. I would like to see it happen, for instance, with the FAA long-term projects. This one is a very long-term project. As much as we rush to get the job done, the fact is that the implementation in its full sense is a long way away.

What do you think about having a specific term of duty for someone who has that responsibility?

Mr. McLAUGHLIN. Well, Director Mueller and I are different on that score. The Director of Central Intelligence does not have a fixed term. The Director of FBI does. So we may have different perspectives.

I think there are pros and cons to it. The pros of having a fixed term for a National Intelligence Director would be that it would be yet another way to do something that I included among my various principles here, which is to ensure the objectivity and non-political character of whoever holds that office, particularly if you could do it in a way, for example—I haven't reviewed for a while how the Chairman of the Joint Chiefs is chosen, but his term is, I think, 2 years renewable in a way that staggers it so that it overlaps with Presidential terms. So there would be advantages to that.

Now, there are some disadvantages to it, I think, in that I have never been a believer that the President should not be able to choose whoever he or she wants for a job like that because a certain amount of trust is required, and trust even, and maybe especially, when the National Intelligence Director is bringing bad news, when the National Intelligence Director has to walk in and say, "Mr. President, I have got to tell you something you are not going to want to hear, but you need to hear it."

In those circumstances, one can argue that intimacy with the President and trust, personal trust, could be an important advantage. It could work a lot of different ways. But I think there are pros and cons to this.

Senator LAUTENBERG. Mr. Mueller.

Mr. MUELLER. As one who has a 10-year term, I actually think that the arguments for a 10-year term for the Director of the FBI are somewhat different than the arguments for a 10-year term of the National Intelligence Director. One of the principal duties of the National Intelligence Director is to be the adviser to the President on intelligence matters. And we tend to focus, I think, in looking at this legislation, and perhaps rightfully so, because it comes out of the 9/11 Commission Report, on counterterrorism. The National Intelligence Director and the CIA do a lot more than focus on counterterrorism. There is a view, a world view shaped that dictates the foreign policy of the United States to a certain extent, to the extent that one looks at the intelligence. And I guess I think the President should have the confidence in the person who holds that view of principal adviser for intelligence, not just counterterrorism, not just WMD, that are important, but way beyond that.

I do think the Bureau is somewhat different in the sense that certainly we should play the role of objective, independent investigators of allegations. And for the Director of the FBI, I think that is tremendously important that that independence and that objectivity in conducting investigations of allegations that can reach throughout the government should not in any way be impinged by what may happen in a particular election.

So I think there is a distinction to be drawn between the role of the National Intelligence Director and the Director of the FBI.

Senator LAUTENBERG. Thank you each for your clarifications.

Chairman COLLINS. Senator Sununu.

**OPENING STATEMENT OF SENATOR SUNUNU**

Senator SUNUNU. Thank you, Madam Chairman.

Just to pick up on that last point, this is not a question. This is an editorial comment, I suppose. But it is my understanding that the statute isn't really a 10-year term at all. It is a 10-year maximum. And the reason we have that is because no one wanted J. Edgar Hoover or that kind of power to be assumed by a future FBI Director. I think you are doing just fine at the moment, and I am not saying that we want to cut short your tenure. But as the statute reads, it is a 10-year maximum, not a 10-year term.

Mr. MUELLER. I know that well. [Laughter.]

Senator SUNUNU. The points you made, however, I think are very valid.

I want to ask you both about programming counterterrorism operations. In your testimony, Director Mueller, you said that the NID should not be directly responsible for the conduct of operations and that his or her role should be to ensure that appropriate activities and operations are conducted by the various elements of the Intelligence Community. And you also used the phrase, "the NID should have a mechanism by which the principals are charged with assuring responsiveness to the direction of the NID in managing implementation." In some of the other material we have, I think a distinction was made between conducting operations and assigning operational responsibilities that the NID or those at the Counterterrorism Center would have responsibility—sorry, the NID would have responsibility for assigning operational responsibilities but not actually conducting operations at the tactical and strategic level.

I just want each of you to comment and clarify on these different roles and responsibilities, one for conducting the operations, maybe making tactical choices, but the other role of the NID for maybe initiating, maybe assigning and helping to coordinate operations on behalf of the broader national Intelligence Community.

Mr. MUELLER. Let me use as an example something like the two conventions that we just had, the Democratic National and Republican National Convention. One was worried about threats against them. It would seem to me that the NID, as the homeland security in the intelligence realm, would pull together the elements of the Intelligence Community and say, OK, here we have this particular convention that is going to take place. What is the FBI doing to gather intelligence? And we would go in and have a discussion about what we have done to gather intelligence in terms of what may happen, international threats from the CIA, domestic threats to the United States, and if there are any gaps in that.

Then I would think the NID would have the responsibility of doing the requirements, saying, OK, FBI, here is something that has come in from the CIA, you go out and determine the validity of this information that came from the CIA. But how we did it, whether we used FISA, whether we used surveillance in this particular case, would be left up to us.

Now, we would have to go back—there should be transparency in what we are doing, and we could always be second-guessed and suggestions made about how to do it differently. But ultimately how we do it, what authorities we use, what personnel we use, I

think ought to be within this chain of command. And by this chain of command, I mean that we have a responsibility, me being the Director of the FBI, to the National Intelligence Director to provide the information the National Intelligence Director needs, and if there are gaps there, to utilize our organization to go out and fill those gaps.

Mr. McLAUGHLIN. This is a tricky question, and it is one on which people have trouble communicating with each other, I believe, because, talk about different cultures in the U.S. Government, the word “planning” means something very different to different organizations. At the Pentagon it typically means a very elaborate, end-to-end process with an envisioned result that is in a way foreordained or must be foreordained. In the intelligence business, it might mean planning, a quick meeting in my office to check the essentials of a problem, out to the field, try something, get back to me, see how it goes, and it is a more iterative process. So first the term “planning” means different things to different people. So how do you get around that?

I agree very much with what Bob Mueller said. The way I would see this working in a National Counterterrorism Center is that it would be a kind of clearinghouse for what needs to be done, and then the doing would be passed to those who must do it.

I will give you an example, a different one than Bob gave you, partly hypothetical and partly real. Let’s assume that we detect through intelligence methods plans by people in two countries in the Persian Gulf to attack oil facilities there, both to harm that local government and to injure the U.S. economy—a real-world example. Let’s assume that we also discover connections between one of those individuals and someone in the United States. This happens all the time.

At that point, the job of whoever has that information in front of him or her is to say, this is how I think it would work. CIA, what are you doing to wrap those guys up? FBI, what are you doing to take that information about the U.S. connection and run it down here in the United States? I won’t tell you how to do it, but it needs to be done, and you know how to do it, and we are going to talk about it again tomorrow.

That is kind of how I would see it working. And at the end of the day, this is all about—I think if there was a single thing that we would hold above all else in the counterterrorism arena and on this particular question, it is what I would call the fusion of data. We must have people who have all of the data in front of them so that those connections can be made, and someone who is looking at all of that data, as people in the TTIC now do, are the ones who are—as we are at our daily meeting at CIA where we have many of these people represented, are the ones who can say there is a pattern here, someone needs to act on this part, this part, and this part.

I hope that answers your question, but that is how I think about it.

Senator SUNUNU. That does. If I can ask one final brief question about the point that you just made about having the information in front of you. In his testimony, Director Mueller noted that there is a proposal out there that creates a new entity that is composed

of analysts and a separate entity for the intelligence collectors. In the Director's words, "We believe that creating such stovepipes would be a step backward in the progress we have made since September 11."

Do you agree with that view of a proposal that creates a collection-only entity or an analyst-only entity?

Mr. McLAUGHLIN. I am not sure what specific example Bob is referring to, but I firmly believe that there is merit in fusing analysis and operators and collectors. And I am not speaking about a hypothetical there. I am speaking about what we have achieved in our Counterterrorism Center, where if you were to walk through the department that deals with al Qaeda, you would see something that, if you went back 10 years, would have been seen as somewhat revolutionary. Go to this desk and there is an operator sitting there, meaning a field operative, someone who is maybe just back from overseas and has extensive experience recruiting agents, running operations.

In the next cubicle, you will find an analyst, someone who has spent most of their time here at headquarters, some time overseas but mostly here, delving deeply into problems and seeing patterns that may not be apparent to someone who has been moving around the world with other priorities and so forth, a checkerboard of people like that. And I think one of our strengths that we have achieved is the fact that an analyst can now walk in to an operations officer and say, I have an idea, I see a pattern here that you ought to follow up on. Or an operations officer can go to an analyst and say, I am getting these reports from three different sources; I need some context to understand this. And that person comes back the next day and says, well, I have dug into this, here is the context, here is how it all fits together.

Senator SUNUNU. Thank you.

Chairman COLLINS. Senator Durbin.

#### **OPENING STATEMENT OF SENATOR DURBIN**

Senator DURBIN. Thank you, Madam Chairman, and thank you both for being here today.

Director Mueller, I am glad that early in your statement you made reference to the civil liberties issues, and I think history teaches us that in times of great fear and national security, freedom is the first casualty. We look back on many things that we did where we overreacted as a government, sometimes with shame.

I would like to speak to specifically the President's Executive Order, which you referred to in your remarks. This order, which came down just a few days ago, established, pursuant, I suppose, to the suggestion of the 9/11 Commission, a board to review whether or not our government has gone too far, whether or not we have invaded the civil liberties of individuals unnecessarily. That is a good thing to have such a board.

But then you look at the Executive Order. Who will stand in judgment of the Department of Justice and whether they have gone too far in invading the civil liberties of Americans? According to the President's Executive Order, it will be the Deputy Attorney General of the Department of Justice, the Vice Chair being the Depart-

ment of Homeland Security Under Secretary, and all the members of the board being political appointees of the Bush Administration.

It strikes me as this board is like saying to a baseball player at bat, you can call your own balls and strikes.

Doesn't it strike you—I hope it does—that we would want to have some group overseeing the activities of this government that is somewhat removed from the political realm, from political appointment, from the actual management of the agency which they are supposed to be reviewing?

Mr. MUELLER. I can see the point that you are making, Senator. I do think there is a value to having a board whose responsibility is to focus on the privacy issues of that which we are contemplating. One could discuss who should serve on that particular board, but I think it is important to establish such a board with that mandate.

In terms of oversight, I do think—and it has been my brief experience up here for the last couple of years—that oversight from Congress into the activities of that board, into the activities and what we are undertaking, whether it be through the Intelligence Committee, the Judiciary Committee, or this Committee, is not—it does not pull its punches. And so I do believe that there is merit in having this board or such a board, and I do believe that there is oversight of our efforts, whether it be through the Intelligence Committee, the Judiciary Committee for the FBI, or this Committee, in terms of addressing terrorism and whether we are going too far or not.

Senator DURBIN. I serve on both of those committees, Intelligence and Judiciary, and you give them too much credit. We are not really as good as we should be. The 9/11 Commission makes that obvious, too. We have got to set out not just to reform the Executive Branch, we need to reform Congress when it comes to the oversight of the activities involved in fighting terrorism. And if the last refuge for protecting the civil liberties of Americans is vested in the members of the Senate Judiciary and Intelligence Committees, I can tell you we need help. We need more troops. We need more people involved if that is what we are to do.

I will not dwell on it. When I spoke to Governor Kean yesterday about this very same composition of this Executive Order, he said that it was their intention to get a more disinterested perspective—I think those were his exact words—of the members. I will not dwell on it, but I think that the Executive Order does not serve that purpose.

Director McLaughlin, we have talked a lot about the wiring diagrams and the budget authority. Let me go to two specific areas I would like to ask you about. You have undoubtedly read the Senate Intelligence Committee Report on the use of intelligence leading up to the invasion of Iraq, the preparation and analysis of intelligence, and the fact that we failed in so many ways to assess the real threat in Iraq. The NIE was prepared in a hasty fashion, 3 weeks when it ordinarily takes 6 months. We were not clearly well versed in what we were going to find in Iraq. Witness the fact we are still looking for weapons of mass destruction. We mistakenly—some mistakenly led others to believe the al Qaeda connection was there. The 9/11 Commission makes it clear it was not.

Most of this was generated through intelligence gathering. We have talked a lot about new structures, new wiring diagrams, new boxes on the chart. Specifically I would like to ask you two things.

Looking back now, do you think that any of the recommendations we are making in terms of this new structure really would have a quantitative and qualitative impact on the mistakes that were made leading to Iraq? And, second, one of the provisions that was raised by the 9/11 Commission I would like to just visit for a brief moment, and that is the whole question of the Abu Ghraib prison situation, which, of course, is a great embarrassment to the United States.

Can you tell me whether the CIA played any role in the Iraqi prison techniques, the interrogation techniques, the stress and duress techniques? Did the White House or any other agency authorize the CIA the use of aggressive interrogation techniques? These are questions which have not been answered to date, and I would like to give you a chance, if you would, responding to this 9/11 Commission Report aspect, to comment.

Mr. McLAUGHLIN. Senator Durbin, on your question about Iraq and the intelligence before the war and whether the changes we are considering would have affected that, my honest opinion here is that the changes we are considering now would have a more immediate impact and are more directly related to counterterrorism than to the kinds of issues that emerged in our work on Iraq and the subsequent examination of it. Because I think principally the effect of these changes that we are considering now would be to increase the sharing and fusion of information and the rapidity with which a National Intelligence Director could realign resources on a problem. I do not think that was involved in some of the difficulties that we had in the Iraq case. I think there were other issues that we have moved to deal with since then that would not necessarily be affected directly by these changes.

Senator DURBIN. I will not dwell on it. My time is up.

Mr. McLAUGHLIN. You understand what I am saying. I just think it applies more to counterterrorism to where I think it is more direct.

Senator DURBIN. Forgive me. Weren't we told by the administration that the invasion of Iraq was counterterrorism?

Mr. McLAUGHLIN. No, I am thinking of al Qaeda.

Senator DURBIN. Weren't we told there was a linkage between Saddam Hussein and al Qaeda?

Mr. McLAUGHLIN. Yes, but the 9/11 Commission was very clear in saying that the Intelligence Community understood that correctly and got it right.

Senator DURBIN. Well, the point I am getting to—well, I do not want to dwell on it—

Mr. McLAUGHLIN. Well, that is my point.

Senator DURBIN. My time is running out, and I do want to ask you to respond to the second question about the CIA's role in the interrogation techniques at Abu Ghraib and whether or not there was any authorization by the CIA or White House or other agency, to your knowledge, for these types of aggressive interrogation techniques.

Mr. McLAUGHLIN. We have under way an Inspector General report of interrogation techniques in Iraq. I have to be careful how I speak about this because that investigation is not complete. But to this point, there is nothing that would indicate CIA involvement in those techniques, and particularly no involvement in the kinds of things that were portrayed in those photographs.

There are one or two cases involving particularly the death of one individual who was transported where that individual was for some period of time in CIA care, and that is being looked into by the Inspector General. But that investigation is not finished yet.

