

**STATUTORY AUTHORITIES OF THE DIRECTOR OF
NATIONAL INTELLIGENCE**

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

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FEBRUARY 14, 2008
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STATUTORY AUTHORITIES OF THE DIRECTOR OF NATIONAL INTELLIGENCE

THURSDAY, FEBRUARY 14, 2008

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

The Committee met, pursuant to notice, at 2:42 p.m., in room SH-216, Hart Senate Office Building, the Honorable Jay Rockefeller, Chairman of the Committee, presiding.

Committee Members Present: Senators Rockefeller, Feinstein, Wyden, Feingold, Whitehouse, Bond, Warner, and Snowe.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, CHAIRMAN, A U.S. SENATOR FROM WEST VIRGINIA

Chairman ROCKEFELLER. My apologies to the Director and to my colleagues for being late. Our witness today appears to be the Director of National Intelligence, Admiral Mike McConnell. And seated behind the Director, a number of his key staff, and we've made space for a least three of them in case anybody wants to leap forward to give answers, make a point during the hearing.

Director MCCONNELL. To save the Director. [Laughter.]

Chairman ROCKEFELLER. I would say that would be at your discretion.

Congress created the position of Director of National Intelligence, or the DNI, because most of us felt that it was no longer practical to expect the head of CIA to manage the entire U.S. intelligence community; in fact, it was self-evident. It was a very glum period, in fact, in terms of intelligence organization and it seems like a long time ago but it really wasn't.

Additionally, we believe that the leader of the intelligence community needs to have more authorities than those possessed by the Director of Central Intelligence in order to effectively manage and direct resources against the intelligence priorities, and we don't know that we put everything out right, or did it right, which is the point of this today.

And so the bill passed in 2004. It was a product of months of heated debate. Many aspects of it are a product of compromise rather than consensus. There were several points about which the House and the Senate could not agree. So rather than let negotiations collapse, certain issues were left ambiguous or unresolved, which is often not helpful.

Some of us worry that Congress may not have given the DNI enough authority to match his enormous responsibilities. I count myself in that group. This is not to say that the authorities assigned to the position under the reform law do not give you a great deal of power; they do. The DNI determines the budget of the intelligence community; he has the authority to transfer money and positions from one intelligence agency to another. But then that sentence needs to be explored. How easily can that happen; what road blocks are thrown up.

Additionally, the DNI directly operates many critical elements of the intelligence community such as the National Counterterrorism Center, the National Counterproliferation Center, the National Intelligence Council, which puts out the NIEs.

The Senate Intelligence Committee is responsible for conducting oversight of the intelligence community, and we take that responsibility very seriously, and I think that the Director and others in the intelligence community are coming to understand that, that we're very oriented toward oversight, and we feel that this has not been the case in the past. And the Vice Chairman and I have very strong ideas about that.

But this means that we have an obligation to monitor your activities in a constructive sense and evaluate whether you have all of the appropriate tools and authorities that you need in order to succeed. With 3 years of experience under our belt, I think it's time for the committee to assess whether the reform legislation has fulfilled its promise, or whether it has not, and we need to make changes or whatever.

For example, one issue before the Committee is the proper relationship of the DNI to the various elements of the intelligence community. Most of these elements are located in different cabinet departments, and it is the DNI's job to make sure that they are all working together in a unified effort, including those agencies such as NSA and NRO, which reside within the Department of Defense.

The Committee must also consider whether the budget and the personnel authorities that Congress has given the DNI are in fact sufficient. The Intelligence Reform Act gives the DNI significant power to move resources from one intelligence agency to another, but if bureaucratic roadblocks cause every transfer to take 6 months, then maybe we haven't done that at all, and at least we need to discuss that.

In sum, the DNI exists because Congress and the American people wanted the intelligence community to function as a unified whole, and because we wanted somebody to be accountable for the intelligence community's collective effectiveness, both its successes and its failures. I firmly believe that Admiral Mike McConnell, the current DNI, is the absolutely right person for the job. So if his ability to lead and to manage the intelligence community is somehow being hampered or compromised or undermined in ways that may not be visible to this Committee, we need to know about it and consider options for eliminating those roadblocks, and we want to.

If, on the other hand, you are able to do your job efficiently and effectively, then that's an encouraging sign that the authorities may be aligned properly. So, again, that's the point of the hearing. So before I turn to the Director for his testimony, which I've read,

I recognize Chairman Bond for any opening statement that he wishes to make.

**OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, VICE
CHAIRMAN, A U.S. SENATOR FROM MISSOURI**

Vice Chairman BOND. Mr. Chairman, thank you very much. I'm not going to pass up this opportunity to share a few views. Admiral McConnell, we thank you once again for appearing before this Committee. You've been spending so much time up on the Hill, it looks like you're camping out, but there are many major issues that we have discussed with you, as we will again at this hearing.

Today we meet again in one of our occasional public forums to discuss the authorities you in your office need to do your job to protect our Nation. At the outset, I highly commend your leadership in attempting to bring the community together. Your efforts to reform the FISA, Foreign Intelligence Surveillance Act, to increase information sharing in collection, coordinate intelligence collection, strengthen analysis, and reform human capital management are particularly laudable.

I also, once again, publicly commend the tremendous work of the individual members of the intelligence community—military troops, civilians, contractors, all of them working together keep us safe. We're grateful for them, indebted to them, and very proud of the excellent work they do. Sound intelligence work, however, is not easy; it's always difficult. It requires exceptional skill, dedication, and sometimes exceptional courage in the face of danger.

Your service is greatly appreciated, and we see the results of your efforts every day.

This hearing is a rare chance to take stock of intelligence reform as it has emerged from the Intelligence Reform and Terrorism Protection Act of 2004, and decide where to go from here. We asked when you first came into office to take a year to formulate for us legislative recommendations so that we can institutionalize what is best working now in the intelligence community, and that we can improve upon intelligence reform, which, as I have mentioned to you many times, I believe was at best half-baked. I voted against IRTPA because I thought it gave you all of the responsibility but not enough authority to go with the responsibility.

I've also stated numerous times and repeat how impressed we all are with the working relationship that you have with Secretary Gates, Under Secretary Clapper, Directors Hayden, Mueller, Maples and others.

But I well remember not so long ago when the relationships in those offices were not as synergistic as today, and we charged you with providing to us your thoughts on legislative recommendations to institutionalize what we can in the relationships you've developed informally.

Now, I'm well aware that relationships cannot be institutionalized, and that with good people it doesn't matter what you institutionalize; they find a way to get the job done, and vice versa. But it certainly facilitates cooperation to make sure that the institutional structure is synergistic and functional as it can be. And your recommendations today will be very important.

While I've been a staunch supporter of your office, I mentioned I didn't vote for the Act due to the major compromises contained in the bill. The Act denied your office the full authorities required truly to direct the intelligence community, not just coordinate its activities, as did your predecessor and the community management staff within the CIA. Without exceptionally strong firm direction, the intelligence community cannot act as one body, and we cannot achieve true unity of purpose required to combat terror and prevent the use of weapons of mass destruction against us and our allies.

There's an historical precedent to intelligence reform that can be drawn in our experience with defense reform. The landmark National Security Act of 1947 that created the Department of Defense, the Air Force, the Joint Chiefs of Staff, and the National Security Council nonetheless contain serious organizational birth defects. These defects were evident in the inter-service rivalries it suffered in Vietnam, the failed hostage rescue attempt in Iran, and in poorly coordinated operations in Grenada. It took congressional leadership in the form of Goldwater-Nichols, of 1986, 40 years after the National Security Act, to create that unity of purpose that enabled the well-orchestrated effective joint operations of our forces over the last two decades.

Mr. Director, I wish we had 40 years to get intelligence reform right, but the harsh reality is we do not. The threat we face today is shadowy, unpredictable, and immediate, putting the lives and livelihoods of our citizens on the line here and abroad. Timely, actionable, accurate intelligence is the key to prevailing against that threat. And quality intelligence, in turn, requires that all elements of the community act together as one.

Strong DNI central direction and authority is required for efficient management of the substantial resources of the IC. Without it, each agency could go its own way, creating its own data centers, its own networks, its own financial and personnel systems, on and on, resulting in gross inefficiencies, making collaboration and information-sharing even more difficult.

As the next administration decides how to grapple with large near-term budget deficits and even larger ones as baby boomers retire, your budget may well come under greater strain. Your own program management plan, which we recently received, acknowledges this strain and concludes it will require tough program tradeoffs and achievements of greater efficiencies if the community is to deliver the intelligence capabilities that the Nation needs.

Mr. Director, this is your chance to tell us what additional authorities you and your office need to be effective, both within the 500 days of your current tenure and well beyond that 500 days when I hope you may be able to and wish to continue to serve. I'm particularly interested in what authorities are needed in the realms of tasking and operational direction, personnel accountability, and acquisition. And I know this expectation puts you in a difficult spot, particularly in public, because you would not want to appear in any way to be in dissonance with the administration and the Secretary of Defense.

But you're a tough guy in a tough job and we know you're up to the assignment. If we can't get candid answers from you, then

we're all in trouble. I trust you will deliver us your candid position today, and if it would help to move into a closed session at a later time to discuss sensitive aspects of the relationship in closed session so that you may speak more freely, I would certainly be amenable to that and I would urge the Chairman and the full committee to give you that opportunity.

But now, we look forward to your public testimony. We thank you for coming and look forward to your testimony and to your responses to our questions. We place great stock in your views, as the Chairman has indicated.

Chairman ROCKEFELLER. Mr. Director?

**STATEMENT OF ADMIRAL J. MICHAEL McCONNELL, USN
(RET.), DIRECTOR OF NATIONAL INTELLIGENCE**

Director McCONNELL. Mr. Chairman, Vice Chairman Bond, thank you for the opportunity to appear today. Members of the Committee, I am pleased to be here.

Before I start, I want to thank you, Chairman Rockefeller and Ranking Member Bond and members of the Committee and the staff sitting behind you. And the reason for that thanks is all the effort over many months to get the FISA legislation passed through the Senate with an overwhelming majority. It passed 2 days ago with bipartisan support, and I think it is commendable. I believe, under this Committee's leadership, we now have a bill that is essential for our community to do its job in protecting the country. The Senate bill needs to be enacted now into law. If it is not, whether the Protect America Act is extended or expires, either way, it will do grave damage to our capabilities to protect the Nation if we don't have your bill passed.

Why I might make that statement? The simple fact of the matter is, we must rely on the private sector to be effective. Without liability protection for the private sector, they are less willing to help if the cost for that help is huge lawsuits. As you know from your months of review, liability protection does not exist in the current law—retroactive liability protection does not exist in current law. It would not exist in an extension and certainly would not exist if the law were allowed to expire. Therefore, we must get the new bill passed immediately if we are to maintain our capabilities to stop terrorist attacks against the Nation.

Turning to today's topic, as you've noted, I'm joined by an array of experts. And you're going to ask some technical questions, I'm sure, and I won't hesitate to call them to the table to help me in answering.

We in the intelligence community have a solemn mandate and responsibility to provide relevant and objective analysis to customers across the government from law enforcement officials, to warfighters, to the President, and of course to the Congress. Our mission is to create decision advantage for our leadership. By decision advantage, we mean the ability to prevent strategic surprise, provide warning, understand emerging threats, track and prevent known threats, while adapting to a changing world. In these activities in some circumstances, as is known to this Committee, we also have an operational role to confront or help reduce foreign threats to the Nation.

