

HEARING OF THE SENATE SELECT COMMITTEE ON INTELLIGENCE

DNI AUTHORITIES AND PERSONNEL ISSUES

WITNESSES:

MR. MICHAEL McCONNELL, DIRECTOR OF NATIONAL INTELLIGENCE

CHAIRER BY: SENATOR JOHN D. ROCKEFELLER, IV (D-WV)

DATE: THURSDAY, FEBRUARY 14, 2008

SENATOR JOHN D. ROCKEFELLER IV (D-WV): 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 MIKE McCONNELL: To save the director. (Laughter.)

SEN. ROCKEFELLER: I would say that would be at your discretion.

Congress created the position of director of National Intelligence, DNI, 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-evidence. And 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 that the - you know, 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 aspects 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 Counter-proliferation 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 towards 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 three years of experience under our belt, it's time for the committee to assess whether the reformed 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 on intelligence agency to another, but if bureaucratic roadblocks cause every transfer to take six months, then maybe we haven't done that at all, and at least we need to discuss about 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 statements that he wishes to make, or statement.

SENATOR CHRISTOPHER S. BOND (R-MO): Mr. Chairman, thank you very much. And 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, and 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 in to 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, Undersecretary Clapper, Directors Hayden, Mueller, Maples and others.

MR. : Mueller.

SEN. BOND: Mueller, Mueller. All right. We call it - we sometimes call it Miller in Missouri but it's Mueller. Okay. But I will 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.

SEN. ROCKEFELLER: Mr. Director?

DIRECTOR McCONNELL: Mr. Chairman, Vice Chairman Bond, thank you for the opportunity to appear today. Members of the committee, 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 the months to get the FISA legislation passed through the Senate with an overwhelming majority. Passed two days ago, 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 bill is extended or expired, 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: the responsibility to provide relevant and objective analysis to customers across the government from law enforcement officials, to war-fighters, 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 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 CIA and was more of an overseer, weakest form, for the dozens of intelligence agencies that existed at that time.

It was apparent that managing the day-to-day activities of the CIA while effectively overseeing the 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 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's weapons of mass destruction 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 '80s 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 the 16 agencies in the community.

As our 500 Day - as part of our 500-Day Plans, 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 three 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 de-confliction; established an executive committee.

This 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 decision making 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; 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 comments - 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 - 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 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 influences 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 excepted 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.

SEN. 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. We should be back in - (inaudible) - minutes. I apologize.

(Recess to vote.)

SEN. ROCKEFELLER: We'll 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 it was - If I considered it appropriate and reasonable, and then I would insist on getting it corrected 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.

SEN. 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 a 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. And 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. It's 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.

SEN. 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 10:00 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 one 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 shouldn't be in danger to terrorists from, you know, sort of from Sunday morning.

So I want to ask this question: You and I both want to see the Protect America -we 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, the Protect America Act is expiring on Saturday night; the natural inclination is to feel that that's the end of collection and so Osama, 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.

SEN. 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 the FISA accord, the procedures and so on were approved and we are loaded - from the date that it'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 where 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, which we

would have to satisfy a probable-cause standard if collection were obtained in the country, meaning a wired 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.

SEN. ROCKEFELLER: Yes, but there the bulk part of the answer is that intelligence would continue to be collected -

DIRECTOR McCONNELL: What is pre-loaded -

SEN. ROCKEFELLER: - With worries, legitimate worries on your part about what -

DIRECTOR McCONNELL: Yes sir, that's fair.

SEN. ROCKEFELLER: - the withdrawal or whatever it might be.

DIRECTOR McCONNELL: Well it's pre-loaded and for where we still have continuing cooperation of the private sector.

SEN. 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.

SEN. ROCKEFELLER: Didn't the Congress specifically provide the Protect America Act the PA 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 carryover but it has -

SEN. ROCKEFELLER: I understand.

DIRECTOR McCONNELL: It has issues, yes sir.

SEN. 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.

SEN. 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 '07, 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 '78. Over time, capability was subtracted from us and so,

when we went into July of '07, we had lost about two-thirds of our capability.

SEN. 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 and the things we put it since the Protect America Act expire, we would be back in that same situation.