Senator DURBIN. And the White House involvement, was there any White House involvement or any other agency in the establishment of these interrogation techniques at Abu Ghraib?

Mr. McLAUGHLIN. Not that I am aware of, no.

Senator DURBIN. Thank you very much. Thank you, Madam Chairman.

Chairman COLLINS. Senator Shelby.

#### OPENING STATEMENT OF SENATOR SHELBY

Senator SHELBY. Thank you, Madam Chairman.

I first want to thank you, Madam Chairman, for your leadership, and also Senator Lieberman's. I want to associate myself with some of the remarks you made earlier, Senator Lieberman. I think we have a great opportunity here legislatively to do something that probably should have been done 50 years ago, but we did not have that opportunity, and that is to bring real structural reform to the Intelligence Community. I trust, Madam Chairman, we will not miss that opportunity under your leadership and Senator Lieberman's.

I want to focus just for a minute, Director McLaughlin, on the National Counterterrorism Center that we keep talking about. My experience over the years with the Intelligence Community causes me at times to question whether such entrenched intelligence bureaucracies will allow the NCTC to live up to its potential. And while the NCTC will be new in a sense, the analysts, a lot of them, will be the same—maybe not totally the same—doing the same job in a sense that they have always done.

What will change? In other words, what will change and will it be for the better? Will it make us safer?

Mr. McLAUGHLIN. I think the answers to those questions, Senator, are yes and yes, and I would use the experience we have had so far in the Terrorist Threat Integration Center to illustrate the point. The Terrorist Threat Integration Center, TTIC, would be the foundation on which the National Counterterrorism Center would be built. And what is new and different there is that one of my terrorism analysts, or one of Bob's, who heretofore had been looking, in my case, almost exclusively at foreign terrorist data, or domestic in the case of the FBI, when they go into that National Counterterrorism Center, as they have into TTIC, they will now be exposed not just to that data but to data from 26 different networks that are flowing into that center.

So that one of the ways I have spoken to my analysts—I sent close to 90 analysts there. One of the things I have said to them is as a career, think about this as a great opportunity because you

are going to be exposed to people from the FBI, the Coast Guard, Homeland Security, and to their perspective that you will never get sitting in our building; and when you come back, you will bring that back into our arena as you focus on foreign terrorism. That changes.

Senator SHELBY. OK. But you are talking about creating basically a super-analyst center, in a sense, in counterterrorism, aren't you?

Mr. McLAUGHLIN. Well, creating analysts with a broader perspective.

Senator SHELBY. A broader perspective. Now, how many analyst centers do we have in the Intelligence Community? I know the Bureau, Director Mueller, you have one. You are central to the whole deal. The State Department has one. We created or tried to create one at Homeland Security. I know I worked with Senator Lieberman on that. How many others do we have, analyst centers?

Mr. McLAUGHLIN. Several. We have the Counterterrorism Center, the Counterintelligence Center, the Counternarcotics Center. I think we will move before long to a Counterproliferation Center.

Senator SHELBY. But other than the FBI, what other agencies in the Intelligence Community have an analysis center?

Mr. McLAUGHLIN. Well, the centers by definition draw on all of these agencies, so that in the ones I have mentioned we have representatives from, in the case of the Counterterrorism Center, upwards of a dozen agencies.

Senator SHELBY. You are talking about people working at the Counterterrorism Center from all of these other agencies.

Mr. McLAUGHLIN. About a dozen.

Senator SHELBY. But these other agencies will continue to have, I assume, their own analysis center; is that right, Director Mueller?

Mr. MUELLER. Correct, yes.

Senator SHELBY. OK.

Mr. McLAUGHLIN. That is the balance we have to strike.

Senator SHELBY. So what you are really talking about—and you alluded to it—is expanding the Terrorism Threat Integration Center that we created, TTIC.

Mr. McLAUGHLIN. Building on that.

Senator SHELBY. Building on that. To a great extent?

Mr. McLAUGHLIN. Well, I would say to the extent that it will now—this all has to be determined in practice, but to the extent that it will now have a strategic planning function that is not resident in the Terrorist Threat Integration Center.

Senator SHELBY. Director McLaughlin, in your prepared remarks that you shared with us earlier, you said, and I will just quote your remarks here: “Ideally, a single person responsible for all national intelligence activities should: Maintain independence and objectivity as the President’s principal intelligence advisor; have full authority to determine, reprogram, and execute all funding for the core national intelligence agencies—CIA, NSA, NGA, and NRO; have clear authority to provide strategic direction to these agencies and drive their collection and analytic priorities; have the authorities necessary”—in other words, power—“to reorient intelligence capabilities to meet emerging threats and priorities; have direct access to substantive experts to help fulfill his/her responsibilities as

the Nation's principal intelligence officer; have the authority to bridge any remaining divides between foreign and domestic intelligence activities in the areas of policy and information technology; have the authority to determine education and professional development standards and personnel management policies and incentives; and ensure the continued synergy"—which is very important—"that results from the close interaction of operators and analysts."

But, ideally—you left out the FBI as far as controlling any of their budget. Is that correct?

Mr. MCLAUGHLIN. Well, I think—

Senator SHELBY. In your remarks.

Mr. MCLAUGHLIN. Yes, the way I see it is that the National Intelligence Director ought to have—I believe there is a portion of the FBI's budget that would be included in the national foreign intelligence program budget, just a very small portion, but certainly not the entire FBI's budget. And Director Mueller, I am sure, has an opinion.

Mr. MUELLER. I would say that our intelligence budget, expanding, I would hope, intelligence budget, not just as small as referred to by my colleague over here—

Senator SHELBY. Well, to do your job, you are going to have to expand it.

Mr. MUELLER. We are, yes. But that should be controlled by the NID, and I would go to appropriations as opposed to execution. In other words, I think there ought to be one appropriation. There ought to be one intelligence budget under the auspices of the NID who could look at what the requirements are, who has the personnel and the capability of meeting those requirements, and then adjusting the budget appropriately, including that portion of the FBI that addresses intelligence.

Senator SHELBY. I know my time is up, but one last statement, I guess. Isn't it true that the President of the United States has and has always had the authority to disclose, if he thought it was important to do so, the numbers on the intelligence appropriations? In other words, the President has that authority if he wanted to do that.

Mr. MUELLER. I assume so.

Senator SHELBY. And if he thought it was in the best interest of the country.

Mr. MCLAUGHLIN. Yes.

Mr. MUELLER. The answer is yes.

Senator SHELBY. So we do not need statutory authority for the President to do that.

Mr. MCLAUGHLIN. No, sir.

Senator SHELBY. He has it. Thank you. Thank you, Madam Chairman.

Chairman COLLINS. Senator Pryor.

#### OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Madam Chairman, thank you for your leadership on this. And I want to thank you for your public service. I appreciate the witnesses coming here today and talking about these very important issues. I want to just focus here for a minute, if I can,

on your plans, both of you, your plans to recruit, hire, and retain the right kind of people for your agencies.

Now, I know that, as I understand it, both agencies have done some fairly innovative and aggressive marketing and made some pretty serious efforts to try to get the right people and keep the right people in place. Could you all tell the Committee a little bit about that?

Mr. MUELLER. Sure. After September 11, we made the determination that we needed to broaden the types of candidates that we were attracting to the FBI. We have historically looked to lawyers, accountants, former law enforcement, military—all good. We have taken the position, rightfully so, I think, that we look for maturity in judgment in the persons we bring on as special agents because we give them tremendous power when you give them the capability of operating as an FBI special agent. So we have looked for maturity in judgment.

In the wake of September 11, we understood that we needed skills that perhaps we had not addressed in the past in the Bureau, so we have opened it up and looked at intelligence officers, computer scientists, scientists to address something like anthrax, language specialists, and regional experts. And we have focused on bringing into the Bureau not only the persons who show the judgment and maturity but also have these additional skills. And we have continued to try to do that for our agents.

This fiscal year we have almost 40,000 applicants for the special agent position. I will tell you for our analyst position, we had almost—well, on the agents, one other fact that I think is important is that of those—it was actually 38,000 applicants we have had in this fiscal year. Almost 17,000 of them demonstrated one of those skills, special skills, that we are now looking for. We have had 57,000 applications for intelligence analyst positions this year. And so I think there are a number of factors that have gone into that.

First, we have been out indicating we want a wide variety of skills in the FBI. Second, persons have responded in the wake of September 11 to the desire for public service. And we have been fortunate to get those persons applying that will bring to the Bureau skills that will be necessary in addressing the threats of the future.

Senator PRYOR. Have you been happy so far with what you have been able to accomplish?

Mr. MUELLER. Yes. I keep saying I am happy with where we are, but we have got a ways to go.

Senator PRYOR. Right.

Mr. MUELLER. And we have made strides, and one of the concerns I had is that if we had focused on some of these specialties, we would lose the maturity of the judgment that is so important. And I am quite confident that the quality of applicants that we are getting is such that we can have the maturity of judgment that we want for a special agent, but also have the benefit of some of these additional specialized skills.

Mr. McLAUGHLIN. When I am asked what we really need these days, I frequently say more experienced people. The Intelligence Community, of course, started from a low point in 1995, 1996, 1997, in that time frame. We bottomed out after about a 23-percent

reduction in the wake of the dissolution of the Soviet Union and the end of the Cold War. And so that particularly in the period since then, we have been building up again, thanks to resource increases by the Congress and the administration. So more experienced people is sort of our bottom line.

I am very pleased with the people we are getting. There seems to be great enthusiasm for public service at this moment. Typically in a week, we get somewhere between 3,000 and 6,000 resumes seeking employment with the Central Intelligence Agency, many more applicants than we can hire.

When we look at our recent classes, which are now at record levels compared to the dozen or so people that we were training in the clandestine service in 1996, we are having an average age of about 28, 29, so we are getting people with significant prior experience before they come to the agency or to the Intelligence Community. This is fairly typical across the agencies.

I am most familiar with CIA's data. If we look at the GPAs, we are up in the range of 3.2 to 3.7, typically. If we look at languages, the one I am most concerned about is Arabic. We have a sizable number of Arabic speakers. I will not use the absolute number here, but in the last year, from 2003 to—within the last 12 months, it has increased by 36 percent in terms of people who test at the Level 3 level. We make a distinction between those who claim proficiency and those who test out.

So those are the areas where we have the greatest need and shortage, and I would emphasize Bob's point that we are looking for people with maturity in skills because, particularly in this era of increasing demands, frequently your first tour as an officer overseas will be in some remote and dangerous place. And for our analysts, talking about them, too, increasingly they operate overseas, and we are looking for similar backgrounds there, and we are getting them.

Senator PRYOR. Is the pool large enough for you or are you competing against yourselves to try to get these qualified people in?

Mr. McLAUGHLIN. I think within the foreign Intelligence Community, most of the agencies that you would talk to would give you comparable statistics. The pool seems to be large enough. There seems to be very high interest in public service at this moment, and we are grateful for that.

Mr. MUELLER. I would say that to a certain extent we are competing for analysts with particular skills, and one of the things that we are looking forward to is, in building up our intelligence cadre, to put it on an equal footing with the Intelligence Community and the Department of Defense and the CIA with the appropriate SES positions, with the career advancement, with remuneration that is the equal of the analytical cadre at other agencies. We haven't always had that, and that is one of the areas in which we are focusing.

Senator PRYOR. Thank you.

Chairman COLLINS. Thank you. Senator Specter.

#### **OPENING STATEMENT OF SENATOR SPECTER**

Senator SPECTER. Thank you, Madam Chairman. In the few moments that I have, I would like to go to what I consider the core

reason for having a National Director, and that is the sharing of information.

I chaired the Intelligence Committee in the 104th Congress and saw what so many have characterized as a culture of concealment, and with oversight for the Judiciary Subcommittee back in the year 2000, we found memoranda from the Director of the FBI which should have been disclosed to the Judiciary Committee, and there, again, a very heavy overlay of what has been characterized as a culture of concealment.

I have circulated a draft bill which would take the Counterintelligence Unit out of the FBI and put it under a Director, leave the entire CIA under a National Director, leave tactical intelligence with the Department of Defense, but the rest of it move under a National Director. And dealing with your two agencies, Director Mueller, you make a decision on what you are going to share with the CIA, and, Director McLaughlin, you make a decision on what you are going to share with the FBI. What I think is a preferable course is that there be a National Director on top who knows all of what the Director of FBI knows and knows all of what the Director of the CIA knows so that there does not have to be a reliance that the FBI has shared all the information with the CIA and the CIA has shared all the information with the FBI, and it goes for the other of the 15 intelligence agencies or counterintelligence agencies, that to the extent you can have a person on top—and we have to rely upon someone to be in charge—that I have been persuaded up to this point—and I am still prepared to listen. I am concerned about some civil liberties issues, which I discussed with Director Mueller yesterday. But what is wrong with that postulation as the best idea to have somebody who knows all of what you two men know and all of what the key men in all of the intelligence agencies know? Director Mueller.

Mr. MUELLER. Senator, I think you can accomplish that without pulling out the divisions of the FBI. If you are looking at an area on, for instance, counterterrorism, the NID should have access to all of the FBI information relating to counterterrorism. The way that person would at this juncture would be through the National Counterterrorism Center, the all-source information analytical center, that would report to the NID.

I do think there are, as I indicated in my remarks, some substantial downsides in pulling out the Counterterrorism or Counterintelligence Division where you are pulling it away from its roots and the sources of the information where you can give that NID the information through the National Counterterrorism Center and through the all-sources Counterterrorism Center, not just the FBI information but the CIA information as well.

You allude to the presumption of non-disclosure that there has been throughout the Bureau in the past, and I would say to a certain extent the CIA. In part, that has been attributable to the wall that was broken down by the Patriot Act; in part, that is attributable to the fact that we focus on cases and do not want the facts of cases getting into the press or going to somebody else. But when it comes to terrorism and other areas such as that, there has to be a presumption of disclosure.

Now, one of the things we have done to instill that in our management is we have had all of our special agents in charge, all of our assistant special agents in charge go through a 1-week course at the Kellogg School of Management in Chicago. The focus of that 1-week course for all of our 250 top management was to take an institution such as ours through a period of transformation. It is the same school that gives similar courses to IBM or GE, the corporate structure around the country.

We had a 1-week course for each of our top management focused on intelligence information and how we treat it, how we disclose it, as well as information technology, with the expectation that those who have gone through that school understand that we are an organization going through transformation, and these are some of the obstacles that other organizations have gone through, and this is what we need to do as an organization to overcome those obstacles.

So I think we as an institution are changing in terms of our understanding, our embracing of the necessity to disseminate and to share information in ways that we perhaps had not been in the past.

Mr. McLAUGHLIN. I would not add much to that.

Senator SPECTER. Mr. McLaughlin, I have 17 seconds left, but you do not have any limitation.