This is not, as some have surmised, a passive community sitting in an office merely conducting analysis. We are in the field, as you noted, conducting aggressive collection operations, actively engaged to create that decision advantage that I mentioned earlier. There are a variety of views, as you also mentioned, about how to structure this community. There are four basic options.

The first is overseer, probably the weakest form. Second would be a coordinator; third, an integrator; and fourth, a director, someone who actually directs all of the community's intelligence activities. I currently have the title of Director, but the authorities created in statute and executive order put me more in the middle of that range of options—coordinator and integrator, rather than director with directive authority.

This is because, of the 16 agencies that make up this community, 15 of them work for a cabinet secretary in his or her department. For decades, the community was led in a decentralized fashion with various elements of the intelligence community being directed largely by their department heads, with limited direction from the Director of Central Intelligence. Until the creation of the DNI, the Director of Central Intelligence doubled as the Director of CIA, as you mentioned, and was more of an overseer, the weakest form, for the dozen or so intelligence agencies that existed at that time.

It was apparent that managing the day-to-day activities of the CIA while effectively overseeing a community composed of organizations serving other cabinet-level departments was a significant challenge for any single person. With the passage of the reform act that you've mentioned in December 2004, the DNI inherited a divided community that required greater coordination and integration to be effective in meeting the new threats.

Over 40 serious studies have been conducted since the 1947 National Security Act that recommended that the intelligence community integrate its efforts under a single, empowered leader. But it took two events—the trauma of September 11th and the failure of intelligence on Iraq's weapons of mass destruction National Intelligence Estimate—to spur dramatic reform of the community.

Today, we are building on that 50-year legacy. Our mandate is to lead this community of 16 agencies and components, of which the DNI has direct reporting responsibility for only one, the CIA. As mentioned, the remaining components are operating under independent department heads. Our current structure charts a middle path between a department of Intelligence with line control over all elements and a confederated model, which provides resources but not day-to-day direction of the subordinate elements. This was the design of the 2004 Act that created this office.

Often said, the intelligence community needs legislation like the Goldwater-Nichols Act of the eighties for DOD. I would note Goldwater-Nichols worked and is working well today. But it was for a single department with all decision authority flowing to the Secretary of Defense. We do not have a department of Intelligence.

Our current model empowers an intelligence community leader, the DNI, who manages strategic planning, policy, budgets, but does not have direct operational control over elements of the community. The DNI does not have direct authority over the personnel in all of the 16 agencies in the community.

As part of our 500-day plan, we have focused the DNI's role as the integrator of the community. We seek to create efficiencies and improved effectiveness in shared services like security clearances, information-sharing, information technology, and communications, but still promote an environment where the elements of the community serve their departmental responsibilities. This integration model of governance across the departments is still being defined because, quite frankly, we are in new territory for U.S. intelligence, something that has never been tried before, balanced with the need to have strong departmental intelligence elements in each department.

This middle ground creates healthy tension—tension that obliges us to take on big issues within the community while at the same time doing so with the support and collaboration of not only the 16 community members but in cooperation with the cabinet department heads. The legislation of 2004 directed specific responsibilities and tasks for the DNI and the office of the DNI. We believe a limited corporate headquarters is required to carry out our strategic tasks, such as the following: analytic and collection leadership; integration and prioritization; community-wide science and technology; budget development and oversight; information technology integration; information-sharing enhancement; human resources policy and direction; equal opportunity and diversity direction and management; and civil liberties and privacy protection leadership and advocacy.

In addition, the office I'm responsible for operates the following mission management-related centers and staff elements: the National Intelligence Council, which produces our National Intelligence Estimates; the National Counterterrorism Center; the National Counterproliferation Center; the National Counterintelligence Executive; the Office of Analytic Mission Management; and the National Intelligence Coordination Center to coordinate collection activities across the Federal Government. This organizational structure enables the office to implement the coordination and integration required by the 2004 Act and ensures that the community's collective efforts are effective and efficient to some degree.

This arrangement has seen significant successes in the past 3 years. It's made an impact on how we do our business and our contribution to the Nation's security. Let me provide a few examples. We have significantly enhanced intelligence collaboration across the community for collection, analysis, and dissemination; improved analytic tradecraft by setting more rigorous standards, promoting alternative analysis and enabling greater analytic collaboration; resourced the National Counterterrorism Center to ensure integration of all levels of information relevant to counterterrorism as well as to promote all-source intelligence collection collaboration and tasking deconfliction; established an executive committee.

The Executive Committee is composed of the heads of the various agencies and the principal customers that receive our information. The executive committee is designed to take on the tough issues to help the DNI with decisionmaking support when we have to make hard decisions. We focused exclusively on guiding the intelligence community at large, allowing the CIA Director to give his agency the full attention that it requires.

And of course, we worked with the Congress to update the things like the FISA legislation; played a key role in the interagency effort to enhance security for the Federal IT networks, and hopefully for the IT networks of the Nation; established a joint-duty program, which requires our future leaders to have joint-duty for a promotion; greatly enhanced classified information-sharing among our foreign partners. We launched security clearance transformation. The purpose of that is to save time and money and make us more efficient. And we integrated and coordinated the intelligence community-wide budget to ensure that we are making hard choices now to prepare the community for the future.

I have just described where we were and where we are. I'll take just a couple of moments to comment on where we want to go. To further intelligence transformation, we have launched a reform initiative aligned to our longer-term vision, which I will profile briefly here. We must develop a workforce that knows, understands, and trusts one another, and regularly shares information to better develop intelligence products. Initiatives such as the joint-duty effort are critical to transforming that culture. We're also developing uniform compensation policies across the community appropriate to a highly performing workforce for the 21st century. This will also serve as an incentive to bring our community closer together.

We want to create a culture of intelligence analysts who understand that they have a responsibility to provide the needed information to the right customer in time to be useful. Such a culture puts great pressure on our analysts. They must know their customers better, they must understand how all the collection systems work better, and they must meet their obligations to protect sources and methods.

We need a seamless flow of information to be effective. We cannot continue to maintain multiple, non-interoperable networks within the community or operate with archaic information-sharing regimes. Initiatives such as our single information environment and modernizing our intelligence-sharing policies and procedures will help us accomplish that goal. By transforming how we identify and address collection gaps, we will produce fused intelligence, creating better situational awareness.

We must also unify the community around priority missions, not around specific intelligence disciplines. Our mission manager approach allows leaders in the community to bring best solutions to solving a problem using multi-disciplinary teams across the community. It's worked well for us and we look forward to expanding that as we go forward.

We will gain influence over our potential adversaries by exploiting America's advantage in technology and systems management. This will require us to radically rethink the way we identify, develop, and field promising new technologies. The current approach is too slow. It's too slow to counter the rapidly evolving threat. Specifically, this will require acquisition reform, streamlining the procurement process, and achieving greater synergies among our science and technology communities.

It will be difficult to accomplish any of our objectives with the antiquated business practices of our systems today. We are working to deploy an integrated planning, programming, budgeting, and

performance management process that aligns strategy to budget, budget to capabilities, and capabilities to performance. This requires timely, accurate, reliable financial systems with the ability to provide a quality financial statement.

Where are we today on the question of DNI authorities? We seek national intelligence authority that can focus, guide, and coordinate the agencies of the community to ensure that our customers get the service they need. We have some successes so far, but there are impediments that slow our ability to take rapid action. We will continue to address these impediments forcefully, exercising our current authorities.

We are working as a member of an interagency process to update current executive guidance on the operation of the community. One of the main focus areas of this interagency process is recommendations to the President for changing the executive orders that govern our community. However, while we work this interagency process, there are a few areas in which your support is needed.

Personnel policies can be both transformational and serve to create a common culture. We request that you act on the recommendations that we have identified to build and support a unified civilian workforce across the community. This includes proposals to allow us to implement modern compensation practices for all of our civilian employees; place all civilian employees in the expected service; and provide for critical-pay positions. We also request relief from rigid civilian end-strength ceilings. These reforms would provide the community with flexibility to most effectively implement our joint-duty program, create a performance culture, reward and retain our best employees, and generally improve the strategic management of the workforce.

In conclusion, Mr. Chairman, with your support, we're on the right path. We've got a lot of work left to do. But we're working hard to create that decision advantage to serve the leaders of our Nation, to protect our citizens, our values, and our way of life. Thank you, sir.

[The prepared statement of Director McConnell appears on page 29.]

Chairman ROCKEFELLER. Thank you, Director McConnell. The Senate, in its constant effort to be helpful to hearings, witnesses, and Members, has a vote about half the way through. After that, there is one more. And so, to my regret, I must ask that you be patient, which you have learned to be, and that we go vote and come back quickly after we've voted on the second vote. I apologize.

[Whereupon, from 3:11 p.m. until 3:44 p.m., the Committee recessed.]

Chairman ROCKEFELLER. The hearing will resume, with all appropriate apologies to a very busy man.

If you gave an order, as DNI, to the CIA or the DIA or NSA or somebody else, and they decided they wanted to ignore your order in full or in part, what would you do?

Director MCCONNELL. It would depend on the circumstances, of course. If I considered it appropriate and reasonable, then I would insist on getting it corrected, and that they would do what I asked them to do. And there are a variety of ways to do that. Fifteen agencies work for another cabinet officer, so one option is to work

it out with the cabinet officer. I always have recourse to fall back to the President if necessary; it's something I would not want to do and would make every effort to work around, but that is the option that I could exhaust if I had to.

Chairman ROCKEFELLER. But you wouldn't have any lack of confidence that what you saw to be what should be done would be done?

Director MCCONNELL. No, sir. One of the things that the bill created was something called the JICC, and I don't remember how it expands, but it's Joint Intelligence Community Council. That's the cabinet officers and interestingly, I chair it; I have cabinet rank but, as you know, I'm not a cabinet officer. So this is the Secretary of Defense, Secretary of State, Secretary of Treasury, Energy and so on. We meet three times a year; we talk about priorities and so on. And since I'm a member of the Principals Committee in the White House I am at all of those decision bodies, so I know these people and we work with them on a regular basis.

So I think, if it was something in extremis that had to be done immediately, there's a path to get that done; if there's something more of a policy nature, there's a path to get that worked out. So it's not like having a department of intelligence—I mean, for sure, that's clear hire-fire directive authority. I have more of a coordinating role, but if I felt strongly about it as a professional in the interest of protecting the country, for whatever reason, I think I could prevail in the debate and dialogue and always have the President to go to if necessary.

Chairman ROCKEFELLER. I want to come back to you on that.

Mr. Director, I want to ask a question which some will take as political but I take as policy. The House has left; I'm meeting with Chairman Reyes of the House Intelligence Committee tomorrow morning at 10 because he's concerned, and I think that John Conyers and Pat Leahy are going to meet, I'm not sure, but I know I'm going to meet with him to figure out what's down the path for FISA. There's no question the President had what he wanted in our bill and he made it very clear on 1 day, and then on the next day he proceeded to make it very clear that this was a terrible thing that the House was doing and that intelligence collection would stop and that they should be in danger to terrorists from, you know, sort of from Sunday morning.

So I want to ask this question: You and I both don't want to see the Protect America Act expire on Saturday. You're clear about that; we're all clear about that. I believe the best way to handle the fact that the Senate sent the House a bill only a few days before the expiration of the Protect America Act and this, for the second time, does in fact give them reason to be upset with us, pushed around by us.

I look at it differently. I think that it'd be great if we agreed on a short-term extension, but that isn't going to happen. Be that as it may, I believe it would be responsible for us to help the American people—and I'm doing this hoping that people will be listening—understand what the government's anti-terrorism capabilities will be in the days ahead.