SEN. ROCKEFELLER: I apologize to my colleagues but I 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 is where our condition is. Now, this is a political process and so all I can do is tell you that if we extend the act or expire the act 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.

SEN. ROCKEFELLER: Well yes, it will be. And I thank you very much, and Senator Bayh.

SENATOR EVAN BAYH (D-IN): Thank you, Mr. Chairman, and I will offer a political suggestion and not ask you to comment since you're 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 reported out in October; they knew that 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. One of the - 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 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.

SEN. BAYH: 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 outlaw 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 classified 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 hand. 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 five years ago, so I don't know if I'm answering your question but it's -

SEN. BAYH: 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.

SEN. BAYH: 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 -

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 captured some hardened terrorists, and so there was 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 we know so much more. It's very easy to have an interrogation if you had 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.

SEN. BAYH: Thank you.

SEN. ROCKEFELLER: I would like to say to my colleagues that the hearing is not about the question I asked or the question 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 SHELDON WHITEHOUSE (D-RI): 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 Qaeda or any organization affiliated with al Qaeda, or any person affiliated with any organization affiliated with al Qaeda, 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 -

SEN. WHITEHOUSE: Someone outside al Qaeda or an organization affiliated with al Qaeda?

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 -

SEN. 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?

(Off mike.)

MR. : 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 one year even beyond the expiration of the Protect America Act. Directives issued under those authorizations should also - may also continue under those also.

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

MR. : 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 needed 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 six 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.

SEN. WHITEHOUSE: But not as to your ability to surveil people who are affiliated with al Qaeda.

MR. : Certainly the authorization, if it covers a - the authorization for the acquisition would continue. It's the implementation of it that creates concern with the private sector.

DIRECTOR McCONNELL: Oh, so 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.

SEN. 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 -

SEN. 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.

SEN. 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.

SEN. 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 naiveté and their ignorance because

it's the same field manual that applies to highly trained, highly professional, highly experience 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 -

SEN. ROCKEFELLER: Please react to that.

DIRECTOR McCONNELL: - 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.

SEN. 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 RUSSELL D. FEINGOLD (D-WI): Mr. Chairman, I would not allow that to happen. My questions are exactly about this topic of this hearing. But I want to first say how valuable your questions were, and how important it was, that you brought us clearly - to some clarity on the issue of what really happens if the PA expires -

DIRECTOR McCONNELL: And I agree with that.

SEN. 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 - quote, "shift and lift collection resource 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 anticipate 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 acknowledge at our hearing that there is a, quote, "need to get the intelligence community back to what I grew up calling 'global reach,'" quote, unquote. We don't have that today," unquote.

She further testified that with Congress' help, the intelligence community can, quote, "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," unquote. Mr. Chairman, that is what we should be doing, pushing the intelligence community to allocate its resources in accordance with our national security needs in 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.

SEN. ROCKEFELLER: And it will be.

SEN. FEINGOLD: Mr. Director, do you agree with the statement in the most recent annual report of the U.S. intelligence community that, quote, "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," unquote.

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 six months we go through a process leading up to the signature by the president, and the way we get the closure is the cabinet officers sit and we take them through a - (inaudible) - what are we looking at, what are we not looking at, and we have - we've added some dynamics to that in the last cycle because - (inaudible) - officers tend to focus on the here and now. And it was to get at your question. What about those areas that we aren't - 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.

SEN. 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. Is 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

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DIRECTOR McCONNELL: No, I don't - I personally don't like the term lift and shift. More that's - that's crisis management in a collection situation. But the whole nature of the priorities forum - or framework, national intelligence priorities framework, was to force focus on the areas that we're 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.

SEN. FEINGOLD: Well, I think about this a lot, especially as I'm - in trips in my work in Africa with regard to the Foreign Relations Committee. And last week you testified that, quote, "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 counter-terrorist 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 pressure of poverty and marginalization directly affect our national - 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 manager. A mission manager took on a political context because if you have one, then the nation that it focuses 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. Now, 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, Secretary of Defense, or whatever, 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 some 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.

SEN. FEINGOLD: Thank you, Mr. Director. Thank you, Mr. Chairman.