Mr. McLAUGHLIN. I would just not add much to what Director Mueller said, except to say that our officers are now present in the FBI, his officers are present in the CIA. On a major terrorist case—I can think of two or three in the last month—Bob and I are on the phone to each other continuously comparing notes about everything from the case itself to our contacts with foreign intelligence services.

We have in TTIC today for the first time a senior official and a body of analysts who work with that person, the Director of TTIC, who has the kind of visibility that you have just discussed. And I see the benefits of that.

So, essentially, let me just stop there and say that the concept you have laid out, Senator, of a person who has this visibility across this whole arena, domestic and foreign, is a good one, I believe. I would endorse it.

Senator SPECTER. Thank you.

Chairman COLLINS. Senator Levin.

#### **OPENING STATEMENT OF SENATOR LEVIN**

Senator LEVIN. Let me first thank you and Senator Lieberman for your stalwart, determined, bipartisan leadership here to produce a product that we can rally around and which will make the necessary reforms. You are both really doing great work, and we all appreciate it.

I think from your description, both of you, of what operations you would allow a new National Intelligence Director to direct, neither of you believe that that Director should have the power to task operations. Is that correct?

Mr. MUELLER. Yes.

Mr. McLAUGHLIN. I think there is a fine line here.

Senator LEVIN. OK. If you cannot answer it quickly, that is OK. Just say you cannot answer it quickly, and I will go on to the next question.

Mr. McLAUGHLIN. I think he should be able to task.

Senator LEVIN. Operations.

Mr. McLAUGHLIN. In one area.

Senator LEVIN. OK. Could you give us that one area?

Mr. McLAUGHLIN. Well, this is how I think about it. I think someone has to report to that National Intelligence Director; for example, if the CIA reported to that National Intelligence Director directly, and the CIA Director worked for that National Intelligence Director, while the CIA Director would be in charge of operations overseas, by virtue of reporting to the National Intelligence Director, that person would certainly have something to say about operations.

Senator LEVIN. Something to say. As the 9/11 Commission recommends, should that NID be able to assign operational responsibilities to an agency?

Mr. McLAUGHLIN. Not directly.

Senator LEVIN. Thank you.

Now, we have heard a lot about the declaration of war against al Qaeda in 1998 by the CIA Director. Did the budgets that were submitted by the CIA subsequent to that declaration of war reflect what the Director believed should be done to carry out that war? Did your budget request inside the Executive Branch, first of all, implement that declaration of war?

Mr. McLAUGHLIN. I don't recall the specific numbers. I know we asked for more money for counterterrorism, but I don't recall—

Senator LEVIN. You asked for more than you got?

Mr. McLAUGHLIN. I just don't recall the data.

Senator LEVIN. Could you get that to this Committee?

Mr. McLAUGHLIN. I will.

Senator LEVIN. OK. Do you know whether or not when the CIA Director came to Congress with the administration's budget the CIA Director indicated that that is what he supported in terms of the needs of the CIA?

Mr. McLAUGHLIN. I am sure that he brought forward a budget that he supported.

Senator LEVIN. And was there ever a case where he said to us, hey, the CIA has declared war, we do not have enough money in this budget request to carry out that war? Was there ever an instance that you know of where that happened?

Mr. McLAUGHLIN. I would have to go back and review the record on that.

Senator LEVIN. Offhand, do you know of any instance where that happened?

Mr. McLAUGHLIN. I know that we needed more and wanted more and asked for more, but I cannot take it to the precision you are asking.

Senator LEVIN. All right. So that there were times when you came to us, to the Congress, and said we are at war but this budget request does not allow us to carry out that war?

Mr. McLAUGHLIN. I would have to review the record to make sure I have that correct.

Senator LEVIN. All right. Now, on the tug of war that has been referred to between the Department of Defense and the Intelligence Community over national assets of the NSA, I think we ought to analyze any such tugs of war that exist and that have occurred over the years. About how many times would you say that occurred?

Mr. McLAUGHLIN. In fact, in practice that does not occur very often.

Senator LEVIN. All right. If there are any examples of that, would you submit those for the record?

Mr. McLAUGHLIN. Yes.

Senator LEVIN. Now, the budget currently that is submitted to the OMB is developed by the DCI by law. Is that correct?

Mr. McLAUGHLIN. That is correct.

Senator LEVIN. Is that a hollow authority? We have heard that all you folks do is you staple together the request of 15 agencies, that you do not shape or influence that.

Mr. McLAUGHLIN. No, it is more complicated than that. The Director issues guidance to each of the agencies based on the national intelligence priorities that are worked out with the National Security Council. The agencies then formulate a budget based on that guidance. The Director then looks at the budget to see if it is in line with the guidance he or she issued. That is then approved and goes to OMB and also to the Department of Defense where there is a consultation at both of those arenas.

Senator LEVIN. So that the guidance is issued currently under law by the CIA Director?

Mr. McLAUGHLIN. That is how it works in practice.

Senator LEVIN. And is that a hollow authority?

Mr. McLAUGHLIN. I wouldn't say so.

Senator LEVIN. Because one of the things we have to decide to do is how do we shift budget authority. I think the real issue, at least as I read the current law, as I read the current Executive Order, is whether or not the law means what it says.

Mr. McLAUGHLIN. No, the Director's authority at the initiation, the formulation of the budget is substantial. His authority declines as the budget is executed.

Senator LEVIN. And that is where, it seems to me, the key issue is, and that is determined currently by Executive Order, is it not?

Mr. McLAUGHLIN. No. That is not, I don't think, determined by Executive Order.

Senator LEVIN. Who determines, for instance, that it is the DOD agencies that have that authority, that budget execution authority, to the extent that it exists in the Executive Branch? And I hope we all remember that when it comes to reprogramming, Congress has got a key role. But, nonetheless, to the extent it exists in the Executive Branch, who currently has that authority? Is that authority which is given to the DOD now given to them by Executive Order or by law?

Mr. McLAUGHLIN. The authority to?

Senator LEVIN. To be the reprogramming engine?

Mr. McLAUGHLIN. No. It is a result of the fact that the budget resides in the DOD and is literally in their comptroller's office and their computer system.

Senator LEVIN. By appropriation?

Mr. McLAUGHLIN. I believe.

Senator LEVIN. So that it is an appropriation decision which puts that implementation authority into the hands now of the DOD?

Mr. McLAUGHLIN. I think that is correct.

Senator LEVIN. Which means we can change that by simply changing how that is appropriated, if we want to do that.

Mr. McLAUGHLIN. Yes, that is correct.

Senator LEVIN. OK. My time is up. I just wonder if there is still a plan for a second round.

Chairman COLLINS. There is, of 5 minutes each.

Senator Voinovich.

#### OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. I would like to thank you, Madam Chairman, and Senator Lieberman for your leadership. I think there is a question about whether or not we are going to spend enough time to do this thing right, and from my observation, I think the time has been put in by all of us, and particularly you, that will put us in a position where we can move forward responsibly with legislation.

I would like to thank you, Mr. Mueller and Mr. McLaughlin, for your service. I was comforted by your testimony in terms of the progress that we have made since September 11. You might be interested to know that I have met with the Joint Task Force people in Cleveland, Columbus, and Cincinnati, and the Homeland Security officials, and they say that there has been a sea change in terms of the exchange of information among law enforcement agencies and also the folks that are charged with homeland security. So this is getting down to the local level where I think it really makes a difference.

Director Mueller, in addition to fighting terrorists, the FBI is responsible for combating other serious threats to the United States, such as organized crime and corruption abroad, a subject on which I held a hearing in the Foreign Relations Committee last year. At that hearing we heard testimony on the pervasive influence of the Russian Mafia in the United States of America. Grant Ashley, Assistant Director of the Criminal Investigative Division of the FBI, testified before the Committee, and I asked him if the FBI had enough resources to fight organized crime as we devote more and more resources to fight against terrorism. He indicated that some of the resources once dedicated to the fight against transnational criminals are being diverted for the fight against terrorism while noting that the problem of transnational crime continues to grow. I am very concerned about crime and corruption overseas, and that is what the hearing was on, and then we had all this information about the Russian Mafia here in the United States.

Yesterday in Cleveland, I met with the FBI special agent in charge, Gerald Mack. He feels that the Joint Terrorism Task Forces are working well. That is one of the things I mentioned. I asked him if he had enough agents assigned to counterterrorism, and he said he did but that he was taking agents away from their normal assignments to meet counterterrorism requirements. You have got a big job. In addition to terrorism, we all know the FBI

has responsibilities for areas such as public corruption, non-violent white-collar financial crimes, and civil rights. I have three questions for you.

First, should the FBI continue to be responsible for all these areas, or should the FBI shed some of its missions which could perhaps be given to other Federal agencies or State law enforcement agencies so that it can focus on its highest priorities, such as terrorism and organized crime?

Second, do you have the workforce and the resources to do all of these missions?

And third, does the FBI need additional personnel flexibilities to accomplish its expanded counterterrorism mission?

Those are three long questions, but the fact of the matter is you are charged with many responsibilities. The question is: Do you have the resources to get them done, or should we give some consideration to shifting some of these responsibilities you have to some other agencies?

Mr. MUELLER. Well, going to the first question on the shifting of the responsibilities, we have shifted responsibilities. We have looked at what areas of responsibility we have in the wake of September 11, for instance, and looked at those areas in which we, in my mind, provide something unique to law enforcement. I moved almost 500 agents from the drug program to counterterrorism in the wake of September 11. I also have moved agents from some of our work in things like bank robberies, smaller white-collar criminal cases, in the belief that DEA and the other agencies that can pick up those areas where we don't have necessarily any special expertise. I think particularly in the drug area, we have developed substantial cases over the years. We have a huge degree of expertise. But it seems to me that DEA can beef up that capability, and they are doing so.

So we have already taken and looked strategically at what we are doing, where we can best put in our personnel. One of the things that we need to be as a workforce, and that is flexible. We will find that there will be a case that arises in a place like Lackawanna, New York, and we have to be able to push resources there, but not leave them there. Too often in the Bureau we have taken resources, put them in a particular place to address an immediate threat, the savings and loan crisis being one of them. And those resources are still there 20 years later, when we need the resources elsewhere in the country.

So we have to be much more flexible, and it may mean in a particular division at a particular point in time, we have to take people—

Senator VOINOVICH. Have you done this in conjunction with the DEA and other agencies?

Mr. MUELLER. Yes.

Senator VOINOVICH. Everybody has signed off on it?

Mr. MUELLER. Yes, through the Department of Justice.

Second, in terms of our workforce, there are areas where we are building up our intelligence capability where we are looking at augmentations to our workforce in terms of how we better provide adequate salaries to our analysts, how we develop a career path for our analysts that has not been there in the past. That equates, as

I said before, to the career path in the CIA or DIA or NSA or these other areas. And we are going to Congress with a request to give us the flexibility to develop those career paths.

Last, in terms of do we have enough money to do all that is on our plate, we have had to prioritize, as every Federal agency does. We put our requests for financing in the critical areas where we need to defend the security of the United States, the requests in counterterrorism, counterintelligence, cyber, white-collar crime because of the large white-collar crime cases we are addressing now. And we have through the administration and through Congress received substantial augmentation of monies over the years. And we continue to go back in the 2004 budget and the 2005 budget to request that which we need to address the current priorities, but also other priorities that we see on the horizon, and we will continue to do so.

Senator VOINOVICH. And you think that the National Intelligence Director having the full view of what is there will be beneficial in terms of your operation, in terms of your resources?

Mr. MUELLER. I believe so. I think the National Intelligence Director would look at us as one of the components and an essential component in terms of intelligence within the United States and would look favorably on a request to augment the monies that are spent on our intelligence program to provide the types of intelligence that both I want, the NID would want, and the President would want as to future threats against the United States, not just in counterterrorism but in counterintelligence, those who wish to steal our secrets, as well as cyber, preventing cyber attacks and identifying those overseas who would launch cyber attacks against our infrastructure, against our Defense Department.

I would look to that National Intelligence Director to look at us and the Defense Department and the CIA and be fair in terms of what we need to do the job as an intelligence agency in ways that we have not been looked upon the past.

Senator VOINOVICH. Thank you.

Chairman COLLINS. Thank you. Senator Dayton.

#### **OPENING STATEMENT OF SENATOR DAYTON**

Senator DAYTON. Thank you, Madam Chairman.

Director Mueller, at a hearing a couple weeks ago, I asked the Secretary of Defense about the chain of command on September 11, 2001. The 9/11 Commission Report concluded that there was not that morning a proper chain of command established between the President of the United States, the Secretary of Defense, and then on to the combatant commanders; and that as a result, the Vice President issued the President's instruction to authorize NORAD fighters to shoot down hijacked enemy planes within U.S. airspace about 2 hours after the first hijacking, and an hour and a half after the first World Trade Tower was struck, the NORAD mission director decided not to pass that instruction on to the pilots who were airborne at the time.

The Secretary of Defense replied that on September 11, 2001, the defense of this country from an enemy attack from within our borders was not the responsibility of the U.S. military or of NORAD but of the FBI. And I would like to know—two questions. One is:

Was that your understanding of your responsibility on that day? And, second, who has that responsibility today if, God forbid, there should be a repeat of a September 11 type of attack?

Mr. MUELLER. We certainly have responsibility for developing intelligence about threats within our borders, threats that may come from outside our borders but are to take place within our borders. We have responsibility for developing intelligence to identify those threats, and we also have responsibility to address those threats with investigations and, by addressing it, taking the investigations to prosecutors and either taking those persons off the street by prosecution, expulsion from the country, or monitoring them. I think we have that responsibility.

I would say it is a shared responsibility. I think Homeland Security has a substantial role to play in protecting the borders, for instance; Customs, the ICE. And so while I think we have a substantial responsibility to prevent another attack within the United States from either international terrorists, domestic terrorists, there are others that play a piece in that.

Senator DAYTON. What was your understanding, sir, on September 11, 2001, given the—

Mr. MUELLER. I think we had a role. Absolutely, I think we had a responsibility to protect the United States. I think we understood that responsibility, and as we do today.

Senator DAYTON. Was that an operational responsibility on that day once those planes were hijacked to take action to defend the country?

Mr. MUELLER. Yes.

Senator DAYTON. And if so, what would that action—what could that action have been given your assets?

Mr. MUELLER. Well, immediately upon the incidents happening, we had a responsibility to determine who was responsible, whether there were any others out there who would utilize similar methods to hijack planes. We had to do it in coordination with others, whether the FAA or, to a certain extent, the military. But we absolutely had a responsibility once those terrorist attacks had occurred to identify who was responsible, make certain there were no others out there.

Senator DAYTON. But that occurred at the time of the attacks—and I guess I am even more interested in if, as I said, God forbid, that kind of attack should develop again, I would like to know who is responsible operationally, who has the authority and the assets to direct whatever must be directed to marshal an active defense of the United States from an enemy attack if it repeats itself from within the borders.