In other words, if the Protect America Act is expiring on Saturday night, the natural inclination is to feel that that's the end of

collection and so Usama, when are you coming. Isn't it true that the intelligence collection gap, which was discussed a great deal at the end of last July, you described that last summer with respect to the coverage of international terrorists, has been closed?

Director MCCONNELL. We've significantly improved our posture since last July, yes, sir, because of the Act that you all passed last August, the Protect America Act.

Chairman ROCKEFELLER. Right, right.

Isn't it true that the targeting and collection of communications of foreign terrorists now underway, pursuant to the Protect America Act, will continue even after the sunset of the Protect America Act?

Director MCCONNELL. The provisions of the bill allow us, once we had submitted to the FISA court the procedures and so on were approved and we are loaded—from the date that's approved we get a year. So at some level the collection will go forward if it, in fact, expires on Saturday.

But now, that said, it's very important that I highlight for this Committee what else happened, what else. One, we lose the ability to compel the carriers to help us; two, there is no liability protection for the carriers, therefore they're thinking twice about helping us, making it much more difficult; and three, this is a very dynamic situation. While we may have something on some key targets that we're working, recruitment, training, different names, different personalities will pop up.

Under the Protect America Act, that was manageable. So if it expires, that new dynamic would put us back in a position under the old FISA legislation, in which we would have to satisfy a probable cause standard if collection were obtained in this country, meaning a wire in United States.

So there is some level of protection but it's not where we need to be. One, we don't have the carriers willingly participating with us and a way to compel them, and it's a pretty dynamic situation.

Chairman ROCKEFELLER. Yes, but there the bulk part of the answer is that intelligence would continue to be collected——

Director MCCONNELL. What is pre-loaded.

Chairman ROCKEFELLER [CONTINUING]. —With worries, legitimate worries on your part about the withdrawal or whatever it might be.

Director MCCONNELL. Yes, sir. What's pre-loaded and for where we still have continuing cooperation of the private sector.

Chairman ROCKEFELLER. Right.

Isn't it true that no vital intelligence collection now going on under the authority of the Protect America Act will be shut off on Saturday?

Director MCCONNELL. It would not be turned off. The issue becomes compelling—private sector cooperation and then the things that change, yes sir, that's correct. The way you stated it is correct.

Chairman ROCKEFELLER. Didn't the Congress specifically provide the Protect America Act authorizations continue in effect until their expiration?

Director MCCONNELL. The way that you've framed it is true, but my response is also true. I mean, there is some provision for carry-over but it has——

Chairman ROCKEFELLER. I understand.

Director MCCONNELL. It has issues, yes sir.

Chairman ROCKEFELLER. And it is also not true that if we come to August, which is when it technically would expire, that there are relatively easy ways for that to be continued if we have not worked out—

Director MCCONNELL. No, sir, I wouldn't agree with that.

Chairman ROCKEFELLER. You would not agree with that.

Director MCCONNELL. I wouldn't, and the reason is we'd find ourselves in a situation that we found ourselves last July. Remember when this was returned to the FISA court in January 1907, the initial response on the FISA court, we had fairly broad capability to do what we needed to do. But as subsequent judges looked at the situation and interpreted the words in the law going back to 1978, over time capability was subtracted from us and so, when we went into July 1907, we had lost about two-thirds of our capability.

Chairman ROCKEFELLER. Right, last year.

Director MCCONNELL. Last year. So my point is, going into the way you framed your question, if we got to July or to August 2008 and the things we on coverage under the Protect America Act expire, we would be back in that same situation.

Chairman ROCKEFELLER. I apologize to my colleagues but I've got to ask this last question.

If you have any uncertainties about this—and you do and I do—would it not have made sense for the President, in that there were reasons that we jammed the House because we were clogged in the Senate—we're not able to operate on amendments for a number of days—the House has been through this experience before and they don't like it and they're angry about it and you can see that in the results of the extension vote last night, that an extension of the Protect America Act, in order to allow these things to work out, which they surely would have been, would have been a good idea?

Director MCCONNELL. Sir, when I went through this experience last summer one of your Members quoted that in the political context, I was a little over my head. I admit that was absolutely correct. This is a political process; I am a professional officer with professional responsibilities. So when I'm advising my committee, both committees, anyone that'll listen on the Hill or in the executive branch, I will advise on our intelligence condition. Now, this is a political process and so all I can do is tell you that if we extend the Act or the Act expires we're at a disadvantage. And so how it's worked out in the political process, that's going to be to those of you who are elected to those positions.

Chairman ROCKEFELLER. Well, yes, it will be. And I thank you very much, and Senator Bond.

Vice Chairman BOND. Thank you, Mr. Chairman. I will offer a political suggestion and not ask you to comment since you are a professional officer.

The House passed a bill. It was very different from our bill; it was clear that the President said he would not sign it because you said it would not work. There is nothing in the rules of the House or any other body that prevent them from looking at that, understanding what's coming. They knew what we reported out in October; they knew that was the form that they would be dealing with

in the House. So it is not a question of when we got it there so much as the inability of the House to deal with it. And I'll just leave that out there for no comment.

I do want to ask you one thing on which you can comment and I think the important thing—and I appreciated the Chairman's question. The key point that you brought out was that, without the power to compel, without protection or retroactive protection, the carriers which may be involved in this program realize that they are suffering serious threats to their business livelihood and perhaps even their facilities and personnel if we don't give them retroactive immunity for the work that they've done. And thus, it is my assumption that general counsels of the carriers would be telling you, you show us a court order or we're not going to cooperate on anything which is not covered by a court order. Is that a fair assumption?

Director MCCONNELL. Sir, it is fair and I would take it a step further. This has to be willing relationship, partnership, and so where we find ourselves now, even with a court order, some are saying we'll take it to court to verify.

And what I want to highlight to you is for us to do this job it requires this willing cooperation. And if you think about this technology area, the United States industry dominates it; it's a strategic advantage for us. And so we're putting ourselves in a position that we can't capitalize on it and I would suggest even perhaps putting it at risk.

What do I mean by that? It's very easy for competition in a foreign country to point to a company here and say you're being sued for spying on its citizens or whatever. Even if those allegations are totally out of order it could damage your brand. And so with Sarbanes-Oxley, fiduciary responsibility to shareholders and so on, we've put these companies in a position where they feel like they're being punished for trying to help. So that's the mitigation that we've got to get through to get this protection for them.

Vice Chairman BOND. Thank you for that explanation, Mr. Director. This hearing is one I've wanted to have for a long time, and I hate to be taking up questions that are of more immediate import, but I found the debate yesterday on the floor, and particularly the news coverage of it, somewhat troubling. The floor adopted the intel authorization bill, approved in conference with what I consider to be one very bad provision requiring that the CIA be limited only to those techniques approved in the Army field manual.

I'd ask you to comment on that in a second, but I want to ask you to address specifically some of the charges and allegations that I think were either badly misinformed or irresponsible, that we heard on the floor and that were covered in the media. I spoke today with an international broadcast group asking me questions to be fed back into the Middle East. They picked up statements that were made on the floor that I believe to be absolutely false.

So first, I would like to ask you, the eight prohibited techniques that the Army field manual specifically prohibits, they are repugnant; I believe they probably violate treaty obligations. I want to know whether there is any intent or whether there's any chance the CIA would use those or use torture, or use waterboarding.

I believe that the argument is appropriately separate from the discussion we heard on the floor, saying this bill outlaws torture, outlaws waterboarding. I do not believe that we need any more legislation. I believe that is outlawed; I believe it is not used. I would like your comments specifically on that and your comments on what would happen to the CIA's interrogation of high-value detainees were they to be limited to the unclassified and thus published techniques in the Army field manual.

Two-part question.

Director MCCONNELL. Sir, let me define sort of the boundaries of law as this imaginary box I'm outlining with my hands. That box is a result of the American political process; it defines our rules, that's our law. The Army field manual in the context of this box is a small circle in the middle of it. It's designed for a specific purpose, for men in uniform, generally younger, less experienced and less trained, for a specific purpose. So the question becomes, do you limit the CIA and its interrogation program to that small circle?

Now, the President stated what his intentions are, but the question is what's inside that box and is it lawful. If it's lawful as determined by the American political process, then CIA would use those lawful techniques in certain prescribed circumstances.

Now, as you've alluded to there are enhanced interrogation techniques currently; waterboarding is not included in that. If it were ever decided, for any reason, that waterboarding should be included in that, there's a process to make that determination, to determine if it's legal. The law has changed since waterboarding was last used some 5 years ago, so I don't know if I'm answering your question but it's—

Vice Chairman BOND. The eight techniques that are specifically prohibited in the Army field manual, burning and electric shocks, those—

Director MCCONNELL. Those clearly are illegal and are not appropriate for anyone, to include the CIA certainly. The ones that are specifically—the things that you just mentioned, yes sir.

Vice Chairman BOND. And the final question was what would happen to the CIA interrogation program if they were limited to that small circle in the big box of permissible techniques?

Director MCCONNELL. It could not be as effective as they have been in certain circumstances, and what I would describe as—it's a point in time. When those techniques were used, we knew little about an organization that had just attacked the World Trade Centers and we had captured some hardened terrorists, and so there were some interrogation techniques used that resulted in useful information.

So is that something that's exercised every day on anyone that's captured? No. Would it be done today the way it was done back then? Probably not. One of the main reasons is we know so much more. It's very easy to have an interrogation if you have lots of answers that you can use to test and probe and establish a relationship. Anyone would prefer a non-confrontational approach if possible, but still what's in the box, so long as it's not torture as defined in the American political process as being legal, then the CIA would be capable of using some of those techniques.

Vice Chairman BOND. Thank you.

Chairman ROCKEFELLER. I would like to say to my colleagues that the hearing is not about the question I asked or the questions the Vice Chairman asked, although they have their interest, but it's about the condition and the authorities and the ability to maneuver and to lead of the Director of National Intelligence in a way that is most efficacious. So I would ask that questions would reflect on that matter, and Senator Whitehouse is next.

Senator WHITEHOUSE. Thank you.

Admiral, first let me ask you to comment on this assertion, if you could tell me if it's true or false: Your surveillance of anyone affiliated with al-Qa'ida or any organization affiliated with al-Qa'ida, or any person affiliated with any organization affiliated with al-Qa'ida, will continue unimpeded through any period in which the so-called Protect America Act is not in effect, at least until August of this year. Is that correct?

Director MCCONNELL. I don't think that's correct, sir, but let me ask for some legal help. Let me tell you my understanding. We have certain procedures that are sort of loaded, been approved by the court and so on. In a dynamic situation, if there was someone outside that, I—

Senator WHITEHOUSE. Someone outside al-Qa'ida or an organization affiliated with al-Qa'ida?

Director MCCONNELL. I'm using known to us or outside a specific list of identifiers or that sort of thing. I think if the Protect America Act expires it would put us back in a situation of probable cause if the collection was done in the United States on a wire. And I think that's the answer but let me get some—

Senator WHITEHOUSE. Unless they were affiliated.

Director MCCONNELL. No, if it's done—if PAA expires and it's done in this country, it would require you to have a warrant, I believe. But let me get someone who actually knows the answer. Ben, are you here?

Mr. POWELL. To the extent someone is covered under an existing authorization—an authorization for an acquisition signed by the Attorney General and the Director of National Intelligence and that has been issued, those continue for up to 1 year even beyond the expiration of the Protect America Act. Directives issued under those authorizations may also continue under those also.