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

SENATOR RON WYDEN (D-OR): 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. And 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. And 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 cancelled on the grounds that they're unaffordable and in effect don't give you value for the dollar that you're allocate.

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 '90s, many of the people with the skill sets had built large systems were attracted to private sector and we 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 - 30 more years in industry - to work through these issues, and now - had 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. And my ex-commandant (?) 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, and we started a process we called 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 a streamline acquisition. The problem is you didn't give me the authority to delegate them to anybody that spends money. So while the DCI and the director of Central Intelligence have special authorities to do special things can take risks that 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.

SEN. 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 Huen (ph), 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. And 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. 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 we're - that's something we

recognize and we're working through it. And let me just make one other point so you'll 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 we'll make that matter.

SEN. (FEMALE): Chairman?

SEN. : 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 five minutes. So Senator Feinstein -

SEN. ROCKEFELLER: I also asked you to take judicial notice that it's Valentine's night and some of us have some responsibilities. (Laughter.)

SEN. (FEMALE): We're all in favor of that.

SEN. ROCKEFELLER: 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 DIANNE FEINSTEIN (D-CA): If I may, Admiral, I'd like to - 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 communities?

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 defense has money - also contributing money, military-intelligence program into a major buy. And what's happened over the last, say, six or eight years is major systems have moved all into defense, all into the national program or to hybrid. 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 this interagency coordination for the directive directive. This is inter-agency; it will go to the principles within two 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.

SEN. 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; we can make that available to you and I think it's a classified number, but let me just verify that.

(Off mike.)

DIRECTOR McCONNELL: It's a classified number but it breaks it out -

SEN. FEINSTEIN: They said it's huge.

DIRECTOR McCONNELL: It's a large number - (chuckles).

SEN. 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.

SEN. 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 counter-proliferation center, the counterintelligence executive; you know, all these little things, they need to be treated as second of fine command so they can do whatever they need to do. And I've got a staff that's capped a level - you can see it; we can manage it and we 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.

SEN. 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.

SEN. ROCKEFELLER: Thank you, Senator Feinstein.

SEN. FEINSTEIN: Notice it's only a yellow line.

SEN. ROCKEFELLER: Yeah, I know, your 13 seconds - (laughter.)

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

SENATOR OLYMPIA SNOWE (R-ME): Okay, I'll be very quick, Mr. Chairman. And welcome, Mr. Director, I appreciate you being here today, and your straightforwardness and forthrightness and I know you've faced considerable challenges as you send 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 four 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 be - 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? You know, one who obviously should be taking charge of the responsibilities within those agencies; not day-to-day control but certainly being able to direct. And so 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. So there's a cabinet secretary between me and the process.

So what we've worked out is to operate as a sense of a unified community, and what views this executive board that we have to do that, and we have the cooperation so far of the cabinet officers. The only way I could see to change that dramatically would 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.

SEN. 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 inter-agency 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.

SEN. SNOWE: Well, and 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 -

SEN. 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's of the essence because it has been four years and I think that the time has come to make a decision. So, you know, we can create the culture that's still underway, 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, you know, 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 viewed the role of director as being just an integrator but also unifier, and this issue you're dealing within the limitations of the law -

DIRECTOR McCONNELL: Right, that's the issue.

SEN. SNOWE: - 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.

SEN. ROCKEFELLER: Former Secretary of the Navy.

SENATOR JOHN WARNER (R-VA): 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.

SEN. 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, fortunately public - I've never seen greater support for the uniformed people than they are 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.

SEN. 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 a question, and that is do you - 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.

SEN. WARNER: And if you were to - 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. BU tin the others there's a cabinet secretary they could have a different -

SEN. 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.

SEN. WARNER: That's the old DO as well as the - all 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.

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

SEN. ROCKEFELLER: No, I thank the senior senator from Virginia, our former oppressors - (chuckles) - and I thank -

SEN. WARNER: I offered to you to unite the two states if you want to; I mean - (laughter) - I'm retiring, a vacancy occurs, and therefore you can keep your slot.

SEN. 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 tell us - 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 you know, 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.

SEN. ROCKEFELLER: The meeting is adjourned.

(END)