Mr. MUELLER. Well, we had a responsibility then to prevent attacks. We understood that before. And we have a responsibility now to prevent attacks.

Senator DAYTON. Prevent. But what happens if one, as I said, should commence along the lines of September 11? Do you have resources available to marshal an act of defense at that point in time? If so, what are they? Do you need such resources?

Mr. MUELLER. We had on September 11 approximately 11,000 agents. On September 12th, we had 6,000 of those agents addressing it.

Senator DAYTON. With all due respect, Director, you are not answering my question.

Mr. MUELLER. We do have resources to address the—once an incident happens—

Senator DAYTON. Is happening.

Mr. MUELLER. Is happening, yes. If there is an ongoing hostage taking, for instance, that is our responsibility. We would have our Hostage Rescue Team there working with State and locals to resolve that issue. If there was another incident such as what happened on September 11 in which planes slam into buildings, then we would have a responsibility to investigate. We also have a responsibility to prevent that happening if we had intelligence. It was our responsibility to pull all the intelligence together along with that which the CIA has and disrupt, prevent that attack.

Senator DAYTON. I guess I was astonished by the Secretary of Defense's response, and I guess I am trying to, again, understand because it would seem that the air defense capabilities of this country reside with either NORAD, which is a North American shared command, or with our own military command directly. And I did not know the FBI had or even shared that, again, immediate, at-the-time responsibility or had the capabilities to take action. So I am trying to understand who has that today and what is the understanding of who has that responsibility today.

Mr. MUELLER. I see. I didn't fully understand, I guess. No, we do not have responsibility for the issuing of orders to NORAD to defend against that type of attack. I mean, our responsibility would be to coordinate with other agencies to make certain that the chain of command through whether it be the Department of Defense, Homeland Security, National Security Council, to the President has all the information we have available to us to make that decision. But we do not have the capability or authority, for instance, to launch jets to prevent an incident such as what happened on September 11.

Senator DAYTON. Thank you.

Thank you, Madam Chairman. My time has expired. Thank you. Chairman COLLINS. Thank you. Senator Carper.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thanks, Madam Chairman.

Director Mueller, I think earlier in response to Governor Voinovich's questions about the work that you have done sort of restructuring and refocusing the FBI's attention on counterterrorism, you went through a litany of a number of the steps you have taken, and I think they are certainly commendable. Some critics of the FBI are concerned that when you leave—and none of us are in these jobs forever—but when you leave, a successor or a series of successors will undo the good work that you have done on this score. And with that in mind, those concerns in mind, what advice would you have for us, steps that we might take legislatively to ensure that does not happen, or at least to reduce the possibility that it would happen?

Mr. MUELLER. I do think that the establishment of a NID goes some ways to assuring that because then you will have oversight

of the Intelligence Community in that office within the administration.

Second, the establishment of an intelligence directorate, the funding, the staffing, the development of career paths, the development of the cadre of people will certainly outlive my tenure. That will be tremendously important. Adequately funding and assuring the staffing will be important to enhance our capabilities there. And there also is the Department of Justice through whom we report, assuring that we are doing the job and satisfying the mission that has been set out for us.

And last, there is Congress, also looking at what we have done, what we have accomplished in various areas, not only in the oversight committees but also in the appropriations process that will be monitoring whether or not we are reaching the goals that we have set for ourselves.

Senator CARPER. Good. Thanks.

Director McLaughlin, if I could ask you a question or two, please. You actually raised an interesting question in some of your previous testimony. I believe it was before the Armed Services Committee. Here is what you asked: "Who will you hold responsible not just when things are going well but when something goes wrong with intelligence?" You went on to say, "Today it is the Director of Central Intelligence, even though his authority over the rest of the community outside CIA"—"his authorities are limited."

"If in the future there will be a National Intelligence Director, what authorities would be commensurate with that kind of responsibility?" That was the question you asked. A good question, I thought.

Having posed that question, I want to just sort of turn the tables on you a little bit this morning and ask you, if you were put on the hook for what goes right or what goes wrong with intelligence, what authorities would you want or need?

Mr. McLAUGHLIN. Well, thanks for asking. I posed the question because I wanted to force people to think about that issue, because it is pretty clear today who you hold responsible. And I think the answer to the question implies certain things about resources and authorities. If you choose to say that the National Intelligence Director is the Nation's principal intelligence officer and that is the person to whom you will look in good times and bad, then I think that person does require substantial authorities and something else that I will talk about.

Now, I have mentioned before what I think the authorities need to be. They need to be greater than the DCI's, which are substantial, but they need to be extending to the budget. They need to be extending to the ability to influence substantially, perhaps hire and fire the leaders of major agencies, so that it is clear that this person really is in charge.

I think the other thing I wanted to mention, though, is that if you truly are being held responsible, you need access to troops; that is to say—I mean, there are two conceptions of how this could work. It could be just—not "just." It could be a person whose principal duties are to handle the programmatics of the community—budget, training, security policies, information technology and so forth. One model.

Another model is someone who does that and also represents the community's view substantively—testifies before the Congress, the annual worldwide threat testimony; briefs the President; renders a judgment for you on behalf of this entire Intelligence Community on whether North Korea has nuclear weapons or not.

Someone who has those responsibilities and you hold responsible and accountable for those kinds of questions will need to be able to reach without any impediments into a body of experts, analysts, and operators, just as the DCI can, to gain that knowledge, gain the expertise, gain the analysis, understand the differences, understand the gaps, and bring them forward.

So that is how I think about it, and if this is the person you want to hold responsible, then it cascades through a series of other decisions to be made, I believe, about how the person is staffed, who reports to the person, and so forth. I can sort of describe how it works now, but that is how I see it.

Senator CARPER. One last quick question, if I could, and just a brief answer, too, if you will, from both of you. We have talked a lot and heard from a lot of witnesses in excellent testimony about some of the things that we ought to do. And, occasionally, I will ask the witnesses, What should we absolutely not do? And if you would just give me an example or two of something we absolutely ought not to do as we restructure our Intelligence Community, what might be an example or two that you would share with us?

Mr. McLAUGHLIN. Don't create a National Intelligence Director with no real authority because you will have the worst of all worlds then. You will have diminished the authority of the Director of Central Intelligence in the process and created another competitor for authority but without clear authority.

Senator CARPER. Director Mueller.

Mr. MUELLER. As I understand the difference in collections, capabilities, authorities between that which is collected overseas and that which is collected within the United States and keeping that in mind when drafting legislation for the NID to assure that the National Intelligence Director has the capability for strategic tasking, but leaves the collection of that information within the authorities of the various different intelligence agencies.

Senator CARPER. Thanks to both of you.

Chairman COLLINS. Thank you.

We are going to have a brief second round of questions, but I am going to take a 5-minute break. I am going to resume the hearing in 5 minutes. Thank you.

Senator LIEBERMAN. We will have a seventh-inning stretch.

Chairman COLLINS. Right.

[Recess.]

Chairman COLLINS. The Committee will come back to order. We will now have a final round of questions limited to 5 minutes each.

Director McLaughlin, as you could tell from the questions you have had from us at this hearing and at previous hearings, there is a great deal of interest in learning exactly how the budget process works now and how we can reform it and institutionalize it in the legislation that we are drafting.

In consulting with my colleagues, I think it would be very helpful to enhancing our understanding if you were to provide to the Com-

mittee a copy of the budget guidance that the DCI sends out to the 15 intelligence agencies.<sup>1</sup> So I would ask that you provide that for the record.

Mr. McLAUGHLIN. I will.

Chairman COLLINS. Thank you. The other issue on which there continues to be great debate, debate driven in part by the fact that different agencies define planning differently, as you have pointed out, has to do with the role of operational planning and how we should draw those lines. In your testimony you referred to an operational meeting that you chair every day, "with Intelligence Community, military and law enforcement elements represented." I am told that these meetings often focus on counterterrorism issues.

You also noted in your testimony that, "at that meeting we review and act on that day's intelligence." I am trying to get more of a feel for what that means. Does that include discussing operations to be carried out by the agencies represented at that operational meeting?

Mr. McLAUGHLIN. It is mainly focused on operations to be carried out by CIA, but we have in that meeting, as part of the personnel from our Counterterrorism Center, representatives from other agencies. There is an FBI officer who is there, stationed in the Counterterrorism Center, so that there is transparency with the FBI. So it is mainly on CIA operations. That said, it is frequently the case that in the course of our operations we uncover a link to the homeland, and that is passed on the spot to the people from the Bureau, and migrates back to the FBI.

It is also the case that there may be a military dimension, and so I have in that meeting the Associate DCI for Military Support, a 3-star Navy Seal, who if we require military involvement in a counterterrorism operation, he is there to organize that. So this is a very tactical meeting we have and decisions—

Chairman COLLINS. Are you tasking though?

Mr. McLAUGHLIN. Yes. We are not tasking the agencies, but it is in fact analogous to what I think might happen in a larger setting in a National Counterterrorism Center. I do not task the FBI and I certainly do not task the U.S. military, but these issues arise, and I will say to my officers, "Be in touch with the FBI to make sure that they are aware of what we have just heard and are acting on it. Be in touch with the Pentagon to make sure they have forces deployed along Border X in the event we drive a terrorist over it. Be in touch with the National Security Agency to make sure they have these phone numbers that we have uncovered in some document collection that we have encountered."

So this is a very tactical, hands-on type of operation every day.

Chairman COLLINS. It is information sharing, it sounds like as well. Is this what you would envision the National Counterterrorism Center doing in order to free up the NID to focus on managing the Intelligence Community?

Mr. McLAUGHLIN. I see it as a variation of that. I think somewhat less tactical, more strategic, and less directive, because I do direct CIA officers and stations to perform certain duties. I would

<sup>1</sup>The list of items CIA has not provided to Senator Levin requests (SASC) has not been provided by press time.

see the NCTC as being more of a clearinghouse for data and the development of a checklist of things that must be done, things that must be plugged together, things that must be integrated, and then directing—directing is probably the wrong word—asking people to focus on that and get back to you. This will have to be determined in practice, but that is my understanding of how this would work.

Chairman COLLINS. Director Mueller.

Mr. MUELLER. I also have a meeting twice a day, 7:15 in the morning and then 5 o'clock in the evening with Counterterrorism, and sitting at the table are representatives of Department of Homeland Security, the CIA, but it is an effort for me to understand what we are doing in our organization and give direction to make certain that we are doing what is necessary to meet the counterterrorism mission.

But apart from what I do and what John does, there also is twice a day, a CIVITS, it is called. It is a videoconference chaired by Homeland Security adviser Fran Townsend or somebody under her, with each of the component agencies on that videoconference, looking to determine whether everything has been done to meet a particular counterterrorism threat, and that is the opportunity, and my understanding is it does take place once a day and once on Saturdays, and it seems to me that it is that planning, that bringing together of the agencies that the National Counterterrorism Center will do that is now being done out of the Homeland Security adviser's office. And it is that type of daily interaction of the agencies that assures that we are agile, that we are responding to the immediate threats that there is coordination.

So I see the National Counterterrorism Center as having the analytical capability, but also that coordinating function that is now being coordinated out of the Homeland Security adviser's office.

Chairman COLLINS. Thank you. Senator Lieberman.

Senator LIEBERMAN. Thanks, Madam Chairman. I thought that was a very good question and very helpful answers because there has been some debate about whether the National Counterterrorism Center should have an operational planning role, and the fear expressed on the extreme is that somehow the Director of the center or the NID would interfere with the chain of command between the war fighters, the Secretary of Defense, the President, or the FBI, yourself, and the Attorney General. But there has to be a way to make this work without doing that, and it sounds like you are doing it every day anyway. In the Counterterrorism Center everybody is going to be around the table analyzing what has been collected. There is a natural way, of course, in which you are all going to say, well, what are we going to do about it? And then you are going to agree who should have what role. I want to go to another question, but I thought your answers were very helpful.

I am going to assume for the moment that we are heading toward creating a National Intelligence Director and that we are going to avoid the pitfall that you, Director McLaughlin, quite accurately state is probably the most dangerous thing we can do here which is create a NID with no real authority. I think today the meeting at the White House was a turning point because the President did explicitly support a strong National Intelligence Director with full authority not just to form but to receive the appropria-

tions for the full national foreign intelligence program, which as you know better than I, is well over half of what we spend on intelligence.

Now I want to ask the question about how we make the NID effective, and that is, what is the bureaucracy under there? I ask you both as individuals who have directed large organizations, but also because your organizations will be now in part or in whole under the NID. We have a few models. We have the Commission model, the three deputies: Foreign, domestic, and military. We have the Roberts model: Collection analysis, science, and technology. Some have suggested we should just give the Director the opportunity to create a couple of deputies and let them decide what they want to do. Others have said maybe the centers are so important, have one deputy for the centers and then one deputy for what your community management team does now, all the budget matters.

What counsel would you give us? This is a slate that is not quite blank, but that we have to fill in fairly soon and we want to do it most effectively, about how to organize under the NID to make this work, assuming he has budget authority.

Mr. McLAUGHLIN. It is always dangerous to design a line and block chart sitting here at the table, but I will give you some thoughts on it.

Senator LIEBERMAN. And I will accept them as first thoughts and I would welcome them.

Mr. McLAUGHLIN. I think the first thing that a National Intelligence Director has to ask him or herself is, "How do I get my job done?" That may be the first, even before that, "What is my job? If I am the Nation's principal intelligence officer, what is my range of duties?" Let us assume that they are a mixture of substance and management.

You have to have troops and you have to have someone to integrate all of these things for you because you are looking at a very diverse community. One way to think about this would be to have the CIA Director and the CIA report directly to the National Intelligence Director. I do not think we have sorted out who reports to whom in any conclusive way in any of the legislation or the bills yet. It is not clear to me anyway.

Senator LIEBERMAN. In one way the Commission decided this or recommended, because as you remember, the CIA Director was one of the deputies, double-hatted.

Mr. McLAUGHLIN. Yes. I would do it a little differently. I would have the National Intelligence Director regard the CIA as the institution that can integrate things for him or her in the sense that among the CIA's distinguishing characteristics is its non-departmental nature. It is not attached to any department that makes or implements policy, and therefore, it is an institution that the National Intelligence Director could turn to for the purpose of integrating both collection and analysis. You have in the CIA a body of all source intelligence analysts who are multidisciplinary, global in focus, and not attached to any policy department. And the CIA Director could make those assets available to the National Intelligence Director.

In the overseas part of the CIA you have not just HUMINT collection, but under the DCI's current practice, the Chief of Station

in various spots around the world is also an integrator. The Chief of Station is the chief intelligence officer for the United States in that country, and therefore, coordinates the activities in that country of other institutions that are stationed there from the Intelligence Community. So the CIA could perform that integration function for the National Intelligence Director.

I raise that because I do not know what the NGA, NSA, and NRO would be in the reporting chain here, but they are essentially collection agencies and agencies that devise technology, and someone needs to integrate that as the CIA currently does for the DCI.