Senator WHITEHOUSE. And those authorizations may include organizational authorizations so that new individuals who are affiliated with the organization can nevertheless be surveilled, correct?

Mr. POWELL. We would certainly take that position, Senator. What we could not do is the issues that are raised in the Attorney General and DNI's letter are if we need to modify or issue new directives pursuant to those authorizations to different electronic communication service providers or different methods than what are covered in existing directives, or modify those authorizations and directives, which we have done over the past 6 months, then, there's also a substantial question in the wording of the Act—although we hope we have good arguments but it may be litigated—of whether the liability protection continues on because that is in the wording of what actually continues on. So as the AG laid out there's uncertainty in all those different areas.

Senator WHITEHOUSE. But not as to your ability to surveil people who are affiliated with al-Qa'ida.

Mr. POWELL. Certainly the authorization, if it covers the authorization for the acquisition, then it would continue. It's the implementation of it that creates concern with the private sector.

Director MCCONNELL. Also, there's an issue of compelling. If you have assistance and it expires, can you now compel? That could be challenged. And so our worry is we're much better with certainty so we know what the rules are; if it changes, you never know how it might be ruled.

Senator WHITEHOUSE. There was an incident recently in which the Director of National Intelligence, then John Negroponte, instructed the head of the CIA, then Porter Goss, that CIA interrogation tapes were not to be destroyed. As it turned out, they were in fact destroyed.

Is there anything out of that circumstance that bears on the authority of the DNI versus the Director of the CIA? Do we need to strengthen the authority of the DNI so that when the DNI makes a statement like that to a CIA Director it becomes clear that it is, in fact, a decision that the agency must comply with? There's a command gap between DNI Negroponte making that statement and the action that took place in contravention of the statement, and where is that command gap.

Director MCCONNELL. It's being investigated now and I haven't talked to Ambassador Negroponte, and I don't know all the circumstances. But if it were an order and if it were violated—two big ifs—then I would agree with the way you outlined it. But what I've heard just in people talking about it, it wasn't a direct order, it was an opinion; I don't know. But if the way you described it, it was an order and it—

Senator WHITEHOUSE. Do you not see it as part of your DNI authority?

Director MCCONNELL. I do, indeed. If it was an order and violated, then you'd have to deal with that situation.

Senator WHITEHOUSE. One last, just quick reaction. You said that the Army field manual was designed for young men, generally less experienced, less well-trained.

Director MCCONNELL. In uniform.

Senator WHITEHOUSE. In uniform.

I frankly don't think that's true, and I would challenge it and urge you to maybe reconsider it because what I understand is that the military has very significant and very experienced intelligence operatives. Men who I've spoken to have 22 years of interrogation experience. They run military intelligence and interrogation schools of 10-, 18-weeks' duration; they have, I guess you'd call it, sort of graduate-level courses. This is a matter—you have, you know, special-ops individuals, you have DIA folks. You have some of the very best intelligence and interrogation operators in the country in the United States military, and they are the ones who are telling us that they work very well within the confines of the Army field manual.

And I think it's fair to have the discussion as to whether or not, at that level, the Army field manual is the right restriction or not.

What is not fair, I don't think, is to take the military interrogation and intelligence operation and denigrate it, as if it's a bunch of 18-year-olds running around who have got no experience doing this and the Army field manual has to protect them from their novice and their ignorance because it's the same field manual that applies to highly trained, highly professional, highly experienced individuals, many of whom have a lot more interrogation experience, it appears, than the folks in the CIA.

Director MCCONNELL. Sir, what you're referring to—

Chairman ROCKEFELLER. Please react to that.

Director MCCONNELL [continuing]. Is coercive techniques. And if you ask the FBI their opinion—and we just did this recently in a hearing up here—you get pretty much the same answer the way you just described it. The way I think of the Army field manual is primarily the lowest common denominator to protect the Nation from what happened—the heinous behavior at Abu Ghraib. So it is a course of action that was taken by this body and the executive branch to agree to how we're going to do that in the future, so that circle closed to be a smaller circle.

What you say is true; they're very experienced people, but now they live within that circle. The question is, do we want to make the same circle apply to all parties, and that's the question that you all have to wrestle with.

Chairman ROCKEFELLER. I would say to my colleagues the following: It may be that—and Senator Whitehouse did ask one question which was directly on point of the purpose of this hearing. It may be that my colleagues don't have an enormous interest in the powers and the authorities of the Director of National Intelligence and they wish to talk about other matters, which are much more fun to talk about, but they were not the point of this hearing; they were not the point of this hearing. That's partly my fault, and that's partly the Vice Chairman's point because we started out with two such matters.

But the point is, does he have the authority that he needs? And if people feel that they are disinclined to engage in that subject, then I of course will be very happy to hear about that, but I'll be very disappointed, even to the point of maybe adjourning the hearing. Senator Feingold.

Senator FEINGOLD. Mr. Chairman, I would not allow that to happen. My questions are exactly about the topic of this hearing. But I want to first say how valuable your questions were, and how important it was that you brought us to some clarity on the issue of what really happens if the PAA expires.

Director MCCONNELL. And I agree with that.

Senator FEINGOLD. Which, by the way, I oppose, letting that happen. And I also feel that way about Senator Whitehouse's about the Army field manual. These things are critical but I happen to find the topic of this hearing fun, as you say, or important. And let me just say, a little over a year ago, the Committee held another hearing on intelligence reform in which ODNI testified to its ability to lift and shift—“Lift and shift collection resources to address current crises such as Darfur and Somalia.”

The problem, however, I think you might agree, is that lifting and shifting almost inherently means that it doesn't help us antici-

pate crises before they happen. It does not help the intelligence community develop experience or expertise on these threats, and it does not represent an ongoing commitment to long-term challenges. In fact, the Deputy DNI for collection acknowledged at our hearing that there is a “need to get the intelligence community back to what I grew up calling ‘global reach.’ We don’t have that today.”

She further testified that with Congress’ help, the intelligence community can “get back to a place where we can do global reach and pay attention to places that are not perhaps high on the list today.”

Mr. Chairman, that is what we should be doing, pushing the intelligence community to allocate its resources in accordance with our national security needs and providing the DNI the authorities he needs to make that happen. And I’d ask that my full statement be placed in the record, Mr. Chairman.

Chairman ROCKEFELLER. And it will be.

[The prepared statement of Senator Feingold appears on page 28.]

Senator FEINGOLD. Mr. Director, do you agree with the statement in the most recent annual report of the U.S. intelligence community that “one challenge to improving the coverage of emerging and strategic issues across the intelligence community has been the diversion of resources to current crisis support.”

Director MCCONNELL. Certainly current crisis support takes a disproportionate share, but let me just offer how we try to mitigate that. We have a thing we call the national intelligence priorities framework, and we make that dynamic. Every 6 months we go through a process leading up to the signature by the President, and the way we get to closure is the cabinet officers sit and we take them through a dialogue. What are we, the intelligence community, looking at, what are we not looking at. And we have added some dynamics to that in the last cycle because cabinet officers tend to focus on the here and now.

And it was to get at your question. What about those areas that we don’t have as much focus on and how do we do that. So they’ve engaged in a very positive way, so we’re trying to get back to addressing your question.

Senator FEINGOLD. Well, I think with regard to that, last year your office testified about its authorities to lift and shift collection resources to address crises. Does what you just said mean that the ODNI has moved beyond lift and shift to ensure that sustained attention is paid to regions that are traditionally underserved by our intelligence community, or is it not a fair—

Director MCCONNELL. No, that is fair. I personally don’t like the term “lift and shift.” That’s crisis management in a collection situation. But the whole nature of the priorities framework, national intelligence priorities framework, was to force focus on the areas that were not getting as much attention.

And it’s changed quite a bit, what we’re looking at, how we’re doing it, and the resources we’re dedicating to it.

Senator FEINGOLD. Well, I think about this a lot, especially in trips and my work in Africa with regard to the Foreign Relations Committee. And last week you testified that, “Kenya is likely to enter a period of increased social tension and instability which

could affect its willingness and ability to cooperate with the United States on regional, diplomatic, and counterterrorism matters.”

This is exactly the kind of strategic challenge to the United States that we need to anticipate rather than just respond to. It also demonstrates clearly how issues like political repression and corruption, ethnic tensions and the destabilizing pressures of poverty and marginalization directly affect our national security.

So Mr. Director, what are you doing to direct collection resources toward these sorts of issues, so that we don't find ourselves unprepared for crises that directly threaten our diplomatic and counterterrorism efforts. I mean, I just think about how I went to Kenya so we can talk about Somalia and Sudan and then, all of a sudden, we have this just extreme political crisis in Kenya and what an impact it has on us as well as on the Kenyan people.

Director MCCONNELL. Part of the way we do this, as I mentioned in my remarks about mission managers. A mission manager took on a political context because if you have one, then the Nation that it focuses on or the region it focuses on gets—there's a reaction. So what I'm looking at is how do I get the benefits of mission management in the construct of how we currently operate.

And as you know, we have National Intelligence Council, which consists of National Intelligence Officers. Those are our most senior officers in the community for a region. What I want to do is empower them to work across the disciplines—HUMINT, SIGINT, imagery, whatever—and get real focus. And then there is a constituency for every region of the world, Department of State, Defense, or wherever, and have active dialogue with them to understand more their needs and so on.

And we're starting to have some traction. There's been particular focus on Africa because of Kenya, because of Chad, because of Somalia. So we're better—not where I would like to be but we're better—and it's making us more sensitive in a global context.

Senator FEINGOLD. Thank you, Mr. Director. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you, Senator Feingold, and thank you for your interest in these matters which are important.

Senator WYDEN. Mr. Director, out of deference to the Chairman I admire very much, I'm going to set aside questions that I had planned to ask about the last couple of days, and let me start then with respect on the authority question, just in matters of fiscal responsibility.

What I've long been concerned about is that there's a habit in the intelligence community of beginning these very large acquisition programs, and nobody's really quite sure how to pay for them down the road. I think you've been concerned about this as well, and you've talked about a variety of strategies that you've been interested in, including auditable financial statements and a variety of things.

But what have you been able to accomplish thus far to make sure that the intelligence community doesn't spend these huge sums of money on these major acquisitions that are going to later have to be canceled on the grounds that they're unaffordable and in effect don't give you value for the dollar that you're allocating?

Director MCCONNELL. Yes, sir. Excellent question, something I'm very concerned about and focused on. Let me capture sort of three areas of interest with acquisition where we get ourselves in trouble. The first is requirements creep. We're going to design something, build something, whatever. And then as we go through the process, everybody wants to add another capability, another capability. So all of a sudden, it becomes unaffordable. The schedule slips or we have a major problem. So we have to do a better job in containing requirements creep.

The second thing is we lost a generation of program managers. When the dot boom occurred in the nineties, many of the people with the skill sets that built large systems were attracted to the private sector and they left. So we suffered from an inadequate supply of professional program managers. So we recognized that, and we're trying to rebuild that capability.

Another part of it is having realistic cost estimating. The idea is don't start something you can't afford. Now, if we can do that—and we established the new deputy on our staff, deputy for acquisition, someone experienced—more than 30 years in industry—to work through these issues, and now hard decisions.

As you're aware, we had a program that was multibillion dollars that was putting us in a position of being a one-point failure. And so we took that on as a community. In my Executive Committee I mentioned earlier, we took it to all of the parties that had to make a decision and finally took it to the President for a decision for coordination with the Hill.

Now, that I think gets us back into focusing in an area looking at the architecture, what's affordable, how would you manage it. We started a process we call ICA, Intelligence Collection Architecture, that's to force us to look at the discipline, the cost, and the schedule so that we will choose things that are affordable in the best interest of the Nation.

So I feel like we're making progress. But one of the things that I would ask your support on—currently your bill or the bill for this office gave me authorities for streamlined acquisition. The problem is, you didn't give me the authority to delegate them to anybody that spends money. So while the DNI and the Director of the Central Intelligence Agency have special authorities to do special things—can take risks, can go fast—and you gave it to me, it's only for my staff and not for the rest of the community. I need that authority for the rest of the community.

Senator WYDEN. And I'm sympathetic to that. Let me ask you about something that came up in an open hearing not long ago that my constituents just were kind of slack-jawed when they heard about it, and it goes to, again, the question of your authorities with respect to the problem. At one of the open hearings we had last fall, Willie Hulan, a senior FBI official, acknowledged that a large number of FBI agents and analysts don't have access to the Internet at their desk.

And Committee staff have found that there were similar access problems existing for the FBI's top-secret system, particularly for the offices overseas. You and I have talked about technology in the past, and I know you have a great interest in this. What can you

do with your authorities to in effect address something that I think just defies common sense?

Director MCCONNELL. In this case, I can offer to help, and we've done that. We've put technical people into the process to help to think it through and do requirements and that sort of thing. And I have some budget authority.

Now, it's much more clearly defined, understood, and in action for the agencies that are in the Defense Department. It's less clearly defined for agencies outside the Defense Department. So that's something we recognize and we're working through it.

And let me just make one other point so you capture this. On the executive committee that we've established to run the community, the Director of the FBI is now a member of that. He participates actively and he is now benefiting from some of this deliberative process. So I think that will make a difference.

Senator WYDEN. Thank you, Mr. Chairman.

Chairman ROCKEFELLER. Thank you very much. I annoyed the former owner of the meager territories of West Virginia, the honorable senior Senator from West Virginia, by pointing out that we're having more votes at 4:30 and that's not much time. So now we have three more people who wish to speak and they're probably not even going to get a full 5 minutes. So Senator Feinstein—

Senator WARNER. I also asked you to take judicial notice that it's Valentine's night and some of us have some responsibilities. [Laughter.]

Senator FEINSTEIN. We're all in favor of that.

Senator WARNER. I know your wife is expecting you for the first time for dinner in a long time.

Director MCCONNELL. That's exactly true, yes, sir.

Senator FEINSTEIN. If I may, Admiral, in addition to what Senator Wyden's point was and your response to it, are you saying that you believe you have adequate budgetary authority at this time?

We had a conversation about a year ago. It was a personal conversation. And you said you hoped to work this out internally. You told us earlier about some of the ways you would work it out. And so I guess my question to you is, without specific additional budgetary authority, do you think you have what it takes to do what is necessary to correct many of the big problems within the intelligence community?

Director MCCONNELL. Ma'am, partially. And let me tell you exactly what the issue is. The law says that if it's an acquisition by a defense agency, which is where most of the acquisition is done, and it's funded by the National Intelligence Program, then I must share jointly with the Department of Defense what's called MDA, Milestone Decision Authority.

It is silent on any program where the Department of Defense is also contributing money, military-intelligence program, into a major buy. And what's happened over the last, say, six or 8 years is major systems have moved all into defense, all into the national program or a hybrid, where they are split-funded. So it's mixed. There's been a lot of to-ing and fro-ing between staffs about we'll use these procedures or those procedures. The poor guy is trying to buy things. We're getting double reviewed and two sets of procedures and so on.

So I sat down with Secretary Gates and said, this is untenable. He's agreed to a process. Where we are now is in interagency coordination for the directive. This is interagency; it will go to the principals within 2 weeks, and what we'll do is make recommendations to the President. So we hope to have this clearly defined and resolved. I would say it's scheduled for signature by the 15th of April. If it doesn't happen, then I have an obligation to come back to tell you it didn't happen and I need some help.

Senator FEINSTEIN. Okay, good, because I think it's our intent that you have that authority, at least it certainly is mine, so I want to help with that any way I can.

One of my concerns has been the growth of contractors within the agency and there's been difficulty in getting any clear understanding of how many contractors are really within the intelligence community. If you exclude the construction of satellites, which is necessarily done by contractors, how many contractors are there in the intelligence community?

Director MCCONNELL. Ma'am, I think—well, two things. We've done a report, so we can make that available to you, and I think it's a classified number, but let me just verify that.

It's a classified number but it breaks it out—

Senator FEINSTEIN. I'll bet it's huge.

Director MCCONNELL. It's a large number.

Senator FEINSTEIN. Is it? Go ahead.

Director MCCONNELL. And we'll just bring it up to let you look at it and then you can ask detailed questions on why this and why that, and so on.

Senator FEINSTEIN. All right. Now, your office is now up to 1,750 people. I gather 40 percent of that is the Counterterrorism Center, which you inherited, but the remaining 60 percent is not. Is that a stable size at this point or is it going to continue to expand?

Director MCCONNELL. Ma'am, what I would like to do is cap my office at a level like the Joint Chiefs of Staff, just cap it at a reasonable place, whatever that is, and I'd like to get help from you to do that.

Now, that said, this is what I need you to also help me do. The Joint Chiefs of Staff is capped; the services or our defense agencies, can grow or contract depending on the mission. So I need to have the Counterterrorism Center, the Counterproliferation Center, the Counterintelligence Executive; you know, all these little things, they need to be treated as second echelon command so they can do whatever they need to do. And I've got a staff that's capped at a set level. You can see it; we can manage it and we can live within our cap. That'll let me manage it, because I don't have a profit motive like I would have in industry, so I'm looking for a way to force us to deal with a given size, just the way the Joint Chiefs work.

Senator FEINSTEIN. Let me just say I think that would be very good and very positive because I think it's kind of Never-Never Land for you the way it is now, so that would be very useful, thank you.

Chairman ROCKEFELLER. Thank you, Senator Feinstein.

Senator FEINSTEIN. Notice it's only a yellow line.

Chairman ROCKEFELLER. I know. You have thirteen seconds left.

Senator Snowe, and then the most esteemed Senator Warner. And our votes start in 3 minutes.

Senator SNOWE. Okay, I'll be very quick, Mr. Chairman. Welcome, Mr. Director, I appreciate you being here today, and your straightforwardness and forthrightness and I know you've faced considerable challenges as you assumed your position.

I was just curious. In reading your statement, you mentioned that you had focused the DNI's role as the integrator of the intelligence community. And I'd like to have you clarify that in terms of exactly what are the natures and dimensions of your power, because when this Act became law 4 years ago, the President was referring to it as a single, unified enterprise for the entire intelligence community. It was certainly understood that you would have unified command over the intelligence agency. So how do you view your role now as an integrator as opposed to a director, one who obviously should be taking charge of the responsibilities within those agencies—not day-to-day control but certainly being able to direct. I know you've chosen a middle ground in all of this and yet, how does that dovetail with the original intent of the law?

Director MCCONNELL. Ma'am, as you know, if you're director you have line authority, and there are 16 agencies, and, of the 16, 15 of them work for another cabinet officer. So as a practical matter, I'm in a situation where it's someone in a department with a different set of personnel standards and a different set of hiring and firing policies and so on. So it's not that I can give direct orders to someone else's organization. There's a cabinet secretary between me and the process.

So what we've worked out is to operate in a sense as a unified community, and we use this executive board to do that, and we have the cooperation so far of the cabinet officers. The only way I could see to change that dynamic significantly would be to create a Department of Intelligence, and then it would be operated like other departments where you have line authority. So right now there is some level of cooperation and integration and management skills that are involved in keeping this community unified.

Senator SNOWE. Do you think that is consistent with the original Act?

Director MCCONNELL. Ma'am, those are the words from the original Act. I mean, you well know the debate was the Department of Intelligence or a coordinator, although it's labeled director, across the community. And the words in the Act left it, the position, without authority for line-direction capability.

Now, in this interagency process we're going through now, it's been recognized. We're trying to get an executive order that will help us make this a stronger position.

Senator SNOWE. I guess it gets back to the original question and premise of whether or not you're seeking additional statutory authority.

Director MCCONNELL. We have to go through this executive order process first.—

Senator SNOWE. And then you're going to because I think it's absolutely critical. I mean, you can go back to this point about time is of the essence because it has been 4 years and I think that the time has come to make a decision so we can create the culture

that's still under way, which is also disturbing about creating a culture of collaboration; you know, the need to share that information.

And that obviously still is not being truly embedded in the culture and that's disturbing, and so we need to move to a point. I think that we should have a timeline and if we have to change the law then I think we need to do that in order to make sure it happens. Otherwise we're going to be in the same situation, and who knows if we don't understand the nature of the consequences as a result of our inability to do that.

And so it's clear that the Director does need strong authority, and the question is whether or not we should be prepared to undertake that. And frankly, I think it has to happen in order to ensure—I don't think we view the role of Director as being just an integrator but also a unifier, and this issue you're dealing within the limitations of the law—

Director MCCONNELL. Right, that's the issue.

Senator SNOWE [continuing]. And that's what we have to recognize, our responsibilities. I think you're doing everything you can within your prerogatives, and we appreciate what you are doing. Thank you.

Director MCCONNELL. Thank you, ma'am.

Chairman ROCKEFELLER. The former Secretary of the Navy.

Senator WARNER. Thank you, Mr. Chairman. I thank colleagues for shortening the questions.

I'm a strong proponent, as you well know and perhaps you've followed some of our debates on the floor. I've joined my two colleagues on this FISA issue, but I think we're losing sight of one aspect of the urgency of getting this into a final form of legislation and on the President's desk, and that is that part of your collection under FISA goes, either directly or indirectly, or both, right down to the tactical level and operating level of the United States military wherever they are in the world, namely in Afghanistan and in Iraq. Am I not correct on that?

Director MCCONNELL. Yes, sir, you're absolutely correct.

Senator WARNER. Well, we've got to drive that point home, that the very men and women of the armed forces, who we all adore and love here at home—I've never seen greater support for the uniformed people than there is today—they may not be entirely sympathetic with some of the goals that were staked out in these two campaigns but they're behind their people, that's for sure, and the safety of these people, their ability to operate and perform the missions that they're performing today, are dependent on FISA collection.

Director MCCONNELL. Yes, sir. The change of the global communications system has made what you said exactly correct. There was a time when it was mostly tactical, push-to-talk, line-of-sight sort of things, but today it's not unusual for communications to move around the globe and back to the battlefield, and our ability to capture that information for direct tactical support can be impacted.

Senator WARNER. Well, I mentioned that on the floor of the Senate yesterday, in a speech that I gave on this question.

I've listened to my good friend over here, the Senator from Rhode Island, question you about your authority and the orders that were

given and were they followed, but let me try and recast the question. And that is—I think you may have answered it in the context of my good friend here from Maine—you don't have that line authority that we somehow felt that we were intending to give you.

Director MCCONNELL. No, sir, I do not.

Senator WARNER. And, for instance, if there were tapes today in the possession of one of these numerous agencies that you have coordinate responsibility over, you can't order them not to destroy them.

Director MCCONNELL. In one case I could, CIA; I have line authority there. But in the others there's a Cabinet secretary that could have a different—

Senator WARNER. Well, you do have that absolute line authority right down to all entities in the Central Intelligence Agency.

Director MCCONNELL. Central Intelligence Agency, yes sir. But that's the only one.