So if you accepted that, then the next thing to figure out would be what are the division of responsibilities between the National Intelligence Director and the Director of the CIA? I will stop there, but there are ways to think about that.

Senator LIEBERMAN. I appreciate that answer and invite you to think about it and give us any counsel you would pretty soon.

Director Mueller, do you have a response?

Mr. MUELLER. Yes.

Senator LIEBERMAN. The Commission recommended the Executive Assistant Director for Intelligence of the FBI might well be double-hatted as the Deputy NID for Domestic Intelligence. I assume that—because I have talked to you about it—you think that is a bad idea.

Mr. MUELLER. I do not agree with double-hatting. Again, going back to chain of command and responsibilities, my responsibility to assure that the dictates, directives of the National Intelligence Director are carried out now, I would delegate that to Maureen Baginski who would be a principal relator to the National Intelligence Director, but I do not believe in double hatting.

Senator LIEBERMAN. If you were the NID what is the structure you would want underneath you to make it work?

Mr. MUELLER. I would have a deputy, and then I would have as a council of the principal players in the National Intelligence Community that would play a role as the users in directing down through their organization the priorities, the requirements that I as the National Intelligence Director with the input of that counsel believe are appropriate and hold the person on that council responsible for the execution of our plan. I would have one deputy. In other words, when I am not there, I would want one deputy who is responsible as opposed to three vying with each other or four vying with each other for prominence across the board.

There is one other point I would make, and that is I do believe the National Intelligence Director should have some independence from any of the underlying agencies. We are incorporating for the first time really in the Intelligence Community some aspect of domestic intelligence, and to have some supervisory advisory role there apart from the Attorney General, in my mind, requires an understanding of how we gather intelligence, under what authorities, what use we can make of it within the domestic United States, which is a different background perhaps, a different area of expertise than one would have in the development of intelligence within the United States. And there has to be, in my mind, that independence at the NID that is somewhat different than having the NID an extension of the CIA.

Senator LIEBERMAN. Very helpful. Thank you both.

Chairman COLLINS. Senator Dayton.

Senator DAYTON. Thank you, Madam Chairman.

Director McLaughlin, there is a book out now, "Imperial Hubris" written by Anonymous, so I believe it is not anyone very anonymous.

And, Madam Chairman, I wish that we could devote a hearing to this and get other views on this, because I think this is the crux of the dilemma that we are facing in this country in terms of our policy.

He writes, "As I complete this book, U.S., British and other coalition forces are trying to govern apparently ungovernable post-war states in Afghanistan and Iraq while simultaneously fighting growing Islamist insurgencies in each, a state of affairs our leaders call victory. In conducting these activities and the conventional military campaigns preceding them, U.S. forces and policies are completing the radicalization of the Islamic world, something Osama bin Laden has been trying to do with substantial but incomplete success since the early 1990s. As a result I think it is fair to conclude that the United States of America remains bin Laden's only indispensable ally. As usual, U.S. leaders are oblivious to this fact and to the dire threat America faces from bin Laden and have followed policies that are making the United States incrementally less secure."

Moving on, "U.S. leaders act as naive and arrogant cheerleaders for the universal applicability of western values and feckless overseas military operations, omnipotently entitled"—various names here. "U.S. leaders boast of being able to create democracy anywhere they choose, ignoring history."

I wonder if you would care to comment on that, and particularly whether we are weakening or strengthening our national security as a result of what we have done to date in Iraq and our continuing operations there?

Mr. McLAUGHLIN. Of course, the author's opinions are his own and—

Senator DAYTON. Absolutely. I am asking you for your professional response as Director of the CIA.

Mr. McLAUGHLIN. I will give you my personal opinion then.

Senator DAYTON. Fine.

Mr. McLAUGHLIN. It is instructive to me that bin Laden carried out these attacks on the United States long before there was any thought of going into Iraq, and carried them out at a time when there was arguably progress in the Arab-Israeli situation. So I do not see these as significant motivators for the al Qaeda movement. They are things that they fall back on as excuses, but in the case of Iraq, I think Iraq is a cause for extremists but it is not the cause of extremism.

Senator DAYTON. As I understand what he is saying here, I guess the crux of my question would be, we are in Iraq, we have done what we have done, but is our continuing presence there, active military involvement there—we have heard now from one of our colleagues, very well regarded, that we could be there another 10 to 20 years. I think the point he is making is that these actions on our part are weakening our national security by continuing to

increase the radical—his term is the radicalization of the radical Arab world, which I do not think is justified in its stance toward the United States, but he is saying here we are unwittingly contributing to that radicalization and to the increased number of those who would take these kind of disastrous actions against us.

Mr. McLAUGHLIN. A lot of things in intelligence fall under the category of discoverable, other things knowable, and other things unknowable. I think the question you have posed, I am not trying to dodge it, but ultimately it is unknowable. In one sense you could say that Iraq can become a cause for extremists even though it is not the cause of extremism, and in the short term you could see it as generating some of the problems that the author talks about.

If you take a longer-term perspective and you imagine the achievement of what the United States is seeking to achieve in Iraq over a period of time, it would have the reverse effect I believe. So I think this is a very fluid and dynamic thing, and to kind of freeze frame it the way the author does, and to talk about it in absolute terms I think is misleading.

Senator DAYTON. Again, I would agree. As Yogi Berra says, it is always hard to make predictions, especially about the future. He does quote Ayman al Zawahri in late 2003. That would be well after we are into the Iraqi operation. Quote: "We thank God for appeasing us with the dilemma in Iraq after Afghanistan. The Americans are facing a delicate situation in both countries. If they withdraw they will lose everything, and if they stay they will continue to bleed to death."

Would you concur that we are bleeding to death if we continue to persist in Iraq for this period of 4 years, 10 years, or 20 years?

Mr. McLAUGHLIN. Once again, I think it is just impossible to say. This is a very tactical day-to-day situation, and it is, of all the situations in the world, the closest that I can see to what I would call a multi-dimensional chessboard. In other words, if there is success on the political arena, success on the economic arena, the security problem will diminish. If there is not, the security problem will continue to grow. And as we look at the political situation now, it is a mixed picture. The recent convocation of a conference is a good sign, selection of 100 people of varying background.

The next question will be, can they achieve their goal of having an election for a constituent assembly in January? If they do, that will be another milestone. If they do not, that will be a bad thing. I think you just cannot talk about it in absolutes. It is very fluid and it is very dependent on all of these variables. I think it is one of those situations where only time will tell.

Senator DAYTON. Thank you for your response. Thank you, Madam Chairman.

Chairman COLLINS. Thank you, Senator Dayton. Senator Levin. Senator LEVIN. Thank you, Madam Chairman.

The two big reports that we have been looking at recently, one is the 9/11 Commission Report, and the other one is the report of the Senate Intelligence Committee. One has to do with the intelligence failures before September 11 to a significant extent. The other one is the intelligence failures prior to Iraq. In none of the 500 pages of each report that I can find is there any relationship drawn between any lack of power over budget or personnel on the

part of the CIA and those failures. I will make that as a statement because it seems to me, unless you know there is something in this report that I have not seen, that is just a statement of fact. There is no connection between what we are looking at, which is greater budget and personnel power for a new intelligence director and the problems to be corrected which were identified in those reports. That does not mean we should not give greater power, by the way, because I think there are some things we can do more efficiently and effectively, so I am not opposed to giving greater power. I think we ought to realize, however, this is not the—this does not address the issues which were raised.

The issue raised in the 9/11 Commission Report essentially was the lack of coordination, and the lack of sharing of information, which TTIC has now done a lot to address, and other efforts, including the Executive Order recently signed by the President also addresses.

The issue though, which needs to be focused on heavily is the question of the objectivity and the independence of the intelligence which is received both by the Executive Branch and by the Legislative Branch, because I think you both pointed out, we are a consumer of those assessments. It is not just that you folks, you particularly, Mr. McLaughlin, brief the President. We rely on that before we vote on authorizations for use of force and for other purposes, for budgeting purposes. We have got to be able to rely on those assessments, and frankly, we cannot. If anyone wants to know why we cannot rely on it, read 500 pages of the Senate Intelligence Committee report as to how far off assessment after assessment after assessment were.

The part that I would like you to address though, Mr. McLaughlin, is this. There were many occasions where the underlying intelligence was different from the public statements of the administration. One was presented to you. That issue was raised with you by Senator Durbin earlier today, and that had to do with the relationship between al Qaeda and Saddam Hussein and Iraq. I want to just give two examples of this. Your underlying assessment relative to this famous report of a meeting in Prague, your classified assessment was that there were great doubts that meeting took place. The 9/11 Commission found that there is no evidence that meeting took place. You had an unsubstantiated report which you had doubts about in the CIA in your classified document, and yet the administration was repeatedly referring to that report of a meeting as being strong possible evidence of a link between al Qaeda and Saddam Hussein, constantly. As a matter of fact, in one of the statements of the administration, it was stated to be that it is likely that meeting occurred, at the same time your underlying intelligence was saying you had real doubts about it.

Why is it that the CIA then in its public statements relative to that meeting did not reflect what your underlying intelligence said, which is that you had doubts about that meeting? What you said publicly was that, we cannot prove that the meeting took place. That is what you said publicly. But what you did not add was something which is critically important, which is that you had doubts about the meeting, that it ever took place, and as a matter of fact, you have concluded there is no credible evidence that the

meeting took place. Why that public difference between what your underlying intelligence said and between what you were saying publicly about that meeting?

And then there is one other issue I would like to get to, which relates to the same point.

Mr. McLAUGHLIN. I know this is a serious concern of yours, Senator, you have raised it a number of times. I will try and address it. First, our understanding of that meeting evolved over time, as most intelligence does. The skepticism came in as we continued to look at it and develop intelligence on it. I cannot give you a timeline as to when that skepticism became more pronounced, but it did.

Senator LEVIN. Could you do that for the record?

Mr. McLAUGHLIN. Sure.

Senator LEVIN. Thank you.

Mr. McLAUGHLIN. Also I do not have in mind precisely what we were saying about it publicly, but I know that we were not at any point publicly endorsing the idea that that meeting was somehow conclusive.

So what we have done is be very forthright, and I would say very objective in what we have said in our intelligence reporting about that meeting to you and to the President. The 9/11 Commission had access to that and rendered a judgment about the accuracy of our work.

I think what you are raising is a difficult issue because it implies that every time a public figure of some importance makes a statement that is at variance with our intelligence, I ought to stand up and say "foul."

Senator LEVIN. You do not have to say "foul." You can say it accurately when you speak publicly.

Mr. McLAUGHLIN. That would be a very difficult job for us because it happens in every arena. I heard Members of Congress on television this weekend say things that I thought were highly inaccurate about our work and about the conclusions of our work.

Senator LEVIN. I am only asking you to state things accurately when you speak, that you give us the full picture when you speak.

Mr. McLAUGHLIN. If every time I heard a public official say something that I disagreed with based on my knowledge of classified information, if I stood up and said, "Excuse me, I would like to correct the record," I would be doing that quite a bit.

Senator LEVIN. You missed my point, but I will try it again. My point is that when you do speak publicly that you give an accurate reflection of the underlying intelligence. We have to rely on that. The public relies on that. And when you leave out—

Mr. McLAUGHLIN. I agree with that.

Senator LEVIN. OK. But you left it out on that key meeting relative to Prague, which was used over and over again by the administration as being a principal source of their conclusion about whatever links exist between al Qaeda. But let me go on to the next one.

Mr. McLAUGHLIN. I would have to go back and parse the words on what we said publicly, but I would just assure you there is no intention on our part to speak inaccurately in public about our intelligence.

Senator LEVIN. Or to leave out critical—

Mr. McLAUGHLIN. Or to leave out critical parts.

Senator LEVIN. Now on the other one, if I may. This has to do with your judgment that there was, as to the relationship between al Qaeda and Saddam Hussein, you reached a conclusion, “you” being the CIA, that as a matter of fact it was highly unlikely that Saddam Hussein would share a weapon of mass destruction with a terrorist group such as al Qaeda. That was your conclusion, that only if attacked, only in retribution, would that action possibly take place. That was your conclusion, that it would be, in your words, classified words at the time, an extreme step for Saddam Hussein to share a weapon of mass destruction with al Qaeda, at the same time the administration was saying that he was very prone any day, any moment to give a weapon of mass destruction to al Qaeda.

So you had a significant difference between your conclusion and the conclusion and the statements which were made by the administration. Did you not have some obligation, at least when speaking publicly about the difference between the administration’s statements and your underlying statements, your classified statements, did you not have an obligation when speaking publicly to accurately reflect that difference?

Mr. McLAUGHLIN. Well, we do not often speak publicly about classified information, so automatically there is a limitation on what we are going to end up saying publicly. But I do recall an exchange that you and I had in the Senate Intelligence Committee in which you asked me similar questions, and I answered them quite clearly in a classified setting, and you requested that I declassify those answers, and I did, and they were answers that generally were along the lines of what we have just discussed in terms of the propensity of Saddam Hussein to use weapons, and that was unclassified after I agreed to your request.

Senator LEVIN. And you said then, when you responded to the request from the Intelligence Committee, on the eve of a vote on the authorization amendment, Mr. McLaughlin, you then gave us the declassified answer, that it would be an extreme step for him to hand one a weapon of mass destruction; is that correct?

Mr. McLAUGHLIN. I do not recall.

Senator LEVIN. Assume for the moment, that is what you said publicly. But then what the Director said was exactly what you say you do not do. He characterized the intelligence. He spoke up and said: There is no difference. There is no inconsistency between the CIA views that you had just declassified and those of the administration. He did exactly what you say you do not do, which is to speak publicly about comments of public officials relative to this kind of information, Director Tenet, and this was front page critical news. This goes to the question of whether or not Saddam Hussein attacked us on September 11, because if he did, everybody wanted to go after him. And so what the CIA Director did after you, at our request, declassified that critical statement that only if attacked would he share a weapon of mass destruction with al Qaeda, it would be an extreme step for him to do so, then the Director initiated a call to the media, saying that there is no inconsistency between those two views, those of the CIA which you just declas-

sified, and those of the administration which were consistently that he is just prone to hand a weapon of mass destruction to al Qaeda.

My question to you is—and it is something which should I hope trouble you, I hope trouble someone there, because we have got to rely on objective independent assessments. And before we hand more power to a Director to do that, we, it seems to me, are duty bound to be comfortable that we are going to be getting straightforward, unvarnished, independent, objective statements when statements are made publicly.

Can you explain that statement that there was no inconsistency in your views which were so different from the administration?

Mr. McLAUGHLIN. I would have to go back and revisit that whole incident. What I would tell you to frame it though is that there is no revealed wisdom on questions like that. People have different views. I stated a view.