Senator WARNER. That's the old DO as well as the—

Director MCCONNELL. No, they would want to negotiate. I mean, as you know this is a strong, proud organization. But in the final analysis in the law, I have that authority, yes sir.

Senator WARNER. Well, that clarifies that, and I thank the chair for the cooperation.

Chairman ROCKEFELLER. No, I thank the senior Senator from Virginia, our former oppressors—

Senator WARNER. I offered to you to unite the two states if you want to; I mean, I'm retiring, a vacancy occurs, and therefore you can keep your slot. [Laughter.]

Chairman ROCKEFELLER. Well, we've got a couple of counties that'd probably like to come over and join you.

That being said, Mr. Director, you have a way about you with words and diplomacy that you give us a lot more information, I think, quite knowingly, than you lay out on the record to be picked up in a broader way, and I think we want to be responsive to you. You laid out some major issues today. You have to have authority, you have to have a hammer, and it's delicate, and large agencies are terribly difficult to get to change.

But in any event, with a few exceptions, I thought this was an extremely valuable hearing and I greatly appreciate the fact that you came, and I less appreciate the fact that we have to go vote.

Director MCCONNELL. Thank you, sir.

Chairman ROCKEFELLER. The meeting is adjourned.

[Whereupon, at 4:38 p.m., the Committee adjourned.]

Submissions for the Record

PREPARED STATEMENT OF HON. RUSSELL FEINGOLD, A U.S. SENATOR FROM
WISCONSIN

Mr. Chairman, the question of the DNI's authorities is too often discussed in abstract terms, in part because the underlying bureaucratic tensions are often opaque. But we should not forget that there are real issues at stake, including whether the ODNI has the ability to redirect intelligence resources to meet our national security needs. That means not just responding to the latest threat or crisis, but committing to a long-term, strategic collection strategy that seeks to anticipate threats and crises before they happen. It also means allocating collection resources toward transnational threats that appear in regions of the world traditionally underserved by our Intelligence Community.

The most recent National Intelligence Strategy published last year acknowledges the problem. The strategy identified five major missions of the Intelligence Community, the first two of which—defeating terrorism and preventing and countering the spread of weapons of mass destruction—are global and transnational in nature. And the third—bolstering the growth of democracy and sustaining peaceful democratic states—also requires global commitment of intelligence resources. The strategy goes on to describe the need to “anticipate developments of strategic concern and identify opportunities as well as vulnerabilities for decisionmakers.”

Yet the most recent Annual Report of the United States Intelligence Community warned that “one challenge to improving the coverage of emerging and strategic issues across the Intelligence Community has been the diversion of resources to current crisis support.” And one look no further than the current crisis in Kenya to understand why sustained attention to issues such as political repression and ethnic tensions are critical to our national security. As the DNI testified last week, “Kenya is likely to enter a period of increased social tension and instability, which could affect its willingness and ability to cooperate with the U.S. on regional diplomatic and counterterrorist matters.”

A little over a year ago, I raised my concerns during another hearing of this Committee. At that time, the ODNI testified that it had used “lift and shift” authorities to respond to collection needs related to Darfur and Somalia. The problem, however, is that the use of these authorities do not help us anticipate crises. They do not help the Intelligence Community develop experience or expertise on these threats. And they do not represent an ongoing commitment to long-term challenges. In fact, the Deputy DNI for Collection acknowledged that we have not yet committed to long-term, global collection strategies. At our hearing, she testified that there is a “need to get the Intelligence Community back to what I grew up calling global reach,” adding that “we don’t have that today.” She further testified that “our challenge is, until we reach that point—with [Congress’s] help—of getting back to a place where we can do global reach, and pay attention to places that we are not—perhaps, high on the list today.”

Mr. Chairman, that was more than a year ago. We cannot accept inertia. Nor can we assume that the DNI will, or can fix this problem on his own. As the former Deputy DNI testified, Congress needs to be involved, pressing the Intelligence Community to allocate its resources in accordance with our national security needs and providing the DNI the authorities he needs to make it happen.

DNI Authorities Hearing

before the

Senate Select Committee on Intelligence

14 February 2008



J. Michael McConnell

Director of National Intelligence

February 14, 2008	<p style="text-align: center;">SENATE SELECT COMMITTEE ON INTELLIGENCE</p> <p style="text-align: center;">FEBRUARY 2008</p> <p style="text-align: center;">DNI AUTHORITIES</p> <p style="text-align: center;">UNCLASSIFIED STATEMENT FOR THE RECORD</p>
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INTRODUCTION

Chairman Rockefeller, Vice Chairman Bond, Members of the Committee, thank you for the opportunity to testify today on the authorities given to the Director of Intelligence (DNI).

Any discussion of authorities must first begin with principles: What purpose does intelligence serve? Why do we have a Director of National Intelligence (DNI)? And what kind of role should the DNI play?

DECISION ADVANTAGE

We in the Intelligence Community have a solemn mandate: The responsibility to provide relevant and objective analysis to customers across the government—from law enforcement officials, to warfighters, to the President, and the Congress. Our job is to create a decision advantage to the leaders of our country. By decision advantage, we mean the ability to prevent

strategic surprise, understand emerging threats and track known threats, while adapting to the changing world. We also have an operational role, in some circumstances, to confront or remove foreign threats to the nation.

ORGANIZATIONAL
OPTIONS

There are a variety of views on how to structure our Community to meet this responsibility. The four organizational options range from that of (1) an overseer to (2) coordinator to (3) integrator to (4) director who “directs” the Intelligence Community’s activities.

OVERSIGHT &
COORDINATION

For decades, the Community was led in a decentralized fashion with various agencies being directed largely by their departments with limited “direction” from the Director of Central Intelligence. Until the creation of the DNI, the Director of Central Intelligence doubled as the Director of the CIA and the coordinator of over a dozen intelligence agencies and components. It was apparent that managing the day-to-day activities of the CIA while effectively overseeing and integrating the Community composed of organizations serving other cabinet level Departments was a significant challenge for a single person. With passage of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of December 2004, the DNI

inherited a divided community that required greater coordination and integration to be effective in meeting the threats of this century.

A number and variety of studies since the 1947 National Security Act recommended that the Intelligence Community integrate its efforts under a single, empowered leader. But it took two events: the trauma of the September 11th attacks and the failure of intelligence on Iraq WMD, to spur dramatic reform of the Intelligence Community.

Today, we are building the foundation to meet the challenges of the 21st Century. Our mandate as we sit before you is to lead this Community of 16 agencies and components, of which the DNI has direct reporting responsibility for only one, the CIA. The remaining components are all under independent department heads.

Our current structure charts a middle path between a Department of Intelligence with line control over all elements and a confederated model, which provides resources but not day to day direction to subordinate elements.

Our current model empowers an intelligence community leader, the DNI, who manages the strategic planning, policy, and budgets for all national intelligence activities, but does not have operational control over the elements that conduct intelligence activities. The DNI also does not have direct authority over the personnel in the 16 agencies in the community.

INTEGRATE THE
INTELLIGENCE
ENTERPRISE

As part of our 500 Day Plan efforts, we have focused the DNI's role as the integrator of the Intelligence Community. We seek to create efficiencies and improved effectiveness in shared services like security clearances, information technology, and communications, but still promote an environment where the IC elements improve their individual and essential areas of expertise.

This integration model of governance across Departments is still being defined because we are in new territory for U.S. Intelligence.

This middle ground creates healthy tension in the system—one that obliges us to take on big issues within the Community while at the same time, doing so with the support and collaboration of the 16 Community members and in cooperation

with the Cabinet Department heads who house 15 of these elements.

IRTPA AUTHORITIES

The IRTPA legislation directed specific responsibilities and tasks for the DNI and the Office of the DNI. We believe a limited corporate headquarters staff is required to carry out strategic tasks such as: analytic and collection leadership; integration and prioritization; IC-wide Science and Technology; budget development and oversight; Information Technology integration; information sharing enhancement; human resources policy development and direction; equal opportunity and diversity direction and management; and civil liberties and privacy protection leadership and advocacy. In addition, the ODNI operates the following mission management-related centers and staff elements:

MISSION FOCUSED

The National Intelligence Council (NIC);
The National Counterterrorism Center (NCTC);
The National Counterproliferation Center (NCPC);
The National Counterintelligence Executive (NCIX);
Office of Analytic Mission Management
National Intelligence Coordination Center (NIC-C)

This organizational structure enables the Office of the DNI to implement the coordination and integration required by the Intelligence Reform and Terrorism Prevention Act and ensures the IC's collective efforts are effective and efficient.

SUCSESSES

This arrangement has seen significant successes in the three years since the ODNI was created in law. It has made an impact on how we do our business and the contribution we make to the nation's well-being. Let me provide you with just a few examples of intelligence reforms we've implemented so far.

We have:

- Established an Executive Committee of IC Agency heads and principal customers to address the tough issues facing the IC and to provide the DNI with decision making support.
- Significantly enhanced intelligence collaboration across the IC for collection, analysis, and dissemination.
- Improved analytic tradecraft by setting more rigorous standards, promoting alternative analysis, and enabling greater IC analytic collaboration.
- Resourced the National Counterterrorism Center to ensure the integration of all strategic level information relevant to counterterrorism strategic analysis as well as to promote

all-source intelligence collection collaboration and tasking deconfliction.

- Focused exclusively on guiding the Intelligence Community at large, allowing the CIA Director to give his agency the attention it requires.
- Worked with Congress to update the Foreign Intelligence Surveillance Act to be responsive to the threats of the 21st century.
- Played a key leadership role in the interagency effort to enhance the security of Federal IT networks.
- Established a civilian Joint Duty program which requires our future senior leaders to have experience at more than one intelligence agency; this will help the IC to create a more cohesive and collaborative community.
- Greatly enhanced classified information sharing among our foreign partners.
- Launched Security Clearance transformation.
- Integrated and coordinated the intelligence community-wide budget to ensure that we are making the hard choices now to prepare the community for the future.

DIRECTION FOR FUTURE I have just described where we were and where we are. I would like to talk about where we want to go. To further intelligence

transformation, we have launched reform initiatives aligned to our longer term vision. I'd like to profile them briefly here:

1) CREATE A CULTURE OF COLLABORATION

We must develop a workforce that knows, understands, and trusts one another, and regularly shares information to develop better intelligence products. Initiatives such as Joint Duty are critical to transforming our culture. We are also developing uniform compensation policies across the IC appropriate for our high performing 21st century civilian workforce, which will also serve as an incentive to bring our community closer together. We want to create a culture of intelligence analysts who understand that they have a "responsibility to provide" the needed information to the right customer in time to be useful. Such a culture puts great pressure on our analysts to know their customers, and to understand how to task all collection systems, and meet their obligations to protect sources and methods.

2) ACCELERATE INFORMATION SHARING

The seamless flow of information among the different collection disciplines and analytic communities will enable our leaders to have the intelligence they need to make the right decisions. We cannot continue to maintain multiple, non-interoperable networks within the Intelligence Community or operate under archaic information sharing regimes. Initiatives

such as the Single Information Environment and modernizing our information sharing policies and procedures will help us accomplish this goal.

3) FOSTER COLLECTION
& ANALYTIC
TRANSFORMATION

By transforming how we identify and address collection gaps, we will produce fused Intelligence, creating better situational awareness and enabling better decision making. We must organize the community around priority missions, not around specific intelligence disciplines and agency organization charts. Our Mission Management approach allows leaders to work across IC issues to bring the best solutions to the problem using multi-disciplinary teams from across the community.