Senator LEVIN. CIA had a view, Mr. McLaughlin. Your view was it would be an extreme step for him to hand a weapon of mass destruction to al Qaeda unless he was attacked. That was the view of the CIA.

Mr. McLAUGHLIN. That was my personal assessment based on your question to me, and—

Senator LEVIN. That was not the CIA view?

Mr. McLAUGHLIN. I did not take a poll. I gave you my personal view, and I guess what I am saying is I would have to go back and revisit the particulars of the incident, but I think it is a question on which reasonable minds can differ.

Senator LEVIN. That was in the NIE. It was not a personal assessment. You declassified the NIE on that issue for us, and then the Director undermined it by saying there was not inconsistency, and that is where the lack of trust comes in. So it was in the NIE. It was not your personal assessment.

Mr. McLAUGHLIN. I was reflecting what was in the NIE. That is for sure, but I was responding to you in a very, as I recall, a very tight exchange in which you were asking me very particular questions, and I gave you my view of what the intelligence had to say.

Senator LEVIN. The Chairman has been very generous. Thank you.

Chairman COLLINS. I want to promise our witnesses that this hearing truly is almost over. Before I adjourn it, I want to clean up one issue about budget authority over which I think some confusion has been created. I see that Larry Kindsvater is sitting right behind the Director, and at the risk of putting him on the spot, I would like to ask him to come forward and answer this question very briefly.

Just to be clear, if Congress wants to appropriate funds directly to the National Intelligence Director, would we have to change the law?

Mr. KINDSVATER. As most things regarding appropriations law, I probably should talk to my attorney first, but my understanding is if you want to specifically appropriate funding to the NID, yes, you have to change the law. But again, I think before we go too far on that, we ought to contact our appropriation lawyers and make sure that is perfectly correct.

Chairman COLLINS. OK.

Mr. KINDSVATER. I believe it is.

Chairman COLLINS. There has been some confusion on that point, whether an Executive Order can do it, or whether there should be a law changed.

Mr. KINDSVATER. The only thing I could add is we would have to go back and check if there is a law today that requires that appropriations for NSA, for example, go to a defense-wide appropriation account. Again, I need to contact one of my attorneys to review the law to find out if that is correct or not.

Chairman COLLINS. OK. Thank you.

Senator LEVIN. Two requests of the Chairman, if I may?

Chairman COLLINS. Yes.

Senator LEVIN. One is that we have heard a lot about a Scowcroft Report recommending some reforms—

Chairman COLLINS. We have requested it.

Senator LEVIN. Thank you. I apologize. I interrupted you.

Chairman COLLINS. No, go ahead.

Senator LEVIN. And the other issue has to do with—this goes to the oversight issue. A lot of emphasis has been made about the importance of congressional oversight as a way of assuring that there be objective and independent intelligence. I want to just be blunt. I talked to Stan about this earlier, and I talked to Mr. McLaughlin about it as well. There is a lot of material which is owed to the Armed Services Committee by the CIA, a lot of questions which have been asked which have not been answered. And it is like pulling teeth, and we have to change that. If we are going to rely on oversight, we have to get a much more responsive Intelligence Community. I have a list which I will give to Mr. McLaughlin of the items which have not been provided despite longstanding—this is months—requests for information.

I only bother this Committee with this issue because of the importance of oversight and the need that Congress has, particularly when these are Committee requests. This was not an individual Senator's request. These were Committee requests. So I would just like to make that point part of the record. I will make this list of items be part of the record. We got a few more answers today, but frankly, they dribble in, and we have got to have a much greater responsiveness. Mr. McLaughlin, you and I have talked about that issue as well, and we will provide the list to Stan.<sup>1</sup>

Chairman COLLINS. We will include that in the record.

Since many of the requests really have been done through the Armed Services Committee, I would encourage you to bring it up to Senator Warner. Senator Lieberman.

Senator LIEBERMAN. Thanks, Madam Chairman. I cannot resist, and I will do this briefly.

I have followed this last dialogue between Senator Levin and Director McLaughlin, and perhaps I will begin it by making this larger point to put an exclamation point after something you said. We are focused on intelligence and organizing our intelligence well. We are focused on the best collection we can, and then the best analysis and breaking down the stovepipe, sharing, centralizing author-

<sup>1</sup>The list of items CIA has not provided to Senator Levin requests (SASC) appears in the Appendix on page 85.

ity and accountability. But in the end a lot of this is not mathematics of two plus two equals four. It is looking at data and reaching conclusions to the best of our ability, and different people can reach different conclusions. And perhaps I will enter this specifically by saying with respect that I disagree with the conclusion, based on my own analysis—and I have spent a lot of time at this—of the intelligence, that Saddam Hussein was not likely to share weapons of mass destruction with terrorist groups. I disagree with the conclusion that he did not have an ongoing relationship with al Qaeda. The stuff that I have read and seen says to me that it went on from the early 1990's, and in fact after we defeated him in the Gulf War, he convened a series of conferences in Baghdad of Islamist terrorists. And the dialogue went on.

The 9/11 Commission Report, though makes it clear that there is not sufficient evidence to find any involvement by Saddam Hussein in supporting the attacks against us of September 11. That is the failure to have evidence to reach a conclusion. They document quite a series of connections between the Iraqi Government under Saddam and al Qaeda, including for the first time I saw it, what they say was an invitation, an offer of asylum by Iraq to Osama bin Laden, which I believe was in 1998 or 1999. So I am happy to disagree with your conclusion.

But to make that larger point, and just to say one last word, it gets at something. Senator Levin is quite appropriately and justifiably focused on seeing whether we can create a system that not only coordinates intelligence and makes it effective to the decision-makers, both Executive Branch and Legislative, but that depoliticizes it, and that is a goal I share. But in trying to achieve that goal I think we all have to understand that if you reached a conclusion or the CIA did, different from me, or let us say the same as whoever happened to be President, maybe that did not happen because your arm was twisted for political reasons, maybe it did. But there is at least the same chance that it did not, that maybe that was your best conclusion based on what you saw.

Mr. McLAUGHLIN. I assume the exclamation point you are trying to place, Senator Lieberman, is after my statement that there is no revealed wisdom on these issues.

Senator LIEBERMAN. That is the exclamation point, absolutely right. Final word is thank you to both of you. You are really extraordinary public servants, and whether one disagrees or agrees with whatever conclusion you reach on a given occasion, I think just listening to you during this hearing, you give me, and I hope insofar as others in the country have watched, just a lot of confidence about who is in charge at this point, and bottom line, I am glad you are on our side.

Mr. MUELLER. Thank you.

Mr. McLAUGHLIN. Thank you, sir.

Chairman COLLINS. I want to echo those thanks, and we very much appreciate your testimony. We look forward to working very closely with both of you as we draft the reform legislation. Thank you for your testimony. The hearing record will remain open for 5 days.

This hearing is now adjourned.

[Whereupon, at 1:55 p.m., the Committee was adjourned.]



# A P P E N D I X

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**STATEMENT OF  
ROBERT S. MUELLER  
DIRECTOR  
FEDERAL BUREAU OF INVESTIGATION  
BEFORE THE  
UNITED STATES SENATE  
COMMITTEE ON GOVERNMENTAL AFFAIRS**

**September 8, 2004**

## **Introduction**

Good morning, Madam Chairman, Senator Lieberman and Members of the Committee. I appreciate the opportunity to be here today to provide the FBI's views on intelligence reform. I would also like to express my gratitude for the efforts of so many inside and outside of government, particularly the 9/11 Commission and this Committee, who have worked to ensure that our national intelligence capability is postured for success against the adversaries of the 21st Century. That overarching objective must drive all efforts for reform.

## **Model for Reform**

To understand our views on intelligence community reform, it is important to understand first how we in the FBI believe intelligence should be managed and how it should be produced. We believe that the management of intelligence should be centralized, but that its production should be distributed. For the FBI, that means that the Office of Intelligence provides guidance to ensure that we focus intelligence

collection and production on intelligence priorities and on filling gaps between what we know and what we do not know. This centralized management overlays our headquarters divisions and our field offices, which remain responsible for intelligence collection, operations, analysis and reporting. The result of this approach is that intelligence and operations are integrated -- with the users of intelligence, not the producers, judging its value. These principles have guided the development of our intelligence program at the FBI.

The FBI's Office of Intelligence manages intelligence production based on requirements, apportions resources based on threats, and sets standards for intelligence cadre training, source development and validation, and collection tasking. The actual production of intelligence occurs within our 56 field offices, 400 resident agencies, our four operational headquarters divisions, and perhaps most importantly, by our 800,000 partners in state, local and tribal law enforcement. The Office of Intelligence continually monitors performance through imbedded intelligence elements in the field and headquarters and adjusts tasking and resources based on nationally directed intelligence requirements. The authorities and responsibilities of our Office of Intelligence allow it to carry out two broad areas of responsibilities: management of the FBI intelligence component; and direction to it to ensure that its activities are in keeping with the priorities established by the President and the needs of the users of intelligence.

Turning to the proposals for intelligence reform, widespread agreement exists as to the creation of a National Intelligence Director as the manager of intelligence production across the 15 Intelligence Community components. The NID, however, should not be directly responsible for the conduct of operations. The role of the NID should, instead, be to ensure that appropriate activities and operations are conducted by the constituent elements of the Intelligence Community.

Given the model above, we believe that the NID should have a mechanism by which the principals of the National Security Council and the Homeland Security Council and the Directors of the CIA, FBI and other relevant Departments and agencies, are charged with ensuring the responsiveness to the direction of the NID and managing implementation of that direction. These individuals represent in large measure the users of intelligence and will bring to the NID the views of the users as they set priorities and evaluate intelligence community performance. In reality, the principals would delegate that responsibility to a subordinate -- in our case, the FBI's Executive Assistant Director for Intelligence.

### **Core Principles to Guide Intelligence Reform**

Madam Chairman, the model I have outlined incorporates three core principles for intelligence reform that we think this Committee should consider as it seeks to enact legislation. These three principles are: (1) providing analysts transparency into sourcing, (2) understanding the

value of operational chain of command, and (3) protecting civil liberties.

#### Providing Analysts Transparency into Sourcing

Turning to the first principle, we believe it is important that analysts be provided transparency into intelligence sources. Just as Agents need to question the background, motivation and access of their sources, analysts must also examine the credibility of sources who provide intelligence information. FBI analysts do not blindly receive source information then develop intelligence reports and threat assessments based on that information. Instead, our analysts have transparency to our sources and the result is a high quality intelligence product.

Historically, individual FBI Agents would collect information, analyze that information in the context of their particular case, and then use that analysis to guide their investigation. But the FBI, as an institution, had not elevated that analytical process above the individual case or investigation to an overall effort to analyze intelligence and strategically direct intelligence collection against threats across all of our programs. Today, we have done so and, I believe, done so successfully. Not only does the FBI remain among the best collectors of information in the world, we now have the enhanced capacity to exploit that information for its intelligence value. Ensuring that our analysts, not just our Agents, have access to information about our sources plays an important role in the development of thorough and reliable intelligence products.

In the ongoing debate regarding intelligence reform, some have suggested that a new entity composed of analysts be created, as well as a separate entity for the intelligence collectors. We believe that creating such "stovepipes" would be a step backward in the progress we have made since 9/11. Our success has been enhanced by co-locating our analysts with those who must act on the intelligence. The physical and logistical proximity of the analysts to the collectors results in increased transparency for the analysts which, in turn, results in better analysis.

#### Understanding the Value of the Operational Chain of Command

The second core principle to consider in reforming the intelligence community is the value of the operational chain of command. The 9/11 Commission report recommended the establishment of a national counterterrorism center as the logical next step to further enhance the cooperation between intelligence, national security, and law enforcement agencies that was begun by the Terrorist Threat Integration Center (TTIC). As you know, the President recently issued an Executive Order establishing the National Counterterrorism Center (NCTC). Among the provisions of the Executive Order is the directive that the NCTC assign strategic operational responsibilities to lead agencies for counterterrorism activities that are consistent with the law. The Executive Order also explicitly states: "The Center shall not direct the execution of operations." This directive, which comports with the recommendation of the 9/11 Commission, recognizes the importance of leaving operational control in

the hands of the agencies.

At least one of the pending legislative proposals for intelligence reform would transfer the Counterterrorism and Counterintelligence Divisions out of the FBI and into a new entity. We believe that such a proposal fails to recognize the fact that most of the FBI's investigative work is accomplished by its 56 field offices and 400 satellite offices located throughout the country. An interdependent relationship exists between the FBI's Headquarters Divisions and our geographically dispersed field offices both in terms of operational coordination of investigations and the routine exchange of personnel. This interdependent relationship and chain of command between the field offices and headquarters divisions cannot be disrupted and remain effective.

The FBI's components, particularly the Counterterrorism and Counterintelligence Divisions, are not distinct and severable entities. Rather, they are fluid combinations of a variety of personnel. They include long-term professional employees, such as analysts, who spend decades developing a subject area expertise; mid-career field agents serving two or three years tours of duty to expand or hone their counterterrorism or counterintelligence experience before returning to management positions in field offices; and senior FBI executives who have proven themselves in leadership roles in the field or other headquarters components.

If the operational divisions are removed from FBI Headquarters, as some have proposed, a large portion of the FBI's counterterrorism and counterintelligence program will remain within the FBI, in the form of counterterrorism and counterintelligence squads and task forces in field offices, as well as designated counterterrorism and counterintelligence agents in our satellite offices. Separating our counterterrorism and counterintelligence leaders from the information collectors and investigators would result in less effective coordination and a less safe America.

In addition, it is important to understand that the FBI's intelligence capabilities are enterprise-wide. Intelligence is integrated into all of the Bureau's investigations, not just counterterrorism and counterintelligence. Some of the reform proposals that would carve out sectors of the FBI fail to take into account that our counterterrorism and counterintelligence efforts benefit enormously from the intelligence garnered through our criminal investigations, our cyber crime efforts, the work of the FBI Laboratory, and our other programs. Altering the operational chain of command for any FBI program would impair the integration of intelligence that has proven effective in our national security efforts.

#### Protecting Civil Liberties

The third and, perhaps most important core principle, is the need to protect civil liberties. As former DCI George Tenet stated in a hearing

earlier this year, the way the CIA conducts operations overseas is very different than the way the FBI conducts operations with our own citizens at home. Concentrating domestic and international counterterrorism operations in one organization represents a serious risk to American civil liberties. It is difficult to expect an agent trained in conducting operations overseas to fully appreciate the necessary legal constraints placed on operations conducted within the United States.

Let me turn to the words of the Commission's report, which stated, "The FBI does need to be able to direct its thousands of agents and other employees to collect intelligence in America's cities and towns—interviewing informants, conducting surveillance and searches, tracking individuals, working collaboratively with local authorities, and doing so with meticulous attention to detail and compliance with the law. The FBI's job in the streets of the United States would thus be a domestic equivalent, operating under the U.S. Constitution and quite different laws and rules, to the job of the CIA's operations officers abroad."

The legal limitations, the oversight mechanisms and self-regulatory practices of the Bureau effectively ensure that our operations are carried out within Constitutional and statutory parameters. A number of outside entities, including the Government Accountability Office and the Department of Justice Office of Inspector General, have studied our operations since 9/11 and have found that we have conducted them with full regard for civil liberties. Moreover, just last month the President issued

an Executive Order creating the President's Board on Safeguarding Americans' Civil Liberties, which will be launched this month. Such a board was recommended by the 9/11 Commission and will include FBI participation.

#### **Update on FBI Intelligence Initiatives**

Recognizing the "significant progress" the FBI has made in the past three years, the 9/11 Commission recommended that counterterrorism intelligence collection in the United States remain with the Bureau. We are proud of that progress, about which I have testified on numerous occasions since 9/11. Today, I would like to conclude by giving you a brief update on some of our most recent efforts:

- We are moving forward with the creation of an FBI Directorate of Intelligence – a "service-within-a-service" – as recommended by the Commission and some Members of Congress.
- We have established Field Intelligence Groups, or FIGS, in each FBI field office to integrate analysts, Agents, linguists, and surveillance personnel in the field to bring a dedicated team focus to intelligence operations.
- We have set unified standards, policies, and training for intelligence analysts. As part of a new recruiting program, veteran analysts are

attending events at colleges and universities throughout the country, and we are offering hiring bonuses to analysts for the first time in FBI history.

- Since FY 2002, 264 analysts have graduated from the College of Analytic Studies' six-week Basic Intelligence Analyst Course. More than 650 field and headquarters analysts have attended specialty courses on a variety of analytical topics. Nearly 1,400 field and headquarters employees have attended specialized counterterrorism courses offered in conjunction with the CIA University, and more than 1,000 New Agent Trainees have received a two-hour instructional block on intelligence.
- We are establishing an Intelligence Officer certification program for Agents, Analysts, Surveillance Specialists and Language Analysts. We are also in the process of changing the criteria on which Agents are evaluated to place more emphasis on intelligence-related functions. Once established, Intelligence Officer certification will be a pre-requisite for advancement, thus ensuring that all FBI senior managers will be fully trained and experienced intelligence officers.
- We are working to incorporate elements of our basic intelligence training course into the New Agents Class curriculum. We expect that work to be completed this month. A key element of this concept is that agents in New Agents Training and analysts in the College of

Analytic Studies will conduct joint training exercises in intelligence tradecraft. The first offerings to contain these joint exercises are expected in December of this year.

- In March, we established a career path in which new Special Agents are initially assigned to a small field office and exposed to a wide range of field experiences. After approximately three years, agents will be transferred to a large field office where they will specialize in one of four program areas: Intelligence, Counterterrorism/Counterintelligence, Cyber, or Criminal, and will receive advanced training tailored to their area of specialization. In our Special Agent hiring, we have changed the list of "critical skills" we are seeking in candidates to include intelligence experience and expertise, foreign languages, and technology.
- Our language specialists are critical to our intelligence cadre as well. The FBI's approximately 1,200 language specialists are stationed across 52 field offices and headquarters, and are now connected via secure networks that allow language specialists in one FBI office to work on projects for any other office. Since the beginning of FY 2001, the FBI has hired nearly 700 new linguists out of a pool of 30,000 applicants. In addition, the FBI formed a Language Services Translation Center to act as a command and control center to coordinate translator assignments and maximize its capacity to render immediate translation assistance.

- We have placed reports officers in our Joint Terrorism Task Forces (JTTFs) to ensure vital information is flowing to those who need it. Since 9/11, we have expanded the total number of JTTFs from 34 to 100.
- We have issued the first-ever FBI requirements and collection tasking documents. These documents are fully aligned with the DCI's National Intelligence Priorities Framework and we have published unclassified versions for our partners in state, local, and tribal law enforcement.
- We have created a collection capabilities database that tells us what sources we can bring to bear on intelligence issues across the FBI.
- And, this year, we are on course to triple the volume of intelligence reporting that we disseminate to the intelligence community.

### **Conclusion**

Madam Chairman, the FBI's combined mission as an intelligence, counterterrorism, and law enforcement agency gives us the singular ability to exploit the connections between terrorism and criminal activity. Now that the USA PATRIOT Act has removed the wall between intelligence and law enforcement investigations, the FBI has a unique capacity to handle both the criminal aspects and intelligence gathering opportunities

presented by any terrorism case, giving us a full range of investigative tools. We are concerned that some pending proposals would erect new walls between our law enforcement and intelligence missions. We also urge Congress to renew all provisions of the PATRIOT ACT -- because no matter how the organizational charts are drawn, we will continue to need these vital tools to prevent acts of terrorism against the American people.

Over the past three years, the FBI has made great strides yet we acknowledge that much work remains to be done. We have a plan in place to get where we need to be and we have the hard-working, dedicated men and women of the FBI to take us there.

Madam Chairman, I want to thank you and the members of this Committee for your support and advice. I look forward to working with you as you develop legislation to strengthen our intelligence apparatus and better ensure the protection of the American people. I welcome any suggestions you have for improving our counterterrorism efforts and strengthening our nation's security. Thank you again for the opportunity to appear before you today. I am happy to answer any questions you may have.

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**Testimony of the Acting Director of Central Intelligence  
9/11 Commission Recommendations Regarding  
Restructuring the IC  
8 September 2004**

Mr. Chairman, as this Committee considers reorganization proposals by the President and the Kean Commission, and the Congress' legislation, I want to speak to the structure and capabilities of the Intelligence Community as it is today, not as it was in 2001. I believe that today's Intelligence Community provides a much stronger foundation than many people realize for whatever changes you decide are necessary. That said, we can still do better, and I will close, therefore, with some thoughts on how these improvements can be accomplished.

## **Intelligence Community Today**

Three years of war have profoundly affected the Intelligence Community. Since 9/11, our capacity and effectiveness have grown as our resources have increased and as we have addressed issues highlighted by our own internal reviews, the Commission, and others. We have adjusted to new demands, built on successes, and learned from errors. This has been the most dramatic period of change for intelligence in my memory. Some examples:

- Our priorities—the Nation's and the Intelligence Community's—have changed. We are on the offensive against terrorists worldwide, and many of the most dangerous are captured or dead.
- Our practices have changed. Intelligence, law enforcement, and military officers serve together and share information in real time on the front lines at home

and abroad. Here in Washington, I chair an operational meeting every day with Intelligence Community, military, and law enforcement elements represented. At that meeting we review and act on that day's intelligence, follow up on earlier streams of reporting, and ensure that someone has the responsibility to get the word out to all concerned parties.

- Our worldwide coalition has changed. It is broader, deeper, and more committed. Where terrorists found sanctuary before, they now find our allies working against them—and we are seeing the results around the world.
- Our laws have changed. The PATRIOT Act has given us weapons in the war that we did not have previously and we have saved lives because of them. The PATRIOT Act gives us access to targets and information that previously could not have been achieved.

- Our institutions have changed. The Terrorist Threat Integration Center enables us to fuse intelligence collected abroad with law enforcement information collected at home. Twenty-six different data networks now flow there and are then shared by officers from the widest array of foreign and domestic intelligence and law enforcement agencies ever assembled in one organization. People who think we can't break down the so-called "stovepipes" need to visit TTIC.

What are the real-world effects of those changes?

Here are a few:

- Many of al-Qa'ida's pre-9/11 leadership are dead or detained, in almost every case taken down as a result of aggressive clandestine human and technical operations, involving effective cooperation among the

various intelligence disciplines and with law enforcement.

- It was imaginative operations and analysis—CIA officers working with the US military—that helped drive armed forces operations and ousted the Taliban from power in Afghanistan, destroying the al-Qa'ida sanctuary in the process.
- CIA, FBI, Treasury, and other partners, at home and abroad, are starving al Qa'ida of its financial lifeblood.
- CIA worked with the FBI as it took down extremists in Lackawanna, Columbus, and New York City.

One area of crucial change is the Intelligence Community's support to the warfighter in Afghanistan and Iraq, where the terrorist challenge remains substantial. I believe such support can and will be preserved under any of the options you consider. Everyone in the Intelligence Community understands that NSA and NGA, both integral

parts of the National Intelligence Community, have a vital role to play in supporting combat—and that role would have to be preserved regardless of who they report to.

In short, the situation has changed dramatically from where the 9/11 Commission left off. Two things, however, are still true: al-Qa'ida and other terrorists remain dangerous; and there still is room for improvement in the Intelligence Community. But the caricature that many seek to perpetuate a Community that does not share information or work together, a Community of turf-conscious people competing for influence—that is not the Community I lead today.

### **Thoughts on Reform**

Looking ahead now, it is important to note that the threat from terrorist organizations is not stagnant. These

organizations learn and adapt. It is not enough for us to keep up, we must anticipate and stay ahead. As we seek to build on the improvements we have made in recent years, we should keep in mind a few of what I call “first principles”:

- First, speed and agility are the keys to winning the war on terrorism, and profoundly important to the nation's other intelligence challenges. Speed and agility are not promoted by complicated wiring diagrams, more levels of bureaucracy, dual-hatting, or uncertainty about who is in charge. But speed and agility ARE promoted by having the right tools to do the job – such as the essential tools provided in the USA PATRIOT Act.
- Second, form should follow function. The functions intelligence must perform today are dramatically different than during the Cold War. Back then, we focused heavily on large strategic forces and where countries stood in the bipolar competition of the day.

Contrary to what is often said, we long ago moved on to the new challenges of today—locating people, tracking shipments of dangerous materials, and understanding politics down to the tribal level in a world where the only constant is change.

- Third, most important to knowing how and what to change is a consensus on what we want from our intelligence agencies, constancy in resources and moral support for them through good and bad times and patience.
- Fourth, some competition is good. Because intelligence reporting can often be interpreted in many different ways, we want all interpretations on the table and an Intelligence Community that facilitates vigorous, rigorous debate.
- Fifth, our foreign partnerships are critical and serve as a force multiplier in the Global War on Terror. Changes in our structure must ensure there is no harm done in

how we build, manage, and strengthen these invaluable relationships.

Reform must not undo the good work already done—it must be tested against the first principles. I urge the Committee to take the time that it needs to consider the likely impact of the many proposals, intended and unintended.

### **President's Reform Agenda**

As you know, on 27 August the President signed four Executive Orders and two Presidential Directives intended to address several recommendations of the 9/11 Commission. These measures will strengthen management of the Intelligence Community, establish a National Counterterrorism Center, improve the sharing of terrorism information, safeguard American civil liberties, improve terrorist-related screening procedures, and establish

common identification standards for federal employees and contractors. The President's actions strengthen the foundation upon which you can build. In those Executive Orders, there are significant changes I would like to highlight.

- First, the DCI will have access to all relevant intelligence relating to transnational terrorism and weapons of mass destruction, including information from the FBI and the Department of Homeland Security.
- Second, the President made it clear that the DCI must be able to determine, with the advice of heads of departments or agencies that have an organization within the Intelligence Community, the annual and consolidated National Foreign Intelligence Program budget. This clarifies the DCI's authority over the NFIP, while retaining his existing authority to participate in the JMIP and TIARA processes.

- Third, in establishing the National Counterterrorism Center, the President underscored the government's commitment to create a central and shared knowledge bank on known and suspected terrorists. For the first time, strategic planning for counterterrorism activities, integrating all elements of national power, and integrated all-source analysis will occur in one place, overseen and orchestrated by a director reporting to the DCI.

There are also some important tasks that have been levied upon us, including the following:

- Developing common standards for sharing terrorism information within the Community;
- Setting standards and qualifications for intelligence officers; and

- Reporting on the effectiveness of the National Foreign Intelligence Program and the new National Counterterrorism Center.

We are in the process of charting our way ahead and will be aggressive in implementing the President's directions. These actions affecting intelligence reform are intended as interim measures. The President has reiterated his commitment to work with Congress to achieve even more far-reaching reforms through legislation, beginning with the creation of the National Intelligence Director.

I have argued, and continue to believe, that a significantly empowered DCI could fulfill the spirit of the 9/11 Commission's recommendations. Nonetheless, now that the President has committed to create a National Intelligence Director, my sole interest is in ensuring that such an individual can succeed, and this will require new authorities

and structures. Ideally, a single person responsible for all national intelligence activities should:

- Maintain independence and objectivity as the President's principal intelligence advisor;
- Have full authority to determine, reprogram, and execute all funding for the core national intelligence agencies—CIA, NSA, NGA and NRO;
- Have clear authority to provide strategic direction to these agencies and drive their collection and analytic priorities;
- Have the authorities necessary to reorient intelligence capabilities to meet emerging threats and priorities;
- Have direct access to substantive experts to help fulfill his/her responsibilities as the nation's principal intelligence officer;

- Have the authority to bridge any remaining divides between foreign and domestic intelligence activities in the areas of policy and information technology;
- Have the authority to determine education and professional development standards and personnel management policies and incentives; and
- Ensure the continued synergy that results from the close interaction of operators and analysts.

This, of course, would involve major changes for our intelligence system. It would require additional legislative changes such as a separate appropriation for the NFIP and organizational realignment. Given the heavy reliance on intelligence by DoD, I believe it would be important to codify the National Intelligence Director's responsibility for meeting military intelligence requirements. At the same time, the national intelligence agencies must support the missions of all the other foreign and domestic organizations – such as

State, FBI, Treasury, and Homeland Security – that have vital roles to play in protecting our Nation. I believe a fully empowered National Intelligence Director would be able to strike this important balance.

Let me close by saying that no matter how successfully we anticipate future challenges, we will not foresee them all. So, we will need the ability to adapt our organizations to change, easily and quickly. We will need flexibility in shifting resources, people, and money to respond to shifting priorities. The new Executive Orders and directives are significant steps in the right direction, but cannot effect all of the changes necessary to adapt our Intelligence Community to the challenges of the 21<sup>st</sup> Century.