4) BUILD TECHNOLOGY
LEADERSHIP &
ACQUISITION
EXCELLENCE

We will gain influences over our adversaries by exploiting America's advantages in technology and systems management. This will require us to radically rethink the way we identify, develop, and field promising new technologies. The current approach is too slow to counter a rapidly evolving threat. Specifically, this requires acquisition reform, streamlining the procurement process, and achieving greater synergies among our science and technology communities.

5) MODERNIZE BUSINESS
PRACTICES

It will be difficult to accomplish any of our objectives with

antiquated business practices and systems. We need to deploy an integrated planning, programming, budgeting, and performance management process that aligns strategy to budget, budget to capabilities, and capabilities to performance. This requires timely, accurate, and reliable financial systems and the ability to provide an auditable financial statement.

6) CLARIFY & ALIGN the
DNI's AUTHORITIES

Let me describe to you where we are today on the question of DNI authorities. We seek national intelligence authority that can focus, guide, and coordinate all IC agencies to ensure that our wide-array of intelligence consumers have the timely, tailored intelligence they need to make decisions. We are proud of our successes thus far in integrating the community using our current authorities, but there are impediments that slow our ability to take rapid action. We will continue to address these impediments to intelligence reform by exercising our current authorities. In addition, we are working as a member of the inter-agency process to update current Executive Guidance on the operation of the Intelligence Community. One of the main focus areas of this inter-agency process for recommendations to the President is maintaining and strengthening protections for privacy and civil liberties.

AREAS FOR SUPPORT

However, there are a few areas in which your support is required. Personnel policies can be both transformational and serve to create a common culture. We request that you act on the recommendations we have identified to build and support a unified IC civilian workforce. This includes proposals to allow us to implement modern compensation practices for all IC civilian employees; place all IC civilian employees in the excepted service; and provide for critical pay positions. We also request relief from rigid civilian end strength ceilings. These reforms would provide the IC with flexibility to most effectively implement our joint duty program; create a performance-based culture and reward and retain our best employees; and generally improve the strategic management of the IC workforce as a more cohesive entity.

CONCLUSION

In conclusion, we have seen significant reform in the Intelligence Community under our current authorities. Over the last few years, the IC has achieved positive results through a concentrated effort for better integration, better strategic management of scarce resources, and sharing of information more freely. With your support, the DNI will continue the Community's transformation to meet the charge I spoke of earlier: To create a decision advantage to our leaders and, ultimately, to protect our citizens, our values, and our way of life.

11

Thank you.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

3 July 2008

The Honorable John D. Rockefeller IV
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

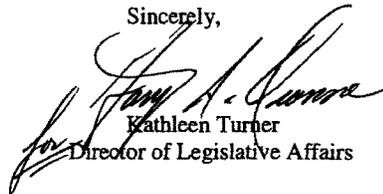
The Honorable Christopher S. Bond
Vice Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Vice Chairman Bond:

(U) The enclosures to this letter respond to questions from Members during the Committee's 14 February 2008 Office of the Director of National Intelligence (ODNI) Authorities hearing. Responses to three questions will be provided under separate correspondence.

(U) If you have any questions on this matter, please contact me on (703) 275-2473.

Sincerely,



Kathleen Turner
Director of Legislative Affairs

UNCLASSIFIED when separated from enclosures

DECL ON: MR
DRV FROM: MIL S-06

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

24 July 2008

The Honorable John D. Rockefeller IV
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

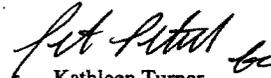
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Vice Chairman
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United States Senate
Washington, DC 20510

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(U) The enclosures to this letter respond to questions from Members during the Committee's 14 February 2008 Office of the Director of National Intelligence (ODNI) Authorities hearing. Most of the responses were delivered to the Committee on 3 July 2008; delivery of these three responses completes the Committee request.

(U) If you have any questions on this matter, please contact me on (703) 275-2473.

Sincerely,


Kathleen Turner
Director of Legislative Affairs

Question 1: (U) Please define the difference between the NIP and the MIP. Is there any ambiguity in the definition? If so, what are the consequences of this ambiguity—does it cloud the DNI's authorities in any way?

(U) The Intelligence Reform Act gave the DNI new authority to move money and people among the different agencies of the intelligence community, with the consent of the Office of Management and Budget and notification to the Congress. In practice, however, these authorities have rarely been used, and Committee staff members have been told that getting approval for a medium-sized reprogramming can often take several months. How long does it typically take to get a reprogramming through the Congress. How long does it take OMB to approve? Why does it take so long for these reprogrammings to happen? Which part of the process takes the longest?

(U) The DNI has realigned NIP funds between Departments during the budget build process. To date, there has not been a pressing need to reprogram funds between Departments. The average timeframe to process and receive approval for a NIP reprogramming action is approximately 2 months after the ODNI receives a complete reprogramming package request from the NIP component. This 2-month window includes: an ODNI approval process (approximately 7 business days), Defense Department consultations (7 business days), OMB approval (approximately 7 business days), and Congressional notification (30 days).

Question 2: (U) Some advocates of intelligence reform argue that we need to bring a version of Congress' landmark "Goldwater-Nichols" reform of Defense to the Intelligence Community. . For instance, the ODNI might exercise "CINC-like" operational control through much-enhanced Mission Managers, while the current Intelligence Agencies would take on "train and equip" responsibilities. This would put the DNI squarely in the driver's seat and it may be what is necessary to foster true unity of purpose for the Community. Have you thought about such an arrangement? How would you structure such reform? What lessons are there for the Intelligence Community in Defense's Goldwater-Nichols experience?

Answer: (U) The Office of the Director of National Intelligence (ODNI) continues to experiment with different concepts for Mission Management, much like the Defense Department experimented for over a decade with the Unified and Specified Commands before settling on the current Combatant Command structure.

(U) Currently we have three very different centers: the National Counterterrorism Center (NCTC); the National Counterproliferation Center (NCPC) and the National Counterintelligence Executive (NCIX). NCTC has a very broad leadership and planning mandate that transcends the Community (i.e., Strategic-Operational Planning). NCPC is more narrowly designed to provide strategic leadership to the IC's Counterproliferation Community. NCIX also has a very broad mandate that encompasses the entire U.S. Government, predates intelligence reform, produces the National Counterintelligence Strategy and other substantive products, and oversees CI priorities and policies for the Community. We also have three distinct country-specific mission managers for North Korea, Iran, and Cuba/Venezuela. These offices are small and focused, and provide strategic leadership, analytical and collection integration, focused policymaker outreach and warfighter support, and day to day oversight and coordination of the IC's efforts against their targets. They enhance analyst-collector and interagency collaboration across the Community, but do not exert operational control of those activities.

(U) There is no need at this point in time to select one form of Mission Management. The Community clearly needs a mechanism to institutionalize the "jointness" that occurs on the operational end of our activities. Many Community leaders and some outside observers note the mission focus and joint spirit which exists among our operationally deployed elements, and how that contrasts with activities "within the Beltway." We must remember that the bulk of the almost 20,000 analysts in the IC are located within other Departments; any mission management model must keep this in mind. That said, the Goldwater-Nichols model remains relevant to IC reform efforts.

(U) In December 2007, the ODNI Office of Strategy Plans, and Policy hosted a conference entitled "Building a Dynamic Enterprise: Lessons from Goldwater-Nichols." This conference included Intelligence Community leaders, DOD leaders involved with the Goldwater-Nichols reforms, outside experts and academics. The participants found several instances where the DOD experience was directly applicable, but also noted many cautions in the comparison.

a. (U) Among the similarities, the conference report noted that "acculturation is key to developing a workforce" and the Community must "establish a single intelligence culture." Both DOD and the Community face "tremendous resistance" and

“transformation must be both top-down and bottom-up.” We have instituted a Joint duty Program, modeled largely on Goldwater-Nichols. The challenge the IC faces is that we do not have Combatant Command equivalents where our staff can gain joint duty experience; although we do have ODNI centers like NCTC, NCPC, and NCIX, along with other mission managers, where Joint Duty credit is available.

b. (U) The differences noted included the fact that the Community is a more complex and overlapping entity than the Defense Department was, it lacks a clear chain-of-command to the DNI (with the exception of the Central Intelligence Agency), and it has little common culture upon which to rely. Furthermore, the Community lacks “an elite educational and training system to promote jointness.”

(U) The common culture and joint training systems in DOD took time to create. In addition to the reforms and initiatives discussed above, the ODNI has made a good start on the culture and education systems as well. It is too early in the overall reform effort to declare victory or defeat.

Question 3: (U) In some peoples’ view, your incomplete authorities, especially with respect to the Intelligence Agency heads, really render you the “Coordinator” of National Intelligence—not its “Director”. What additional personnel authorities do you need with respect to the heads of the NIP Intelligence Agencies to make them more accountable to you and more accountable for the results you seek?

Answer: (U) I do not require any additional personnel authorities with respect to the heads of the NIP Intelligence Agencies to make them more accountable. As you know, section 1014 of the IRTPA provides the DNI with a role in the selection of senior officers across the IC. In addition, I require each of the heads of the IC elements to sign a Personal Performance Agreement (PPA), describing specific results that are demonstrable and measurable, contribute to the overall National Intelligence Strategy (NIS), and represent a “stretch” for senior leaders. The IC element heads also are required to submit a mid-year review report on their PPA accomplishments made in relation to their performance objectives, and we meet one-on-one to discuss their progress. I also have asked the heads of IC elements to review and revise as necessary the annual performance plans for their senior executives and professionals to ensure that they align with the NIS. Finally, I believe the rewrite of Executive Order 12333, which is currently underway, will further clarify the relationship between the DNI and the heads of the NIP Intelligence Agencies in a manner that ensures accountability.

Question 4: (U) The Intelligence Reform and Terrorism Prevention Act required that the DNI share with the Office of the Secretary of Defense (OSD) the “milestone decision authority” on NIP programs that are executed within DoD (This means you and the Secretary of Defense jointly determine how, what, and when to buy for big programs, like satellites). We understand that the ODNI and OSD are working out an agreement on how to share this critical authority. However, that seems to be a half measure at best, since the DM has complete budgetary responsibility for the NIP, but he can’t control big program management. When are you and the SecDef going to finish your agreement on sharing acquisition authority? Any big issues left with it? Why shouldn’t the DNI be the sole decisionmaker on these acquisitions—at least in cases where most of the funding for an acquisition is contained in the NIP budget (for which you are sole responsible)?

Answer: (U) The DNI and the SecDef signed a memorandum of agreement (MOA) on 25 March 2008 concerning the “Management of Acquisition Programs Executed at the Department of Defense Intelligence Community Elements”. The MOA reflects the needs of both the DNI and the SecDef in the conduct of these acquisitions and no issues remain. In addition to the definition of the interaction between the Offices of the DNI (ODNI) and the Department of Defense (DoD) when a major system acquisition (MSA) is funded in whole or majority by the National Intelligence Program (NIP), the MOA also provides for inclusion of the ODNI staff in the Defense Acquisition Board (DAB) process when an intelligence related MSA is funded in majority by the Military Intelligence Program (MIP).

(U) While it might be more efficient if the DNI had sole milestone decision authority (MDA) for all NIP acquisitions rather than sharing it with the SecDef, the compromise that Congress arrived at recognizes the significant defense equities in many of these major system acquisitions executed in the Department of Defense that support not only national intelligence needs and missions but also critical Department of Defense needs and missions.

Question 5: (U) We believe that one of the areas where the Intelligence Reform and Terrorism Protection Act did provide the DNI ample authorities was in the budget arena. You seem to have sufficient budget authorities over the National In-

telligence Program (NIP), but your ability to help shape and influence Military Intelligence program (MIP) budgets is less clear. Do you agree that you have sufficient budget authorities for the NIP? What about for the MIP? Do you see any definitional problems in separating NIP and MIP that cloud your authorities or unnecessarily get in the way of business?

Answer: (U) The DNI's NIP budget authorities are sufficient. The law provides sufficient authority to plan and program NIP resources, but the DNI's flexibility to manage NIP resources is limited by the revised reprogramming thresholds in the Classified Annex to the Fiscal Year (FY) 2008 Defense Appropriations Act that changes the reprogramming level from the Expenditure Center to the Project level. This limits the DNI's and Program Managers' ability to realign funds quickly and react to unforeseen requirements in a timely manner.

(U) DNI budget authorities are sufficient for the MT. The ODNI staff works closely with the Office of the Under Secretary of Defense (Intelligence) (OUSDI) to review major system acquisitions, budgets and personnel. The ODNI staff also contributed to the fiscal year 2009 Defense Intelligence Guidance, participated on Office of the Secretary of Defense (OSD) budget issue teams, is a member on DoD senior budget councils, and coordinates on the final resolution of the MIP budget. In addition, the DNI meets regularly with the Secretary of Defense, and the OUSDI is a member of the DNI's Executive Committee.

(U) There are no definitional problems between NIP and MT as long as there is a clear distinction of requirements.

Question 6: (U) There appears to be a disconnect between the IC's appetite for big new programs and its ability to fund them—especially when costs ultimately soar far above original estimates, and must be canceled after billions of dollars have been wasted. This problem exists, in part, because the community does not look realistically at budget affordability of big programs beyond its “Five Year Defense Plans (FYDPs)” —even though most of their costs are incurred beyond this 5 year timeframe.

(U) A study you worked on for the ODNI just before you left Booz-Allen placed part of the blame on a broken requirements process. Specifically, your own study found that the requirements process in the Community is not effectively linked to budget decisions and instead is used to justify programs that already have significant momentum. In other words, we “require” that which we cannot afford. What have you done to keep from funding expensive new programs now that your successors will later be forced to terminate? Why don't your acquisition and budget processes factor in realistic, long-term affordability—not just what you fit within your budget year or Five Year Plan? Do you have sufficient authorities to deal with this problem? What remains to be done to fix this problem?

(U) We are taking direct action to improve the situation. DNI acquisition policy (ICD 105), policy guidance (ICPG 105.1), and the Acquisition Crosscutting Emphasis Area to the National Intelligence Strategy include the following tenets:

- a. (U) Do not start acquisitions you can not afford
- b. (U) Fully fund all acquisitions you undertake
- c. (U) Require appropriate levels of domain knowledge for all acquisition participants
- d. (U) Use only mature technology, or include and fully fund technology maturity before proceeding with development efforts
- e. (U) Utilize independent reviews and oversight of all acquisitions
- f. (U) Settle for no less than excellence in achieving cost, schedule and performance
- g. (U) Ensure accountability at all levels

The implementation of these guidelines and requirements will help address the long-term affordability of major acquisitions.

(U) The DNI needs authority for NIP acquisitions commensurate with his responsibility. Sole milestone decision authority (MDA) vested in the DNI for all acquisitions funded in majority by the NIP, together with authority to direct use of DNI acquisition policies, would greatly increase the speed at which the IC achieves acquisition excellence. The DNI has two legislative initiatives in coordination with the Office of Management and Budget (OMB) for consideration in the fiscal year 2009 legislative timeframe.

Question 7: (U) The IRTPA gave the Intelligence Community Chief Information Officer, currently Gen. Myerose, broad authority to set standards for IT and to manage IT resources. Nonetheless, the Committee understands that CIOs from elements of the IC do not accept his authority, instead citing their own authorities under the

Clinger-Cohen Act of 1996, which they believe is undiminished by IRTPA. The Committee would be open to means of clarifying this situation in favor of strengthening your office. Do you believe we need to resolve purported legal ambiguities to strengthen the authority of your CIO as intended by IRTPA?

Answer: (U) We believe it helpful to resolve legal ambiguities to clarify the authority of the Chief Information Officer (CIO) as intended by the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004. We would be happy to meet and discuss this topic to determine appropriate and useful ways to clarify these authorities.

Question 8: (U) The Committee understands that many DoD airborne imagery collectors use data dissemination means that are incompatible with existing NIP exploitation and dissemination architectures. This is operationally problematic but it also has fiscal drawbacks as large investments are required to “back engineer” the supporting infrastructure. Nonetheless, the National Geospatial-Intelligence Agency (NGA) has long been required by statute and by DoD directives to provide standards to which all imagery collection systems to be built. Given NGA’s role why are so many imagery systems fielded that are incompatible with one another and with the existing supporting architectures? Does the Director of NGA, in his role as functional manager, have the authorities needed to enforce—not just recommend—imagery standards? If so, why do these problems persist?

Answer: (U) The NGA Director, in his role as Functional Manager for GEOINT, adjudicates and mandates GEOINT standards for DoD use through the GEOINT Standards Working Group (GWG). Prior to the stand up of the GWG in January 2003, the GEOINT standards baseline for imagery systems was not as comprehensive as needed to ensure consistent development of GEOINT, not just imagery, systems.

(U) NGA established the GWG in January 2003. Through the work of the GWG, the requisite inventory of necessary standards that guide GEOINT systems development has grown to achieve critical mass and is being augmented as driven by both mission and industry. This standards baseline is codified within the DoD IT Standards Registry (DISR) and is being codified by the DNI in the Intelligence Community Standards Registry (ICSR). In addition to mandating specific standards within the DISR, the GWG has produced two guidance documents related to imagery systems development: the Distributed Common Ground System (DCGS) Acquisition Standards Handbook—Imagery (DASH—I), and the Sensor Standards Acquisition Guide (S2AG). Both documents will be included in the DISR as guidance documents, and will further enhance the ability of GEOINT systems developers to ensure consistent, interoperable development.

(U) NGA has instituted the NGA Interoperability Action Team (NIAT). NIAT works across the NSG with airborne and imagery systems Program Managers to ensure early insertion of appropriate standards into acquisition baselines. Response to the initial NIAT efforts have been extremely positive, and NGA anticipates that continued interaction with Program Managers through the NIAT activity will result in substantial improvement in the interoperability of fielded systems.

(U) As the National System for Geospatial Intelligence (NSG) Functional Manager, NGA is fulfilling its standards-related responsibilities. Regarding the end-to-end GEOINT standards adoption and compliance management chain, NGA’s role is not exclusive. Beyond the NSG Functional Manager, all affected program managers, program executive officers (PEO’s), chief information officers (CIO’s), and milestone decision authorities (MDA’s) have equally important responsibilities to insure that:

- a. (U) NSG-approved GEOINT standards are indeed incorporated into experimental, acquisition, and operational programs,
- b. (U) Transition to standards compliance is accounted for within programmatic total ownership cost (TOC) budget submissions and execution baselines, and
- c. (U) Requisite robust standards compliance testing, reporting, and certification is executed within programs prior to operational transition.
- d. (U) All of the aforementioned events must be executed with due diligence in order to mitigate the risk of, if not eliminate, fielding GEOINT systems that are incompatible with one another as well as with existing supporting architectures.

(U) The NGA Director has indicated that he has all the authorities necessary to execute defined mission responsibilities. The D/NGA approach has focused on building a GEOINT community from the ground up and addressing those issues upon which there is an agreed upon course of action.

(U) We are currently working with the DNI and USD(I) to modify our existing DoD directive (charter) and Intelligence Community Directive (ICD) and to strengthen D/NGA authorities for GEOINT activities across the National Intel-

ligence Program (NIP) and Military Intelligence Program (MIP) and as such, provide some “de jure” mechanisms to ensure that GEOINT Program Manager guidance is complied with on community activities/initiatives ranging from unified geospatial operations to systems R&D and acquisition.

(U) With respect to GEOINT standards, the D/NGA is executing his responsibilities to mandate GEOINT standards for DoD use in acquisition actions. It is incumbent upon all DoD entities to follow approved acquisition procedure and use the indicated standards where appropriate, or seek a waiver defining rationale for deviating from the standards baseline.

(U) While progress has been significant, it will take time for the entire community to implement the full standards baseline. NGA will continue to work aggressively through the GWG and the NIAT to develop and propagate standards and foster standards implementation through early interaction with Program Managers. NGA will continue to work with the DNI to leverage DNI authority to move the community toward standards implementation through development of appropriate community Policy Guides.

(U) As stated previously, NGA’s role is not exclusive regarding the end-to-end GEOINT standards adoption and compliance management chain. All affected program managers, program executive officers (PEO’s), chief information officers (CIO’s), and milestone decision authorities (MDA’s) have equally important responsibilities.

Question 9: (U) The leadership of the National Clandestine Service (NCS) is dominated by CIA officers. Other HUMINT agencies, FBI, and DoD entities are less than fully invested in the NCS. As a result, we do not have unity of effort. Standards are not uniformly enforced, and governance among agencies is by a series of memoranda of understanding, tantamount to treaties between competing powers. Symptomatic of this problem is the apparently deadlocked negotiations over Intelligence Community Directive 304, which would establish the procedures, principles, and guidelines for the conduct of HUMINT across the Community. We can all agree this area needs true unity of effort. We don’t want HUMINT officers stepping on each others’ toes; at the same time, we want to encourage innovation and healthy competition—without wasting resources. Do you favor, as some do, elevating the National HUMINT Manager authority to the ODNI and also ensuring broader agency representation (beyond CIA)—perhaps by making the National HUMINT Manager a non-CIA officer, but one who knows the clandestine HUMINT business? What are your views on this problem and what is your proposed solution?

(U) While progress in HUMINT transformation has been significant, it will take time to fully develop and implement policies, standards, best practices, and services of common concern. The DNI and the National HUMINT Manager will continue to pursue initiatives to gain greater efficiency, agility, flexibility and integration across the national HUMINT enterprise.

Question 10: (U) During your confirmation hearing, you said that you believed that the authorities of the DNI needed to be “cleaned up” with regard to how the intelligence community is managed. You noted, on several occasions, to Members of this Committee that you would examine the ODNI and its role in the intelligence community and would return to the Committee to outline specific areas in which new or additional authorities were needed. The Committee even postponed a Committee hearing on this issue after your request for more time to formulate such a proposal. At that Committee hearing, you said that you were seeking to focus, guide and coordinate agencies by “exercising [your] current authorities.” You also noted that you were working as a member of the interagency process to make necessary changes to the executive order governing the organization of the intelligence community. It appears, based on this testimony and on the fact that no major authorities related legislation have been requested by your office, that you are satisfied with current authorities of the ODNI. Do you believe there are any remaining authority issues that need to be addressed with legislation? If so, what are they? Are your requests for additional authorities adequate to ensure that your successors have the necessary authorities to manage the intelligence community in the future when the leadership of the ODNI, CIA, and the Department of Defense may not have as collegial a relationship as does the current leadership? When will the revisions to executive order 12333 be completed? When will these revisions be briefed to the Committee?

Question 11: (U) At the hearing, in response to a question from Senator Bayh, the DNI stated that the eight interrogation techniques prohibited by the Army Field Manual “clearly are illegal and not appropriate for anyone, to include the CIA cer-

tainly.” Is this correct? Are these techniques clearly illegal? Could any of them ever be appropriate for use by the CIA, under any circumstances?