September 8, 2004

List of items CIA has not provided to Senator Levin requests (SASC)

- 1) Late answers to Questions for the Record (QFRs) from the March 9, 2004 hearing. The Committee requests that the CIA return the edited transcript with information for the Record (IFRs) and answers to QFRs within 30 days of receiving the transcript from SASC (which is usually within 2 weeks of the hearing date). The first set of Tenet answers to the March 9 QFRs was dated July 1, and received by SASC on July 7, containing answers to 6 of the 39 questions. The second response arrived on August 18, and contained 19 answers. The third response arrived on September 8, and contained 6 answers. **As of September 8, there are eight questions that have still not been answered, six months after the hearing date. Four of them are Senator Levin's questions. In the July 1 response, CIA said it would provide the remaining answers "in the near future."**
- 2) Document requests: These are the responses still owed from CIA:
  - April 9, 2004 letter to DCI Tenet, re: five questions on Feith briefing documents, response requested by April 23. July 6 response with answers to questions. **Still due:** results from declassification review of the briefing charts (i.e., any declassified portions of briefing charts). July 6 CIA letter says "we hope to have an answer to you shortly. We apologize for the delay."
  - April 29, 2004 letter to DCI Tenet requesting declassification of portions of three documents related to Iraq-al Qaeda relations by May 10. July 6 response said "the declassification review is underway and we hope to have an answer to you shortly." **As of September 8, there has been no answer yet.**
  - July 27, 2004 letter requesting documents (mostly identified in 9/11 Commission report) and declassification of two reports that SASC has, by August 14. **As of September 8, we have received no written response to the request.**

**Post-Hearing Questions for the Record  
Submitted to Director Robert Mueller  
From Senator Carl Levin**

**“Building an Agile Intelligence Community to Fight Terrorism and Emerging Threats”**

**September 8, 2004**

1. There apparently were a number of instances where components of the intelligence community possessed, but did not share, information that might have helped other agencies take action before the 9/11 terrorist attacks. The 9/11 Commission has recommended giving a new National Intelligence Director control of personnel and budget of the national intelligence program, which I assume would equate to the National Foreign Intelligence Program or NFIP. A large portion of the NFIP funding currently supports organizations that work for both the Secretary of Defense and the Director of Central Intelligence.

One specific example of failure to share information was the CIA’s failure to share information on the presence of two of the 9/11 plotters with the Immigration and Naturalization Service (INS) or the Federal Bureau of Investigation (FBI). This was despite the fact that the CIA staff and budget were operating under the control of the Director of Central Intelligence (the current analogue of the proposed National Intelligence Director).

a) Are there currently impediments to sharing data that can only be broken down by changing organizational relationships? If so, what laws or organizational structures need to be changed?

2. One of the things that we have learned from the events of 9/11 is that there apparently has been no accountability for the failures to do the jobs that were assigned to people. There were people with information in Minneapolis who sent this information to the bin Laden desk at FBI headquarters, and the national desk did nothing with that information. In the case of the CIA, we had folks overseas who saw the two people who they knew were part of Al Qaida, and were involved in the attack of the USS Cole, enter the United States. The CIA people had the job of putting these men on a watch list and did not do so. We’re all talking about stovepipes, but it wasn’t just stovepipes. The FBI was not notified by the CIA because the people who should have notified the Immigration and Naturalization Service and the Border Patrol did not do so.

I understand that the FBI’s Inspector General is working on a report on the subject of accountability.

a) What is the exact status of the Inspector General’s report?

b) When will Congress receive this report?

c) Has anyone at the FBI been held accountable for pre-9/11 actions or failures? If so, what actions have been taken to hold such personnel accountable?

**Post-Hearing Questions for the Record  
Submitted to Director Robert Mueller  
From Senator Daniel Akaka**

**“Building an Agile Intelligence Community to Fight Terrorism and Emerging Threats”**

**September 8, 2004**

In response to questions during today’s hearing you suggested that the National Intelligence Director (NID), through a National Counter-terrorist Center (NCTC), should help coordinate, plan, and establish terrorist collection requirements.

A. Do you believe that the NID should have responsibility for all those activities or should the NID share that responsibility with other agency heads?

B. Do you believe that the NID should be responsible for directing, or ordering, specific counter-terrorism operations although these operations might be carried out by another agency such as the Department of Defense, CIA, or the FBI? In other words, should the NID be capable of directing other agencies to conduct specific counter-terrorism operations in response to specific threat information received by the NCTC?

C. If you do believe that the NID should have this capability, should the NID have the authority to over-rule, for example, the Secretary of Defense or the Attorney General should they disagree with the NID’s direction?

D. Would you please describe the three most effective recruitment tools used by the FBI to attract new employees and what three tools are most effective in retaining current employees?

E. What personnel flexibilities would be most useful to the FBI in managing your workforce, and do you believe a common personnel system for the intelligence community would be appropriate?

F. If you believe an intelligence community-wide personnel system would be effective, what would you like to have included in such a system?

**Post-Hearing Questions for the Record  
Submitted to Acting Director John McLaughlin  
From Senator Carl Levin**

**“Building an Agile Intelligence Community to Fight Terrorism and Emerging Threats”**

**September 8, 2004**

- 1) Please respond to the following questions concerning the intelligence budget process.
  - a) Have there been examples in the last 10 years of the CIA asking OMB for funding for a program or activity where OMB turned down the CIA request? If so please describe some examples and indicate how frequently this has happened.
  - b) Have there been examples during the last 10 years where CIA has requested a reprogramming that the Defense Department disagreed with, and thus blocked the reprogramming? If so, please cite some examples and indicate how frequently this has happened.
- 2) In 1998, DCI George Tenet wrote in a memo that “we are at war” with Al Qaida. Please respond to the following questions with regard to Director Tenet’s statement.
  - a) Did the budgets that were submitted by the CIA subsequent to that statement reflect what the director believed should be done to carry out that war?
  - b) Was there ever an occasion where Director Tenet asked the legislative branch for additional funds based on his view that we were at war with Al Qaida?
  - c) Can you cite instances where Director Tenet or CIA staff testified before Congress that the CIA was at war with Al Qaida and therefore needed an increased budget?
- 3) At the hearing, one subject that was discussed was the so called “tug-of-war” between the DOD and the intelligence community over national assets of the NSA.
  - a) To your knowledge, on how many occasions in the last 10 years have such tug-of-wars occurred? Please describe such occasions and give the date for each one.
- 4) One issue that is of great importance is the independence and objectivity of intelligence. According to declassified summaries, the CIA’s underlying classified assessment, relative to the one Czech report of a meeting between Mohamed Atta and an Iraqi intelligence officer in Prague, was that the CIA had doubts that the meeting took place. The 9/11 Commission found that there was no evidence that that meeting took place. And yet, Administration officials repeatedly referred to that report of a meeting as being possible evidence of a link between Iraq and the 9/11 terrorist attacks by al Qaeda.

a) When I asked at the hearing about why the CIA's public statements relative to that alleged meeting did not reflect what the underlying intelligence said, you stated that "our understanding of the meeting evolved over time, as most intelligence does. The skepticism came in as we continued to look at it and develop intelligence on it. I can't give you a time line as to when that skepticism became more pronounced, but it did." At the hearing, you stated that you would provide us with such a time line. Please provide this time line for the record indicating when the CIA was first skeptical that the meeting occurred and how that skepticism evolved and developed over time.

5) On September 28, 2002, President Bush said that "each passing day could be the one on which the Iraqi regime gives anthrax or VX nerve gas or someday a nuclear weapon to a terrorist group," and on October 7, 2002, he said that "Iraq could decide on any given day to provide a biological or chemical weapon to a terrorist group or individual terrorists. Alliance with terrorists could allow the Iraqi regime to attack America without leaving any fingerprints."

On October 7, you signed a letter for DCI George Tenet to Sen. Bob Graham declassifying portions of the NIE on Iraq's WMD, which indicated Iraq was unlikely to provide WMD to terrorists such as al Qaeda, and called such a move an "extreme step" that would be Saddam's "last chance to exact vengeance by taking a large number of victims with him" if he had already been attacked by the US, or had concluded that a regime-ending attack was unavoidable.

a) Do you agree that there is a fundamental difference between saying that "each passing day" could be the one on which Iraq provided weapons of mass destruction to al Qaeda – which suggests that it was likely – and the NIE saying that it would be an "extreme step" that would be Saddam's "last chance to exact vengeance by taking a large number of victims with him" if he had already been attacked by the US, or had concluded that a regime-ending attack was unavoidable? They seem to me to be opposing views. Do you agree?

On October 8, 2002, the day after you signed that letter, DCI Tenet told the *New York Times* that there was "no inconsistency" between the views in the letter and the President's views on the subject, which was flatly incorrect.

b) At the hearing, you stated that you would have to go back and "revisit that whole incident" with regard to this question. Please explain how the DCI could claim there was "no inconsistency" between the views in the letter and the President's views on the subject when the views were fundamentally different.

6) You asked a number of questions in your August 17th testimony about accountability and responsibility within the intelligence community. I would like to ask similar questions of you.

a) Given the enormous intelligence failures regarding Iraq prior to the war, who is

accountable or responsible within the Intelligence Community? For example, do you bear any measure of responsibility? Does the Deputy Director for Intelligence, under whom the faulty analysis was produced, bear any responsibility?

b) If there is responsibility and accountability in the Intelligence Community, when it got the Iraq intelligence so wrong, why haven't any of the responsible parties acknowledged their responsibility? Why are all the same officials still managing the Agency and the IC without any apparent consequence for the failed intelligence?

c) Your August 17th testimony asked the question: "will responsibility and accountability be harder to pin down than it is today?" I hope the answer is a resounding "No," given that there seems so little accountability and responsibility today. Can you tell me what actions have taken place, if any, to demonstrate that officials within the Intelligence Community are being held accountable or responsible for their behavior or their failure to carry out their responsibilities with respect either to Iraq or to the pre-9/11 situation?

7) I understand that the CIA Inspector General has either completed, or nearly completed, a report on the subject of accountability for pre-9/11 failures.

a) What is the exact status of the CIA's IG report?

b) When will Congress be provided with this report?

8) With respect to the relationship between Iraq and al Qaeda, the 9/11 Commission report concludes that "we have seen no evidence that these or the earlier contacts developed into a collaborative operational relationship. Nor have we seen evidence indicating that Iraq cooperated with al Qaeda in developing or carrying out any attacks against the United States." (P.66) The Senate Intelligence Committee report provides numerous examples of the problems with Intelligence Community analysis of this relationship, and of significant differences with the Defense Department analysis of that relationship.

a) Is it your judgment that Iraq and al Qaeda were allies?

9) The 9-11 Commission recommends "the establishment of a National Counterterrorism Center (NCTC), built on the foundation of the existing Terrorist Threat Integration Center (TTIC)." The Commission sees the NCTC as a center for "joint operational planning and joint intelligence." On August 27th, the President signed an Executive Order establishing the NCTC, which will "undertake, as soon as the Director of Central Intelligence determines it to be practicable, all functions assigned to the Terrorist Threat Integration Center."

a) Putting aside the issue of operational planning, will the NCTC be significantly different than the TTIC? If yes, what are the differences between the two in terms of analysis of intelligence? If no, then what benefits will the NCTC bring over the TTIC?

10) In a footnote in the 9/11 Commission report (page 470, footnote 76), the Commission refers to an al Qaeda operative [al Libi] recanting much of his allegation that Iraq had provided training to al Qaeda in chemical and biological weapons.

- a) When did the al Qaeda operative [al Libi] recant the statement he had made regarding Iraq providing chemical and biological training to al Qaeda?
- b) In DCI Tenet's classified testimony of September 17, 2002 to the Senate Select Committee on Intelligence (excerpts of which have since been declassified), he stated that details of Iraq providing training to al Qaeda were "from sources of varying reliability." Yet on February 11, 2003, DCI Tenet gave public testimony that Iraq "has provided training in poisons and gasses to two al-Qaida associates," and characterized the information as coming from "credible and reliable sources." Do you know why former DCI Tenet left out the caveat about "sources of varying reliability" in his public testimony, or why he contradicted his classified testimony on source reliability?

11) At the hearing, you mentioned recent successes in hiring new analysts, and in building up the staff of the Agency.

- a) How many new Directorate of Intelligence (DI) analysts have been hired during the last five years, and how many DI analysts have left the Agency during that period?
- b) What has been the net change per year in the DI analytic personnel strength for each of the last five years?
- c) What are the top three reasons people have given for joining the Agency and for leaving the Agency in the last five years?
- d) What is the retention rate of the new DI hires over the last five years?

12) The substantive knowledge and experience of intelligence analysts is an important factor in the quality of the analytic product.

- a) How do you measure the substantive qualifications and expertise of analysts in their assigned analytic areas of responsibility? Do you consider the time spent in that area, among other factors?

b) How does the substantive level of analytic expertise with the current DI analytic staff compare with that of 1990 or 1980, in terms of how long analysts have worked their assigned analytic areas of responsibility?

c) How are analysts trained to do their jobs effectively – not just as new hires, but as they continue to gain substantive experience and knowledge? Is there a continuing training program in the DI, and a core of training professionals?

13) What are the promotion policies and career paths for DI analysts? Are these policies clearly established and communicated to the analytic staff? Have these policies changed in the last five years, and if so, how?

a) How do you judge the performance and effectiveness of analysts? Are there standards that are known to the analysts to guide them in their work, and are these standards followed consistently?

b) What analytic traits and qualities are encouraged and rewarded? How?

c) How does an analyst's career typically develop in terms of additional expertise and responsibility, including growth to senior analytic and management levels? What is the path from analyst to branch chief, group chief, and SIS, and how long does it typically take to reach these senior levels of responsibility?

14) There has been a good deal of discussion about the need for "competitive analysis" in the Intelligence Community. The Senate Intelligence Committee report on Iraq intelligence failures cites a common problem with "group think," wherein analysts did not question inherited assumptions or conventional (but incorrect) wisdom. The result was badly flawed intelligence.

a) How do you guard against "group think" or a culture of "yes men" analysts who don't think "outside the box" and don't challenge assumptions?

b) How does the Agency encourage analysts to think unconventionally, and not to be afraid of suggesting alternative analyses or approaches? Are they rewarded or promoted for such behavior, or is there a sense that management does not encourage such analytic independence or freedom? Please provide current examples to illustrate your answer.

**Post-Hearing Questions for the Record  
Submitted to Acting Director John McLaughlin  
From Senator Daniel Akaka**

**“Building an Agile Intelligence Community to Fight Terrorism and Emerging Threats”**

**September 8, 2004**

A. You suggested in response to questions that declassification of the National Foreign Intelligence Program (NFIP) portion of the intelligence community budget would permit Congress to monitor the “constancy” of funding for certain programs that might suffer from budget changes year-to-year. However, you supported only the declassification of the overall budget number, not that for either individual programs or agencies such as the National Security Agency (NSA).

How would declassification of the bottom line number permit the Congress to exercise public oversight of individual programs to ensure that they received appropriate annual funding?

B. Some intelligence officers have suggested that declassification of the bottom line budget number for agencies such as the NSA would be possible because yearly numbers do not provide insight into procurement programs that are usually multi-year.

Would you support declassification of the annual budget number for the NSA, NRO, and NGA?

C. In your testimony you state that the Terrorist Threat Integration Center is now fusing information from 26 different data networks. Could you provide either a classified or declassified answer for the Record stating the name of these data networks and identifying the originating intelligence agency?

D. Would you please describe the three most effective recruitment tools used by the CIA to attract new employees and what three tools are most effective in retaining current employees?

E. What personnel flexibilities would be most useful to the CIA in managing your workforce, and do you believe a common personnel system for the intelligence community would be appropriate?

F. If you believe an intelligence community-wide personnel system would be effective, what would you like to have included in such a system?